



Type: Book Chapter

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## Law and War in the Book of Mormon

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Source: *Warfare in the Book of Mormon*

Editor(s): Stephen D. Ricks and William J. Hamblin

Published: Provo, UT/Salt Lake City; Foundation for Ancient Research and  
Mormon Studies/Deseret Book, 1990

Page(s): 46-102

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## Law and War in the Book of Mormon

*John W. Welch*

At first, law and war appear to be opposites. Especially in the modern experience, wars are thought to be basically extralegal. They break out when law and order break down; rules and conventions can become next to meaningless in the heat and rage of war. On closer examination, however, even war cannot be conducted successfully in a total state of anarchy or chaos. To a greater or lesser extent, all civilizations accept and employ certain laws, rules, customs, rituals, and conventional practices in times of war. In ancient Israel and in the Book of Mormon, this was certainly also the case.

Although no code of martial law as such has survived from the ancient Near East – and indeed it is doubtful that such a code in the modern sense of the term ever existed in the ancient world – the texts that have survived show that laws and social rules regulated both domestic and international aspects of war in ancient Israel and in ancient Mesopotamia.<sup>1</sup> The main sources regarding martial law under the law of Moses are found in Deuteronomy (see especially 13:12–16; 20:10–14, 19–20; 21:10–14; 23:1–14; and 24:5).<sup>2</sup> One may also extract from the normative and narrative texts in the Old Testament certain rules and principles that evidently regulated conduct during times of war.<sup>3</sup> One may further examine how war influenced the administration of justice or the enforcement of social obligations among the Israelites and the people they came in contact with.

The present study explores internally and comparatively several points of interaction between law and war in the Book of Mormon. Within the Book of Mormon, one can observe the effects of war on the normal affairs of Nephite government, the nature of their laws and norms pertaining to the conduct of war itself, and the use of armed forces in maintaining domestic order. One may also compare and contrast the Nephite experience with that of their Israelite relatives.

Like the Jews at Jerusalem, the Nephites up to the coming of Christ followed the law of Moses in basically all its civil, public, private, and ritual dimensions (see 2 Nephi 5:10; Alma 30:3). Accordingly, I assume that the martial laws of ancient Israel were significant in the regulation of military force in the Book of Mormon. While it is not possible, of course, to know exactly what laws were current in the ancient Near East around the time of Lehi, many rules and principles are reflected in biblical sources, primarily in Deuteronomy, a text that received particular emphasis under the reforms of Josiah in the decades just before Lehi's departure from Jerusalem. In addition, the likely existence of other laws and customs in preexilic Israel can be cautiously extrapolated from contemporaneous bodies of Mesopotamian law and from later rabbinic and other Jewish law books that, over the years, have consistently reflected stable oral traditions and interpretations relevant to biblical precedents.<sup>4</sup>

In the study of biblical law, one must deliberately evaluate the relevance of all these various materials, especially those coming from more recent sources. If they are sufficiently linked to specific provisions of biblical Hebrew law, several of these later sources can add data pertinent to our understanding of the likely state of Israelite law in Lehi's day. I strive in this paper to proceed according to this methodology.

Careful historical investigation of the Nephite record

also must be attentive, not only to lines of continuity between the ancient traditions of Israel and those of the Nephites, but also to the possibility of distinctive developments within the Nephite and Lamanite cultures in the New World. In the case of the regulation and conduct of war, however, the legacy of ancient Israelite martial attitudes and the spirit of customary Jewish law seem to have remained strong among the Book of Mormon populations.

### **General Effects of War on Nephite Law: The Tightening of Governmental Controls**

In all societies, governmental powers increase during times of war. Governments often impose curfews and curtail liberties as they focus the country's resources on military objectives and as political and military leaders take charge of emergency affairs. Such increased governmental power necessarily occurs at the expense of individual freedoms: acts permissible during peacetime may become crimes against the state during wartime; and martial rule may suspend or abrogate procedures that society would normally observe.<sup>5</sup> Such effects of increased governmental control can be illustrated in several ways from the Book of Mormon.

#### *1. Suspension or Interruption of Judicial Processes*

War in the Book of Mormon disrupted the normal administration of justice in many ways. Even in times of peace, only a small body of leaders spent their time resolving legal disputes and ruling the Nephite people. War taxed this little group heavily. Thus, during the darkest days of the campaigns of Ammoron, when Zarahemla fell and a dissenting king held it for a time (see Alma 61:8), the Nephite judicial system apparently could not operate. During those extreme months of political crisis, all matters of legal concern must have seemed far less important than the issues of national survival at hand.

After the war, the Nephite system for administering justice had to be reconstituted, demonstrating how thoroughly disrupted the judicial system was during this time. As the record indicates, soon after the recapture of Zarahemla, "Pahoran did return to his judgment-seat" (Alma 62:44), and new "regulations were made concerning the law. And their judges, and their chief judges were chosen" (Alma 62:47). Evidently, defending the nation had involved everyone. Even Helaman, the high priest over the church, had temporarily set aside his ecclesiastical responsibilities to lead a regiment. After the war, he too found that "a regulation should be made again in the church." He and his brothers "did establish again the church of God, throughout all the land" (Alma 62:44, 46). During this particular time of extreme national crisis, most social institutions—including the judicial system and the church organization—were effectively placed on hold until victory was won. In most other times of war, however, the Nephites apparently were able to maintain their judicial system and religious organization.

The response of the Nephites to this perilous condition in Zarahemla during the Amalickiahite War was not only natural, but also in keeping with the spirit of Jewish law. Talmudic law distinguishes between a permissive war (*milhemet reshut*) that seeks to expand the borders of Israel and a war of obligation (*milhemet mitzvah*), such as a war of self-defense or of national survival.<sup>6</sup> In the case of a war of national survival, the conduct of war was not optional for the people. In such a situation, scarcely any man would be justified in placing any other interest of church or state or personal convenience ahead of winning the war. Indeed, even women were not exempt from military service in a war of obligation: "All go forth, even a bridegroom from his bridal chamber, and a bride from under her canopy."<sup>7</sup> So it was, with his back against the wall, that Captain Moroni even threatened to put women and children under

arms against Ammoron (see Alma 54:12; 55:17), corroborating the idea that Moroni treated this campaign as a war of obligation and making his bloodless capture of the city of Gid all the more relieving.

## *2. Transfer of Legal Authority to the Chief Captain in Cases Involving Military Affairs*

Times of war may require a transfer of legal authority to military leaders, especially in cases involving military personnel or national security. The care with which such powers were conferred upon the Nephite chief captain, even in extenuating circumstances of armed conflict, shows how deeply the fundamental principles of legal order rested at the heart of this society.

Two well-documented instances of this come again from the record of the extraordinary Amalickiahite War. In the first, Captain Moroni exercised legal authority over the dissenters who had taken up arms and left with Amalickiah to join the Lamanites but who were soon captured (see Alma 46:29–35). Though no trials were held for these king-men dissenters, Moroni was not usurping legal authority in acting as he did. The record is careful to state that the chief judges and the voice of the people had expressly given Moroni plenary power “to exercise authority over [the armies of the Nephites]” (Alma 46:34). The dissenting soldiers were clearly guilty of disloyalty or treason against the state. The chief captain’s handling of the matter was expedient, simple, fair, and within his jurisdiction. He gave the rebel soldiers the choice of either entering “into a covenant to support the cause of freedom” or of being put to death (Alma 46:35). The rebel leaders, however, escaped (see Alma 46:33).

Five years later, Moroni needed to deal a second time with the king-men. Again endorsed by the voice of the people, Moroni sent a petition to the governor asking that he give Moroni “power to compel those dissenters to de-

fend their country or to put them to death" (Alma 51:15). This request was granted, and with this legal authority, Moroni and his men acted quickly to remove a seditious element from within the city of Zarahemla. Any king-men who lifted weapons of war to fight against the men of Moroni "were hewn down and leveled to the earth" (Alma 51:18). Captured soldiers, as before, were given the opportunity to "[yield] to the standard of liberty . . . and to take up arms in defence of their country" (Alma 51:20), but the surviving leaders of the insurrection were "taken and cast into prison" (Alma 51:19). Apparently Moroni and his men did not give the leaders the opportunity to swear the oath of allegiance, but rather he held them for trial.

Normally, trials in the ancient world were conducted without much delay, especially when all of the witnesses were immediately available, as they would have been for the trials of these king-men nobles. But in this case, trials were not promptly commenced. The justification given for this delay was that "there was no time for their trials at this period" (Alma 51:19), but the situation also involved political expediency, for six years passed before these prisoners received a trial, at which they were simply sentenced and "executed according to the law" (Alma 62:9). Of course, these political prisoners had no constitutional right under Nephite law to a speedy trial or to a writ of habeas corpus. Moroni and the other Nephite leaders were probably quite satisfied to silence these political activists by holding them in prison. The Nephite leaders were possibly also reluctant to execute the king-men leaders too quickly for fear of antagonizing their former followers.

These cases show that the Nephites exercised considerable caution in extending powers of martial law to Moroni. His jurisdiction extended only over soldiers: he was empowered only to deal "according to his will *with the armies* of the Nephites" (Alma 46:34; italics added), and he imprisoned only those who committed the overt act of

“lift[ing] their weapons *of war* to fight” (Alma 51:18; italics added). Thus, there is no evidence that Moroni had any authority over civil affairs in the land of Zarahemla, and the problems he faced in trying to get reinforcements and assistance from Pahoran (see Alma 59–60) indicate that his powers did not supplant those of the skeletal civil government.

Moreover, his powers were created in a manner consistent with, but not explicitly covered by, the checks required under the law of Mosiah. Under that legal system, a higher judge could judge lower judges (see Mosiah 29:28), and later Nephite law reflects a requirement that the governor had to sign any death sentence (see 3 Nephi 6:22). In Moroni’s case, these judicial safeguards were dropped. Instead, the chief judges or the governor sanctioned Moroni’s conduct in advance, and apparently because such grants of power were extraordinary, they had to be ratified by the voice of the people.

Moroni’s conduct—especially putting to death those who refused to take up arms—may appear brutal or harsh to modern readers, but it was consonant with the martial laws of his day. An ancient passage in 1 Samuel 8:11–17 documents the right of the king to compel military service, a rule that would have been widely observed. As Maimonides more recently explained, the king could “issue a decree that whoever evades [military taxes or conscription] may be punished either by confiscation of property or by death.”<sup>8</sup> Moreover, “Nahmanides adds that the power to levy an army was not limited to royalty but that whoever exercised lawful authority over the people had the right to raise an army for permissive war or a war of obligation.”<sup>9</sup> Thus, Captain Moroni emerges as a man of law and order. He obtained his extraordinary martial powers through legitimate channels of governmental and popular authority, and he imposed normal penalties on those who refused to take up arms in a war of national survival.



### *3. The Position of the Chief Captain in the Nephite Government*

Prior to the reign of the judges in Zarahemla, the king held all military and administrative power. King Benjamin and other Nephite kings were, in the tradition of the kings of Nephi, both warriors and statesmen (see, e.g., Words of Mormon 1:13). Therefore, during the reign of the kings, the kind of legal authorizations given to Captain Moroni was unnecessary, for the separate office of chief captain was nonexistent.

The change from kingship to judgeship was put into effect by the law of Mosiah promulgated and acknowledged in Mosiah 29. It appears from the record that the law of Mosiah did not contain any concrete provision establishing the office of a military leader, but rather the law anticipated that the chief judge would assume military leadership as occasions demanded. Over time, the position of chief captain evolved among the Nephites, as the following data indicates.

The first chief judge was Alma the Younger. He led the Nephite armies in battle against the rebellious Amlicites and the Lamanites, going “with his captains, and chief captains, yea, at the head of his armies” (Alma 2:16). As chief judge, Alma conducted the military affairs of his people and fought in hand-to-hand combat against Amlici, the leader of the insurgents (see Alma 2:29).

Six years later, however, the previously unmentioned Zoram led the Nephites in battle as their “chief captain” — a position to which he had been “appointed” (Alma 16:5). This office was legally constituted as a result of the division of governmental powers that resulted when Alma relinquished the judgment seat. Alma retained control of religious affairs as high priest but conferred power over judicial matters upon Nephihah as chief judge (see Alma 4:16–18). Evidently, military power was given to the chief

captain. Neither Nephiah nor any subsequent chief judge is ever mentioned as leading the Nephite military.

Since the Nephites had no standing army (see Alma 3:1; 44:23), they probably had a chief captain only during times of severe hostilities. Apparently, they had no chief captain when the leader of the Gadianton robbers made threats against Lachoneus and the Nephites because Lachoneus, as chief judge, had to appoint “chief captains over all the armies of the Nephites, to command them at the time that the robbers should come down out of the wilderness against them” (3 Nephi 3:17).

As was the case with the chief judge, the chief captain worked in conjunction with the high priest over the land. Both Zoram and Moroni relied on Alma’s prophetic powers (see Alma 16:5–6; 43:23–24), and Moronihah began preaching to the people himself when he realized his armies would see no success in their unrighteous condition (see Helaman 4:13–16). In fact, “the custom among all the Nephites [was] to appoint for their chief captains, (save it were in their times of wickedness) some one that had the spirit of revelation and also prophecy” (3 Nephi 3:19).

At first, the chief captain was appointed “by the chief judges and the voice of the people” (Alma 46:34). The position of chief captain, therefore, carried a certain democratic mantle with it, authorizing the chief captain to take “all the command, and the government of [Nephite] wars” (Alma 43:17). (A century later, Lachoneus seems to have acted alone in appointing Gidgiddoni chief captain – either the practice had changed by that time, or he acted expediently in urgent circumstances, or perhaps the record simply omits details about Gidgiddoni’s appointment. See 3 Nephi 3:17–19.)

The powers of the Nephite chief captain were so extensive that the people undoubtedly saw him as the nation’s *de facto* leader during times of war. This was a plenary commission, allowing him (1) to make “regulations to

prepare for war” (Alma 51:22) in such matters as (2) recruiting troops (see Alma 46:11–28), (3) erecting forts (see Alma 48:8), (4) fortifying and building cities (see Alma 50:1–2, 14–15), and even (5) directing citizens to relocate when necessary (see Alma 43:26). He also had power (6) to execute armed dissenters (see Alma 46:31–35), (7) to negotiate terms of peace with the enemy (see Alma 44), and (8) to act as a sort of judge—at least in matters pertaining to national security or involving military affairs. In Alma 50:25–36, for example, the people in the land of Morianton claimed a part of the land of Lehi. Instead of turning to the chief judge to resolve this land dispute, the people of Lehi took their case to Captain Moroni. Apparently the case came under the military commander’s jurisdiction because the people of Morianton had taken up arms and were determined to slay the people of Lehi with the sword. Apparently Moroni was the one who judged that the people of Lehi were “not in the wrong” (Alma 50:27).

Moroni’s use of judicial power is reminiscent of the enhanced judicial role of Israelite kings during times of war. In discussing the “gruesome episode” described in 2 Kings 6:26–30, Boecker asks, “Why did the woman turn to the king?” instead of to the local system of justice. One possible answer, he suggests, is that the woman “reacted to a particular situation, one of war; she was besieged by the enemy. The law of war therefore prevailed. The commander-in-chief was also the supreme judge. This could be why the king was approached by the woman.”<sup>10</sup>

Another power of the Nephite commander-in-chief seems to have been the power to relocate the entire population and mobilize their property in the war effort. Several times in Nephite history, the people moved (voluntarily or involuntarily) to avert war or to strengthen their defensive position. For such purposes, Nephi moved his fledgling colony from the Land of First Inheritance to the Land of Nephi; and Mosiah, the father of Benjamin, moved

his people from Nephi to Zarahemla after a time of “much war and contention” (Omni 1:10–13). Most notably, Lachoneus ordered all Nephites to relocate with their property near the city of Bountiful (see 3 Nephi 3:13, 22–23), and Mormon directed a mass migration of his people in a final effort to regroup and prepare for battle (see Mormon 6:2–5).

Under normal conditions, the government probably would not exercise the extraordinary power of causing the entire population to abandon homes and property, although their property laws – which essentially rejected the idea of fee simple ownership<sup>11</sup> – would not have seen this as an unlawful taking of private property. Even during times of peace, the king of the Lamanites was able to command his people to vacate the land of Nephi so that Zeniff could occupy that land pursuant to a treaty which Zeniff and the king had entered into (see Mosiah 9:6–7). There are many other cases in ancient history of compulsory migrations, for example, among the Assyrians, Romans, Mongols, and Byzantines (when the Slavs were moved into Anatolia). To a similar end under later Jewish law, the government could exact an “unlimited tax” to support war (cf. 1 Samuel 8:11–14).<sup>12</sup>

As seen above, however, the chief captain’s powers were neither unshared nor unlimited. In his angry epistle to the chief judge Nephiah, Moroni notes that the chief judge and “all those who have been chosen by this people to govern and manage the affairs of this war . . . [were] appointed to gather together men, and arm them with swords, . . . and send forth against the Lamanites” (Alma 60:1–2). Though Moroni’s strategic command of the troops was complete, others, including the chief judge, were apparently jointly responsible for managing the affairs of war. Lachoneus also shared responsibilities over military affairs, perhaps because he initiated his defense plan before he appointed his chief captain. While Moroni’s powers were

unquestionably broad, he seemingly was cautious not to tread on the office of the chief judge when dealing with matters that might be deemed more domestic than military.

#### *4. Increased Restrictions on the Freedom of Travel*

The privileges of freedom of travel and of free trade were not always enjoyed in the ancient world.<sup>13</sup> In addition to difficulties like the lack of foreign monetary exchanges and limited public accommodations and transportation that imposed practical barriers to travel and trade, legal restrictions also existed. For example, exit rules were especially stringent in Ptolemaic Egypt.<sup>14</sup> Understandably, therefore, the unusual condition of free travel between the Nephites and Lamanites in the sixty-fourth year of the reign of judges was prominently and proudly reported in Helaman 6:8. Significant trade agreements or peace treaties must have been involved to allow the extent of free travel, reciprocal lodging, and trade concessions necessary for these merchants to exchange goods and prosper as they did. Such legal action could have taken a form similar to that of King Lamoni's decree granting the sons of Mosiah "free access to their houses, and also their temples, and their sanctuaries" (Alma 23:2). Allowing Nephites to go wherever they pleased in the sixty-fourth year would have represented a major political change among the Nephites, for only three years earlier, they still considered "[deserting] away into the land of Nephi" wicked and unlawful (Helaman 4:12).

Long-standing Nephite policies ostensibly discouraged free travel from the land of Zarahemla, as is reflected at several points in Nephite history. Special permission was apparently necessary to travel from one land to another (see Mosiah 7:2; 28:1), and armies pursued or held in subjugation several groups to prevent them from leaving a particular land (like Alma the Elder's group and Limhi's people). Travelers and foreigners were apprehended and

treated with considerable hostility, especially when conditions were tense (see Mosiah 8:7; Alma 23:2). In the twenty-fourth year of the reign of judges, the people of the land of Lehi even called upon armed forces to prevent the people of Morianton from migrating into the land northward (Alma 50:25–36). Leaving Zarahemla was possible (see Alma 63:6–8; Helaman 3:3), but there is little evidence that any travelers from Zarahemla ever routinely returned or that Nephites viewed travel favorably.

In some ways population movements were a cause of war, and in other ways they were a result of war. Group separations were never well received, and almost every time one Book of Mormon group broke off from another, war ensued. The departure of dissenters precipitated several wars. For example, anger over Nephi's departure fueled the initial wars between the Nephites and the Lamanites. The major Lamanite offensive of the second century B.C. came on the heels of Mosiah's exodus from the land of Nephi. Among the Lamanites, military force prohibited Alma the Elder from taking his group of converts and leaving the land of Nephi. Among the Nephites, armed force restrained Amalickiah's dissenters from leaving the land of Zarahemla. The Zoramites seem to have been allowed to separate themselves from the Nephites when they moved to Antionum, but Alma worried about the military threat this posed for the Nephites (see Alma 31:3–4).

Of course during times of war, freedom of travel is always likely to decrease. During war, fleeing to the Lamanites—with the probable intent of fighting with them against the Nephites—constituted a crime punishable by death (see Alma 46:30–35). These Nephite measures prohibiting their people from joining with or aiding an enemy are reminiscent of the Jewish laws that “forbade Jews to volunteer to fight in foreign armies as soldiers of adventure.” Later, the Talmud extended this principle to banning all sales to or furnishing an aggressor with any “weapons

or supplies which might serve him in a war of aggression against a peaceful neighbor.”<sup>15</sup> The spirit of Jewish and Nephite rules in this regard is similar: Both demand the loyalty of their people to defend their state from within and without.

## Law and the Conduct of War

Many legal rules or customs had the force of law with domestic and international significance and dictated the proper conduct of warring parties in the ancient world. Such principles affected every stage of war, from the initiation of hostilities through the conduct of battles to the consummation of peace treaties.

### 1. *Preliminary Negotiations and Warnings*

Among Book of Mormon peoples, military commanders typically corresponded with each other before launching any attacks. Even where hatred ran deep, and even when there was no chance that the proposed terms would be accepted, the parties asked for capitulation or extended terms of surrender before going to battle. Thus, the bloodthirsty Giddianhi gave Lachoneus a choice between yielding up his cities, lands, and possessions to unite as partners with Giddianhi’s people, or else be destroyed (see 3 Nephi 3:6–8). Likewise, Moroni and Ammoron exchanged taunts, insults, and possible terms for the exchange of prisoners before Moroni went into battle formation around the city of Gid (see Alma 54). Moroni was especially reluctant to recommence a battle he was winning and become a man of blood without first offering Zerahemnah terms of peace (see Alma 44:1–7).

In addition to offering terms of settlement, communications also stated the parties’ justifications for going to war. Thus, Ammoron offered his reasons, namely, to avenge the death of his brother and to restore the Lamanites to their alleged right to the government (see Alma

54:16–17). Similarly, Giddianhi sought to “recover their rights and government” (3 Nephi 3:10). These offers and explanations were issued as serious threats and proposals, as is shown by the fact that oaths and curses often attended these verbal volleys. Thus Amalickiah had sworn in going to war that he would “drink the blood of Moroni” (Alma 51:9), and Giddianhi swore “with an oath” that he would attack if his terms were not met (3 Nephi 3:8).

Great emphasis was placed on such preliminaries in the Book of Mormon, which is not surprising because not only ancient custom, but also Israelite law, required parties to justify their conduct and to consider a peaceful resolution before resorting to mayhem. “When thou comest nigh unto a city to fight against it, then proclaim peace unto it. And it shall be, if it make thee answer of peace, and open unto thee, then it shall be, that all the people that is found therein shall be tributaries unto thee, and they shall serve thee.” If this offer were rejected, the Israelites could then besiege the city and totally destroy all its males (Deuteronomy 20:10–13).

This rule even applied in wars of national survival: “According to the Rabbis, the Biblical command that there must be a prior declaration of war, that a sneak attack like a ‘Pearl Harbor’ was forbidden, applies even to a war of obligation.”<sup>16</sup> “Even a nation at war must take all possible steps to avoid the shedding of blood. According to a biblical injunction, the Jewish army must offer peace before launching an attack. . . . One may not wage war against a nation without first offering peace.”<sup>17</sup> Compare this to Doctrine and Covenants 98:23–48, especially 98:33–34: “This is the law that I gave unto mine ancients, that . . . if any nation, tongue, or people should proclaim war against them, they should first lift a standard of peace unto that people.”

Commonly, ancient wars were based on “animosities and arguments of leaders” of nations, and hence premartial



correspondences were typical and appropriate “to justify declarations of war and call down divine support. Among the reasons given for the outbreak of hostilities were rebellion by a vassal state, reaction to attack, or reprisal for some other wrongdoing.”<sup>18</sup> The practice of swearing oaths of conquest in such communiqués, reminiscent of the ultimatum of Giddianhi, is evidenced, for example, in the words of Yarim-Lim, king of Aleppo, to his enemy Yashub-Yahad, “I swear to you by Adad, god of my city, and by Sin, my personal god, that I shall not rest until I crush you and your land.”<sup>19</sup>

These legal notices declaring war—in effect initiating a lawsuit between the gods of the respective sides, to be decided through the ordeal of battle<sup>20</sup>—were to be lodged according to Jewish law at least two or three days before opening hostilities.<sup>21</sup> Thus, it was consonant with such principles that Giddianhi gave Lachoneus until the “morrow month” to consider his proposal before his armies would come down against the Nephites and make them “extinct” (3 Nephi 3:8). Granting a few days’ respite was necessary to allow the other side time to decide whether to accept or reject the offer. This also allowed time for the troops to gather at an appointed place for the battle if the enemy were to reject the terms. In the civil war with the Amlicites, for example, the Nephites evidently knew when and where the Amlicites would attack, for they had time to prepare and gather for the battle, knowing the “intent of the Amlicites” and “the time of their coming” (Alma 2:12–13). The most obvious case in the Book of Mormon of making such prearrangements was the final battle at Cumorah, in which the commanders agreed on the time and place where they would meet, as Mormon had requested (see Mormon 6:2–3). A similar practice is evidenced in the instructions of the ancient Egyptian commander Piankhi to his general “to give the enemy choice of time and place for the fight.”<sup>22</sup>

## 2. *The Duty to Take Up Arms*

Roland de Vaux describes the duty of ancient Near Eastern peoples to take up arms in defense of their people: "Among nomads there is no distinction between the army and the people: every able-bodied man can join in a raid and must be prepared to defend the tribe's property and rights against an enemy. . . . This was probably true of Israel also."<sup>23</sup> Saul called all Israel to take up arms against the Ammonites (see 1 Samuel 11:1–11) and against the Amalekites (see 1 Samuel 15:1–7). The narrative of the Ammonite war also records the threat and curse Saul pronounced upon anyone who would not join in the battle. He symbolically cut a yoke of oxen into pieces and proclaimed, "Whosoever cometh not forth after Saul and after Samuel, so shall it be done unto his oxen" (1 Samuel 11:7), and sent the pieces and the warning by messengers to marshal the troops. Compare also the demonstration of Yaqim-Addu, governor of Sagaratum, who executed a criminal in prison and paraded his head among the villages as a warning of what would happen if they did not assemble quickly.<sup>24</sup>

As discussed above, the same civic duty existed in Nephite law and society. Moroni had power to punish any people in the land of Zarahemla who would not "defend their country" (Alma 51:15; cf. Alma 46:35). Like Saul and Yaqim-Addu, Captain Moroni symbolically portrayed the fate of those who would not fight in righteousness by tearing his coat and having the soldiers cast their coats to the ground and trample them, ceremoniously prophesying that they would be likewise torn and asking God to cast them down at the feet of their enemies if they should forget their God and fall into transgression (see Alma 46:21–22).

The duty to go to war, however, applied only in fighting against an enemy. Thus, according to Deuteronomy 20:1–2, instructing the leader to speak to his troops in a

holy tongue when they go up to battle against an enemy was interpreted as not applying in a conflict against other Israelites: “ ‘Against your enemies’ but not against your brethren, not Judah against Simeon nor Simeon against Benjamin.”<sup>25</sup> A similar feeling may be reflected in the insistence of the Anti-Nephi-Lehis not to “take up arms against their brethren” or “shed the blood of their brethren” (Alma 24:6, 18).

In the Book of Mormon, the duty to fight evidently fell upon all able-bodied men. Thus Zeniff reports, “I and my people did go forth against the Lamanites to battle” (Mosiah 9:16), and, under extreme and desperate circumstances, even old men, women, and children were not exempt (see Mosiah 10:9; Alma 54:12).<sup>26</sup> The laws of Deuteronomy afforded humanitarian exemptions from military service for those who were engaged or had recently married, built a new house, planted a new vineyard, or were fearful (see Deuteronomy 20:5–9; 24:5), but there is no evidence that these exemptions applied in wars of national defense, nor are they mentioned expressly in the Book of Mormon.

The one Book of Mormon group that was afforded an exemption from military service was the famous case of the people of Ammon, who, in repenting of their previous bloodshed, had sworn an oath that they would never again take up arms (see Alma 24:11–13; 27:23). After they arrived in Zarahemla, they were granted an exemption from active military duty. Why were they granted this exemption? Unquestionably, their reason for not fighting was righteous and bona fide. Moreover, granting this extraordinary legal exemption may also have been justified on the legal basis of Deuteronomy 20:8, which exempts those who are “fearful and fainthearted.” Since everyone going into battle was likely to be “fearful and fainthearted,” this exemption undoubtedly had to be given a narrow meaning in actual ancient practice; otherwise, nearly everyone would be

exempt. Indeed, as the Talmud explains, this biblical text only "alludes to one who is afraid *because of the transgressions he had committed.*"<sup>27</sup> In other words, if a soldier would have cowered in the face of enemy battle for any reason because of his previous sins (perhaps fearing that his sins prevented God from defending him, or because he was afraid to die a sinner), he was unfit for battle. On such grounds, certainly the Nephites would have recognized that the righteous fears of the Ammonites would have justifiably rendered them unsuitable for military duty.

The rabbis also report that the "fearful and faint-hearted" exemption applied only with respect to "voluntary" exploits of the king. Thus, in a "compulsory war" of national defense, even the fainthearted were obligated to go into battle.<sup>28</sup> Perhaps a similar limiting regulation contributed to the older Ammonites' change of heart several years later. They felt that they should no longer claim their exemption but rather break their covenant and return to military duty, having been moved by compassion for the Nephites and their dire nation-threatening predicament. Only the prophet Helaman's fear that they might "lose their souls" if they violated their oath prohibited them from doing so. Instead, they sent their sons into battle, who entered into a covenant and went forth to fight (Alma 53:13–17).

The men who remained exempt, however, continued to support the war from the home front, for the Ammonites were granted their exemption, as the voice of the people said, "on condition that they will give us a portion of their substance to assist us that we may maintain our armies" (Alma 27:24). This arrangement is especially noteworthy, since the Talmud likewise holds that most who are exempted from military service under the law of Moses are "only released from actual fighting, *but not from serving in the rear: 'They must furnish water and food and repair the roads.'*"<sup>29</sup> The Nephite interpretation reflects a similar un-

derstanding of the law in Deuteronomy. The condition imposed upon the Ammonites, therefore, was not only logical and religious, but also consistent with the spirit of Israelite law, which generally placed a high civic obligation on all citizens to contribute actively to the defense of their country, their God, their religion, and their people.

### 3. *The Age of Military Accountability*

All legal systems recognize distinctions between minors and adults. Several texts in the Bible indicate that ancient Israelite law was no exception and acknowledge the importance of age distinctions for legal purposes. In particular, twenty appears to have been the age at which Israelite males became obligated to serve in the military.<sup>30</sup> Only men twenty and older were counted in the Israelite censuses recorded in Numbers 1 and 26 (see 1:2–3; 26:2); only men of that age were held accountable for the murmuring of the Israelites in the wilderness (see Numbers 14:29); only those twenty and older were subject to the half-shekel temple tax (see Exodus 30:14; 38:26); and, several centuries later, only men of that age were counted in the censuses of David and Amaziah numbering the men of military age (see 1 Chronicles 27:23; 2 Chronicles 25:5). These texts set a strong precedent establishing twenty as the age of full majority in ancient Israel. Similarly at Qumran, at the age of twenty a person became specifically responsible to God and explicitly subject to divine punishment,<sup>31</sup> knowing “good and evil,” and was permitted to have sexual relations.<sup>32</sup>

The Book of Mormon writers seem to acknowledge four classifications of children and adolescents: infants, little children, children, and young men. King Benjamin’s speech is the one source in which all these groups are mentioned. With respect to military obligations, we are interested primarily in the group he and other Nephite writers called “young men.” Book of Mormon writers make

frequent use of the term *young men*. When speaking to his people, Benjamin addressed them as “old men, and also . . . young men, and . . . little children” (Mosiah 2:40). In so doing, he addressed all the nation, “from the eldest down to the youngest,” grandfathers (“old men”), fathers and single male adults (“young men”), and young sons and daughters (“little children”) (Mosiah 2:5).

Since the term *young men* in the Book of Mormon almost always refers to soldiers, it is reasonable to conclude that a “young man” under Nephite law and society was a man who had attained the age of twenty and who was responsible to render military service. (The Hebrew terms *bahūrîm*<sup>33</sup> and *nōʿūrîm*<sup>34</sup> refer precisely to such young men liable for military service.) Thus, Isaiah, quoted in 2 Nephi 23:18, said that the bows of enemy soldiers would “dash the young men,” and Book of Mormon usage followed that precedent. Zeniff mobilized all his “old men that could bear arms, and also all [his] young men that were able to bear arms” (Mosiah 10:9); in other words, he mobilized every able-bodied man who was of age.

The stripling warriors who fought under Helaman’s command are described consistently as “young men” (Alma 53:18, 20; 56:5, 9, 55). The implication is that they were around the age of twenty, or that Helaman treated them that way. Helaman once spoke of these soldiers with endearment, saying that they were all “very young” (Alma 56:46). Some of these volunteers may have been under the legal age for military service and for that reason were not serving in the regular Nephite army. On the other hand, some of them could have been over twenty. Around 80 B.C., their fathers had sworn an oath against taking up arms (see Alma 24). The narrative does not mention how old these boys were at that time, when they were not required to swear that oath along with their fathers, but about sixteen years later, they were fighting under Helaman.

The numbering of the Lamanite “young men” among the Nephites as they prepared for war (see 3 Nephi 2:14–16) recalls the military censuses taken in ancient Israel that listed all men aged twenty and over in the “sum of all the congregation of the children of Israel” (Numbers 1:2–3). Presumably then, those Lamanite “young men” had to be twenty or over in order to be numbered. The only other place in the Book of Mormon where the phrase *young man* appears is in Mosiah 17:2, where Alma is described as “a young man.” Since Alma was serving at the time as a priest and judge on King Noah’s court, the use of the phrase *young man* here is consistent with its use elsewhere as a technical legal term describing those who had attained the age of full majority and public status under Nephite law.

#### 4. *The Military Census*

Anciently, for both military and religious purposes, “numbering” was important among the legally acknowledged group. As Speiser has shown, the census taken at the conclusion of many ancient assemblies “involved in all cases more than a mere tally.” The purpose was not just to count, but to “take into account” (Heb. *pqd*) and “to attend to [each constituent] with care.”<sup>35</sup> Speiser explains:

On periodic occasions, the higher powers made lists which determined who among the mortals was to live and who was to die. Now, the same basic concept confronts us throughout the history of Jewish religious thought. Moses says to God: “Efface me, I pray Thee, from Thy book which Thou hast written,” and God replies, “Him only who has sinned against Me will I efface from My book” (Exod. 32:32–33). According to the Mishna *Rosh ha-shana*, the mortals are judged by God on New Year’s Day, passing before him in review like *troops* (I 3). The appertaining liturgies carry this thought further. “On New Year’s Day they are recorded, and sealed

on the Day of Atonement: how many are to pass away and how many to be brought into being, who is to live and who is to die." More relevant still is a passage from another old Jewish poem which refers to the same occasion: "On it are the creatures recorded (*yippaqēdū*), to assign them to life or death." We have here the technical verb *pqd* itself, in its special idiomatic sense, which tradition had somehow managed to hand down although the correct meaning of the corresponding biblical occurrences had long been lost. To be sure, these are views relating especially to the New Year. But there are no compelling grounds for assuming that such ideas were always restricted to that one juncture.<sup>36</sup>

In Old Babylonian times "the census took its name from the incidental process of ritual 'purification,' "<sup>37</sup> and in ancient Israel these concepts are manifested in the several censuses taken of Israelite tribes and armies (see Numbers 1:3; 26:2; 2 Samuel 24). These enrollments filled two major functions: "To serve as the basis for levying and collecting taxes, and to serve as a register of those men subject to military duty."<sup>38</sup> At the time of these "numberings," the law required every man twenty years old and above to be numbered and to pay half a temple shekel "to make an atonement (*kōfer*) for [their] souls" (Exodus 30:11–16). These soldier lists were "to be prepared methodically, place by place, . . . and name by name."<sup>39</sup> The process sometimes terrified those whose names were being enrolled in God's book of life and death, "bordering on a phobia about being counted,"<sup>40</sup> and hence this was a sacred, serious, and solemn undertaking. There were several purposes of this accounting: to organize the people, to purify the host, to assure that the entire army had been duly purified, and to designate those included and those excluded among the people of God.

In the Book of Mormon, the procedure of "numbering" is also mentioned frequently. Sometimes it relates to po-



litical citizenship and cultural identification (e.g., "Now all the people of Zarahemla were numbered with the Nephites," Mosiah 25:13; cf. 2 Nephi 4:11; 10:19; Mosiah 25:12; Alma 45:13–14; 3 Nephi 3:14). Other times it refers to those who were adopted into or ritually numbered among the house of Israel or the church of God (e.g., 1 Nephi 14:2; 2 Nephi 10:18; Mosiah 26:32, 36; Alma 5:57; 6:3; 27:27; Helaman 15:13; 3 Nephi 15:24; 16:3, 13; 18:31; 21:6, 22; 30:2; Moroni 6:4, 7; 7:39). In general, it is associated with the concepts of constituting and purifying the people as a political and religious body, and on solemn occasions, all the names were individually inscribed (e.g., Mosiah 6:1). The census evidently functioned among the Nephites in many of the same ways discussed by Speiser: (1) to constitute tribal boundaries within the group; (2) to number and purify the army; (3) to assure the ritual purification of the entire population; and (4) to designate those who would live among God's people in this life and in the world to come. Each of these functions appears in the Book of Mormon.

For present purposes, we are concerned only with the military use of the census. For example, this practice seems to have been invoked at one of the most desperate times in Nephite/Lamanite military history: "All the Lamanites who had become converted unto the Lord . . . were compelled . . . to take up arms against those Gadianton robbers" (3 Nephi 2:12). When "the Nephites were threatened with utter destruction" (3 Nephi 2:13), they took a census of their armies and all their people: "Those Lamanites who had united with the Nephites were numbered among the Nephites" (3 Nephi 2:14). The result was purificatory: "And their curse was taken from them" (3 Nephi 2:15). Thereafter, this invigorated Nephite army went on with the aid of God to win an extremely emotional victory over Giddianhi, Zemnarihah, and their robbers (see 3 Nephi 3–4).

### 5. *Oaths of Enlistment*

People in antiquity often entered into legally binding obligations, contracts, or commitments by means of oaths. Oaths were used for several purposes in Israelite and Nephite military affairs: one was to demonstrate one's commitment to fight wholeheartedly. When Nephite men enlisted to fight for their country, they did so with a covenant. For example, Moroni recruited troops with this cry: "Behold, whosoever will maintain this title upon the land, let them come forth in the strength of the Lord, *and enter into a covenant that they will maintain their rights, and their religion, that the Lord God may bless them*" (Alma 46:20; italics added; see also Alma 53:17).

This oath was more than just a commitment to "maintain their rights" by fighting loyally for their country. The new soldiers "came running together with their armor girded about their loins, rending their garments in token, or as a covenant, *that they would not forsake the Lord their God; or, in other words, if they should transgress the commandments of God, or fall into transgression, and be ashamed to take upon them the name of Christ, the Lord should rend them even as they had rent their garments*" (Alma 46:21; italics added). The soldiers then entered a covenant in a manner similar to that of the Hittite Soldier's Oath.<sup>41</sup>

The primary purpose of such an oath seems to have been to enlist and establish the soldiers' commitment to obey the Lord valiantly in all things: "We covenant with our God, that we shall be destroyed, even as our brethren in the land northward, if we shall fall into transgression; yea, he may cast us at the feet of our enemies, even as we have cast our garments at thy feet to be trodden under foot, if we shall fall into transgression" (Alma 46:22).

The impact of such an oath on soldiers about to enter into battle is clear. In addition to strengthening the faint-

hearted and reducing the chances that these part-time warriors would desert in the frightening face of battle, the covenant relationship between God and the individual formed an essential alliance with the divine warrior who stood at the head of the troops and alone would give them victory or deliver them up to defeat. The righteous Nephites had faith that the Lord alone would deliver their enemies into their hands. When he had surrounded the invading Lamanite troops only a year earlier, Moroni had expounded this very point to his enemy Zerahemnah:

Ye behold that the Lord is with us; and ye behold that he has delivered you into our hands. And now I would that ye should understand that this is done unto us because of our religion and our faith in Christ. . . . Ye see that God will support, and keep, and preserve us, so long as we are faithful unto him, and unto our faith, and our religion; and never will the Lord suffer that we shall be destroyed except we should fall into transgression and deny our faith. (Alma 44:3–4.)

The most important oath that the Nephite soldiers hoping for victory could make was to covenant not to “fall into transgression,” for they knew that the Lord would support, preserve, and keep them only so long as they were faithful to him and his commandments.

The ancient Israelites understood war in very much the same way. De Vaux writes that “war was regarded as a sacral undertaking with a ritual of its own,”<sup>42</sup> and, in addition to purity, “faith was an indispensable condition”<sup>43</sup> for the combatants. Rofe adds: “Inasmuch as war was perceived as an activity and a revelation of God, it was considered holy; . . . hence the term ‘to consecrate battle’ (Jeremiah 6:4; Joel 3:9; Micah 3:5) and the warriors’ state of being ‘consecrated’ (Isaiah 13:3; Jeremiah 22:7; 51:27–28).”<sup>44</sup> “Rigorous modes of oath-taking and dedication,” notably among the Nazarites (see Numbers 6:5, 8), and other military oaths such as that of King Kartu in the

Ugaritic epic of Krt were also taken.<sup>45</sup> The result that was to follow from such a sacral martial state is described in the law of Deuteronomy: "For the Lord your God is he that goeth with you, to fight for you against your enemies, to save you" (Deuteronomy 20:4). The oath taken by Moroni's men clearly displays such faith and dependence upon God and commitment to keeping his commandments during wartime, in righteousness and purity.

### 6. *Laws of Purity in Warfare*

The obligation to maintain righteousness and purity extended well beyond oath making at the time of enlistment. The law of Moses also required holiness of the camp throughout the campaign.<sup>46</sup> "When the host goeth forth against thine enemies, then keep thee from every wicked thing" (Deuteronomy 23:9). Well known from the Old Testament are several laws, rules, and regulations requiring the ritualistic and hygienic purity of the armies of Israel: "The combatants had to be in a state of ritual cleanliness, *i.e.*, 'made holy' (Joshua 3:5). They were bound to remain continent (2 Samuel 11:11), and this obligation of cleanliness extended to the camp, which had to be kept 'holy' if Yahweh was to encamp with his troops (Deuteronomy 23:10–15). The reason was that the wars of Israel were the wars of Yahweh (1 Samuel 18:17; 25:28)."<sup>47</sup>

Hence God was consulted before the troops went into battle: In the period of the early monarchy, "Yahweh was consulted (Judges 20:23, 28; 1 Samuel 14:37; 23:2, 4) by means of the ephod and sacred lots (1 Samuel 23:9–10; 30:7–8)"<sup>48</sup> through a priestly function, while in the years around the time of Lehi, God's will in this regard was "conveyed through the prophet (Deuteronomy 18:15–19)."<sup>49</sup> God himself "marched in the van of the army (Judges 4:14; 2 Samuel 5:24; cf. Deuteronomy 20:4)."<sup>50</sup> And the Talmud later reiterated these same principles: "So long as Israel turned their thoughts above and subjected their

hearts to their Father in Heaven they prevailed, but otherwise they fell,"<sup>51</sup> and the exemptions from ritual washing applied only in optional wars, not those of obligatory national defense.<sup>52</sup>

Similar concerns over the righteousness of the army and about the need to consult God through his prophet prior to battle are present in Book of Mormon accounts. For example, Captain Moroni insisted that his troops not "fall into transgression" (Alma 46:22), for military success critically depended upon their righteousness. The "exceeding faith" and purity of the stripling warriors of Helaman were their most distinctive virtues (Alma 53:21; 57:26). God gave them victory because "they did obey and observe to perform every word of command with exactness; yea, and even according to their faith it was done unto them" (Alma 57:21). The chief captain, Zoram, sought Alma's advice "whither the Lord would that they should go into the wilderness in search of their brethren,"<sup>53</sup> knowing that Alma "had the spirit of prophecy" (Alma 16:5). Captain Moroni was sure to consult with Alma the prophet and high priest before going into battle in the land of Manti, and the word of the Lord delivered by Alma told Moroni when and where to meet and defeat the enemy (see Alma 43:22–24). Later, chief captains were appointed who "had the spirit of revelation and also prophecy" (3 Nephi 3:19).

All this was to assure that the will of the Lord was done in battle and that the combatants remained pure and righteous, as the law required. Accordingly, the righteous Nephites attributed their military successes to God (e.g., Alma 44:5; 57:36; 58:33; Mormon 2:26), whereas the unrighteous claimed that victory was due to their weapons or their own strength (e.g., Alma 44:9).

### *7. Respect for Man in the Conduct of War*

Since war was perceived as a ritual or sacral action of and with God, conducting hostilities with respect and dig-

nity for all involved, as God dictated, was essential. Captain Moroni exemplified this noble spirit when he said to Zerahemnah in the intense emotion and heat of capture, "We do not desire to be men of blood. . . . We do not desire to slay you" (Alma 44:1). With the exception of the destruction of Ammonihah, there is no evidence that the occupying forces of the Lamanites during most of their history burned or destroyed Nephite cities (including Zarahemla, Nephihah, Mulek, Cumeni, and many others). Only in the final hours of the complete collapse of this civilization did the attacking armies begin to burn each other's towns, villages, and cities in wanton destruction (see Mormon 5:5).

These attitudes appear to reflect the humanitarian standards of conventional warfare that God's law required among the ancient Israelites. "In conducting military operations, wanton destruction of fruit trees in the enemy's territory was forbidden (Deuteronomy 20:19),"<sup>54</sup> and saving a human life was the most meritorious deed known to Jewish ethics, a value extended even into the conduct of battle: "Even a nation at war must take all possible steps to avoid the shedding of blood. . . . The moral repugnance against taking another person's life, even an enemy's, was expressed by Rabbi Yitschak (fourth-fifth century A.D.): 'Just as David was praying to God that he should not fall into the hands of Saul, he also prayed that Saul should not fall into his hands.'"<sup>55</sup> Thus, even in attacking a city, humanitarian concerns remained operative (see Deuteronomy 20:10).

In this regard, the rabbis derived a further rule from the instruction to wage war against Midian "as the Lord commanded" (Numbers 31:7), which they took to mean that "it was permitted to surround the enemy only on three sides so that they might flee from the beleaguered city."<sup>56</sup> Perhaps the people of Limhi saw the divine hand similarly affording them the opportunity to escape out "the back

pass, through the back wall, on the back side of the city" (Mosiah 22:6), followed by a half-hearted Lamanite attempt to recapture these escaped civilians (see Mosiah 22:16). Thus, humanitarian attitudes are detectable at several points in the war records of the Book of Mormon, particularly in the treatment of hostages and captives.

#### *8. Laws regarding Captives of War*

While the Book of Mormon records no express set of provisions regulating the treatment of prisoners of war, examination of the passages concerning the matter shows several patterns in the Nephite military treatment of captives. The Book of Mormon describes circumstances under which prisoners were taken, the types of people who were captured, the treatment given to those imprisoned, and the conditions upon which prisoners might be released.

In a heated and fair battle, Nephite military leaders had no qualms about pursuing and slaying the enemy, as when Alma led the Nephites, and they "did pursue the Amlicites all that day, and did slay them with much slaughter, insomuch that there were slain of the Amlicites twelve thousand five hundred thirty and two souls" (Alma 2:19; cf. Alma 43:38–41; 44:7; 51:32; 52:25, 32). The Nephites understood well the need to "defend themselves against their enemies, even to the shedding of blood if it were necessary" (Alma 48:14); yet they "did not delight in the shedding of blood" (Alma 48:23) and would have preferred not to slay their enemies at all (see Alma 44:1).

Whenever they obtained reasonable advantage over their enemies, they were quick to disarm their enemies and cease the work of destruction (see Alma 43–44; 52:37–39). Moroni was repeatedly in a position to slay soldiers who had unjustly attacked his people, but instead he merely took them prisoner or offered generous terms of peace. For example, Nephite strategists whose men had surrounded drunken or sleeping Lamanite soldiers al-

lowed the enemy to awake and surrender rather than slaughter them in their vulnerability (see Alma 55:18–24; 62:23–25). Even when guarding and transporting captured enemy troops meant risking the lives of Nephite soldiers and nearly depleting their own supplies, Nephite commanders preferred imprisoning Lamanites to executing them (see Alma 57:13–16). As a rule, the Nephites never killed an enemy who surrendered.

The only apparent exception to this rule was when Gidgiddoni led the combined Nephite-Lamanite forces against the Gadianton robbers. He commanded his men “that they should not spare any that should fall into their hands by the way” (3 Nephi 4:13). This was undoubtedly because of the nature of the war and the enemy: the Nephites were not attempting to push another nation’s troops out of Nephite territory but were battling against a band of robbers whose parasitic existence would always threaten Nephite and Lamanite security if they were not eliminated. But even with such an enemy, when Gidgiddoni’s troops later managed to surround the robbers, they did not follow the captain’s extermination order but took prisoner all those who yielded themselves up (see 3 Nephi 4:25–27).

Moroni was a pragmatist as well as a prophet, and he was more likely to take prisoners (as opposed to letting captured soldiers go free with a covenant of peace) if he needed bargaining power to regain captured Nephites (see Alma 52:8). Yet unlike the Lamanites, Moroni’s troops never took women or children prisoner (see Alma 54:3), largely because the Nephite soldiers never fought in Lamanite territory. Helaman’s epistle to Moroni indicates that when Lamanite provisions became short, the Lamanites kept alive only the most valuable prisoners, the chief captains (see Alma 56:12).

When the Nephites took prisoners, they made good (but not excessive) use of them. Moroni had Lamanite



prisoners both bury those slain in battle and fortify the city of Bountiful so that it became a suitable "stronghold to retain . . . prisoners." By doing so, he not only freed up Nephite troops for battle, but he also made guarding the prisoners easier (Alma 53:1–6). If prisoners did attempt to escape or revolt, they were slain (see Alma 57:30–34).

Prisoners were not sought after, however, as a cheap form of slave labor. Instead, Nephites generally avoided taking prisoners by allowing captured troops to go free if they yielded up their weapons and covenanted not to fight again. Often they allowed prisoners also to go free if they made a similar promise. Thus, Moroni allowed Zerahemnah and his men to go free when they agreed to such conditions out of desperation, after having previously refused to enter into a covenant of peace "which [they knew] that [they would] break" (Alma 44:8). The people of Morianton were allowed to return to their lands "upon their covenanting to keep the peace" (Alma 50:36).

Such covenants were taken seriously. After defeating a Lamanite army, Moroni and Pahoran caused those who had not been slain "to enter into a covenant that they would no more take up their weapons of war against the Nephites. And when they had entered into this covenant, they sent them to dwell with the people of Ammon, and they were in number about four thousand who had not been slain" (Alma 62:16–17). Moroni and Pahoran sent four thousand Lamanite soldiers, who had given nothing more than their word, to live with the defenseless Ammonites! Eventually, all remaining prisoners were allowed to join the people of Ammon, and they began "to labor exceedingly, tilling the ground, raising all manner of grain, and flocks and herds of every kind; and thus were the Nephites relieved from a great burden; yea, insomuch that they were relieved from all the prisoners of the Lamanites" (Alma 62:29).

Later, after Moronihah had surrounded the Lamanite armies and regained possession of the city of Zarahemla,

he “caused that the Lamanites who had been taken prisoners should depart out of the land in peace” (Helaman 1:33). Finally, after Gidgiddoni’s troops had captured or slain all of the Gadianton robbers, the Nephites “did cause the word of God to be preached unto [the prisoners]; and as many as would repent of their sins and enter into a covenant that they would murder no more were set at liberty” (3 Nephi 5:4).

One category of prisoners deserves special attention, namely the Nephite rebels. Those who were Nephite citizens but attempted to overthrow the government or aid the enemy were treated in a manner similar yet not identical to the way the Nephites treated captured enemy troops. Armed resisters, as were rebellious Lamanite prisoners, were slain (see Alma 51:19), but any who opted to enter into a covenant “to support the cause of freedom” (Alma 46:35) were allowed to fight for their country. Unlike Lamanite prisoners, however, Nephite rebels could be put on trial and executed for their crimes (see Alma 62:9). Their resistance did not have to be active – refusal to defend the country also warranted execution (see Alma 46:35). The Nephites also singled out rebel leaders for punishment. The leaders of the king-men were thrown into prison (see Alma 51:19); Pachus, who had made himself king, was immediately slain, whereas his men were imprisoned and given a trial (see Alma 62:8–9); and Zemnarihah, leader of the Gadianton robbers, was ceremoniously hanged (see 3 Nephi 4:28). The singling out of rebel leaders for punishment and execution marks the most significant difference between the treatment of Nephite rebels and Lamanite prisoners. No captured Lamanite leader was ever executed or even treated differently than other captured soldiers, as far as the record indicates.

The Gadianton robbers, in particular, provide an interesting case study. The Nephites apparently considered them to be Nephite criminals rather than enemy prisoners

of war, since those who would not change their ways were “condemned and punished according to the law” (3 Nephi 5:5). Yet the robbers must have been treated under martial law, because murderers would not normally have had the option of being “set at liberty” if they would “repent of their sins and enter into a covenant that they would murder no more” (3 Nephi 5:4).

Turning to provisions of early biblical and Jewish law dealing with the taking and treatment of prisoners of war, one again finds several points of comparison with the Nephite experience. First, a general humanitarian thrust is often emphasized in the law of Moses and by its rabbinic commentators. Proverbs 25:21, for example, states, “If thine enemy be hungry, give him bread to eat; and if he be thirsty, give him water to drink.” The rabbis understood this ancient rubric to apply to enemies in wartime, even to those who “‘have risen up early’ to kill you [Exodus 22:12], and [after being disarmed].”<sup>57</sup> Thus a principle of Jewish ethic was that “a defeated enemy, who no longer poses any danger, should be accorded humane treatment,”<sup>58</sup> a rule that Josephus reported as an ancient rule regarding captives, requiring that one should “do them no harm.”<sup>59</sup> Thus the Hebrews generally did not kill prisoners of war.

James Priest, like others, cites the encounter between Elisha and the king of Israel as demonstrating “that there was a generally understood practice of mercy toward war prisoners.”<sup>60</sup>

The king of Israel said unto Elisha, when he saw them, My father, shall I smite them? shall I smite them? And he answered, Thou shalt not smite them: wouldest thou smite those whom thou hast taken captive with thy sword and with thy bow? Set bread and water before them, that they may eat and drink, and go to their master. (2 Kings 6:21–22.)

Israel’s kings were known for their mercy (see 1 Kings

20:31). Prisoners of war (excepting those mistakenly taken who should have been killed initially) were treated comparatively well. There are no Old Testament instances of Israel torturing its prisoners of war, for example, as some its neighbors, especially the Assyrians, were prone to do.<sup>61</sup> Similarly, the Nephites fed and treated their captives humanely after disarming them, and the Book of Mormon record especially notes cases where the enemies of the Nephites unethically violated these canons of conduct (see Alma 56:12).

Another general principle of Jewish law prohibited the exploitation of captives as forced laborers:

If the enemy was vanquished or submitted peaceably, they could be compelled to serve their Israelite conquerors, to work for them but not as slaves. They must be paid, says Nahmanides, the value of their labor, like any free worker. Thus, Jewish law forbids the exploitation and enslavement of vanquished populations by forced labor without recompense.<sup>62</sup>

While only postbiblical texts articulate this principle clearly, the norm is consistent with early historical practices and texts. For example, Deuteronomy 21:10–14 requires that a captured woman cannot be held as a slave, but must be given the full status of a wife or released. Israelite laws also granted Hebrew slaves far greater rights than foreign slaves,<sup>63</sup> and Mosiah 2:13 notes an outright prohibition against making “slaves one of another.” These principles would have made it very difficult for Nephites or Lamanites (who were still kinsmen) to hold slaves of each other, a condition that never arose in the Book of Mormon.

Furthermore, the law of Deuteronomy 21:10–14 regarding the treatment of female captives was interpreted “to prevent licentiousness, acts of rape on the field of battle, etc.”<sup>64</sup> The treatment of the women whom Ammoron took captive seems to have followed this rule, for

they were allowed to remain with their husbands and children (see Alma 54:11). At the opposite extreme, Mormon noted with particular odiousness that the soldiers in Moriantum had raped and tortured the Lamanite women they had captured (see Moroni 9:9–10), a mark of ultimate degeneracy.

The main exceptions to the spirit of these rules in ancient Israel occurred in the wars of the Israelite conquest of Canaan. There the rule was “take no captives.” But this is viewed as a special case. De Vaux claims that such cases of mass extermination were exceptional: “Apart from the *hèrem* in a holy war which involved all living beings, the massacre of prisoners was never a general rule.”<sup>65</sup> In the Conquest, if a distant city refused to submit, Israel was to slay every male and take all the “women, and the little ones, and the cattle, and all that is in the city, even all the spoil thereof” unto itself (Deuteronomy 20:13–14). Regarding the Canaanite cities in the Israelite territory, however, the commandment was “Thou shalt utterly destroy them; . . . that they teach you not to do after all their abominations, which they have done unto their gods” (Deuteronomy 20:17–18).

Thus, Moses was angry with his captains when they slew only the Midianite men in battle, taking the Midianite women and children captive. He commanded them to kill all the male children and females who were not virgins; the Israelites were allowed to keep alive the virgins for themselves (see Numbers 31:7–18). In a similar instance, the virgins of Jabesh-Gilead were spared so that the men of Benjamin could have wives (see Judges 21:10–14). Likewise, Joshua utterly destroyed “all that breathed” in several heathen cities (Joshua 10:40). In one campaign, the Lord commanded Saul through Samuel that he should “go and smite Amalek, and utterly destroy all that they have and spare them not; but slay both man and woman, infant and suckling, ox and sheep, camel and ass” (1 Samuel

15:3). Yet, because Saul spared the king and the best animals so that they could be sacrificed, the Lord “rejected [him] from being king over Israel” (1 Samuel 15:9–26), and Samuel himself executed the Amalekite king (see 1 Samuel 15:33).

Not until the time of David, who also engaged in the utter destruction of certain enemies (see 1 Samuel 27:9; 1 Samuel 30:17), did Israel again take prisoners or gain tributaries (see 2 Samuel 8:2–14; 2 Samuel 10:19). Apparently, David made state slaves of the Ammonites (see 2 Samuel 12:31).<sup>66</sup> Thus the Book of Mormon peoples ostensibly followed the provisions in Deuteronomy concerning prisoners of war, with the exception of the irrelevant conquest commandments to destroy all enemies.

Note, too, that the treatment of captives changed considerably among the Lamanites in the final era of Nephite history. In the fourth century A.D., the Lamanites captured and sacrificed many Nephite women and children (see Mormon 4:14, 21). This may be connected with the widespread practice of human sacrifice of prisoners in later Maya, Toltec, and Aztec civilizations, and it represents a shocking, radical divergence from the nobler laws of war consistently observed in the earlier periods of the Nephite record.

### *9. Restrictions on Taking Booty and Plunder*

Pillaging and plundering were strictly prohibited under Nephite law: “Neither have I suffered that ye should . . . plunder,” reported the king and commander-in-chief, Benjamin (Mosiah 2:13). While plundering was rarely an issue for Nephite men under arms, since they always fought to defend their own territory, Nephite law continued to issue strong rules and penalties against those who plundered (e.g., Mosiah 29:14, 36; Alma 16:18; 23:3; Helaman 4:12–13). It was, however, a common practice among the Lamanites and the wicked (e.g., Mosiah 10:17; 24:7; Alma

17:14; 18:7; Helaman 3:16; 6:17, 23), both in war and in peace.

Long-standing Israelite policies restricted soldiers from keeping booty for themselves. For example, Achan was put to death for hiding some silver, gold, and cloth under his tent, articles that were plundered from the fallen city of Ai (see Joshua 7:24–25). Indeed, noble traditions of collecting the booty of war and dividing it among the kings and soldiers involved in the battle date back to the times of Abraham and before,<sup>67</sup> and survived long after.<sup>68</sup> Perhaps the roots of the Nephites' antipathy toward plundering can be traced back to these persistent historical precedents.

#### *10. The Treatment and Burial of Victims*

The Book of Mormon war records go out of their way to report the burial of war dead, particularly those of the enemy. King Zeniff, for example, reports, "I, myself, with mine own hands, did help to bury their dead" (Mosiah 9:19). The bodies of the Ammonihahites were heaped up and buried by someone in the area (see Alma 16:11); thousands of fallen soldiers were buried in the ground or heaped in mounds (see Alma 28:11); and the bodies of both Nephites and Lamanites were cast into the waters of Sidon to be buried in the sea (see Alma 44:22). All of these cases show considerable concern for burial and respect for the bodies of the victims of battle, including those of one's enemies.

High regard for burying the dead was common in early and late antiquity. Josephus expressed the regard that Judaism had for the body of an enemy killed in battle: "Let our enemies that fall in battle be also buried; nor let any dead body lie above ground, or suffer a punishment beyond what justice requires."<sup>69</sup> The crucial need for a proper burial is well documented in ancient records, especially dramatically in the story of Antigone, who risked her life

to give her brother a proper burial, and in Thucydides' account of the Athenian admiral whom the people of Athens put to death for his failure (notwithstanding terrible weather) to return to the location of a sea battle to try to recover as many bodies as possible so they could be given a proper burial.

### *11. The Use of Oaths in Treaties*

The subject of treaty oaths has been discussed in some depth by others.<sup>70</sup> The case of Moroni and Zerahemnah demonstrates in considerable detail how the Nephites and Lamanites often used oaths to consummate a legal treaty at the end of a war. Upon gaining a position of clear advantage in battle, Moroni proposed a negative covenant—something a conqueror commonly imposed in the Near East on a defeated army—requiring the Lamanites to surrender their weapons of war and covenant never to return to fight against the Nephites. The oath of peace was obviously an important part of Moroni's proposal because he refused Zerahemnah's counteroffer, which simply involved the Lamanites delivering up their weapons of war (see Alma 44:6–10). After further conflict, Zerahemnah and his soldiers eventually yielded up their weapons, and “after they had entered into a covenant with [Moroni] of peace they were suffered to depart into the wilderness” (Alma 44:20). The Nephites required similar covenants of peace of the Lamanites in later battles (see Alma 62:16), of the people of Morianton (see Alma 50:36), and of the captured soldiers of Zemnarihah (see 3 Nephi 5:4).

Although there is no record of Israelites entering into an agreement of this specific form, oaths of peace were often an important part of treaties in the ancient Near East. For example, George Mendenhall writes, “Hittite treaty oaths required a conquered nation or people to take an individual oath of allegiance to the king of the prevailing people and a vow not to return to war.”<sup>71</sup> David Lorton



explains how, in one ancient Egyptian treaty, “his majesty caused that [the defeated princes at Megiddo] be caused to *sdf3* a *tryt*-oath,<sup>72</sup> saying, “We shall not repeat the evil against (*nn whm.n r bin hr*) *Mn-hpr-R<sup>c</sup>* — may he live forever! — our Lord, during our lifetimes: for we have seen his power, and he has given us ‘breath’ as he desires.”<sup>73</sup>

The Moroni-Zerahemnah incident demonstrates the personal nature of these Nephite-Lamanite treaties. As was usually the case in the ancient Near East, these treaties apparently were primarily personal covenants.<sup>74</sup> The Nephites were always willing to release any individual soldier who would take the oath of peace, and some did, even before their leader. And when Zerahemnah agreed to the peace treaty, it was still not enough that he covenanted for his nation: each soldier had to take the oath individually as well (see Alma 44:15, 19–20).

## 12. *The Ammonites’ Unilateral Oath of Peace*

Another military use of the oath in the Book of Mormon was the oath of peace sworn by the Lamanites Ammon and his brethren converted. Pursuant to this ritual, thousands of Lamanites took upon themselves a new name, the people of Anti-Nephi-Lehi (see Alma 23:17). When the unconverted Lamanites began preparations to kill these people, Ammon and his brethren held “a council with Lamoni and also with his brother Anti-Nephi-Lehi, what they should do to defend themselves against the Lamanites” (Alma 24:5). None of the Anti-Nephi-Lehies “would take up arms against their brethren; . . . yea, and also their king commanded them that they should not” (Alma 24:6).

In explaining his reasons for wanting to refrain from further bloodshed, their king stated that his people had been “convinced of [their] sins, and of the many murders which [they had] committed.” He thanked God that “he hath granted unto us that we might repent of these things, and also that he hath forgiven us of those our many sins

and murders which we have committed” (Alma 24:9–10). After explaining how fortunate they were to have been forgiven, the king pleaded with his people, “Let us retain our swords that they be not stained with the blood of our brethren; for perhaps, if we should stain our swords *again* they can no more be washed bright through the blood of the Son of our great God, which shall be shed for the atonement of our sins” (Alma 24:13; italics added). The people responded to their king’s plea, burying their swords as “a testimony to God, and also to men, that they never would use weapons again for the shedding of man’s blood; and this they did, vouching and covenanting with God, that rather than shed the blood of their brethren they would give up their own lives” (Alma 24:18).

This oath of the Ammonites (as they would later come to be known) reflected the resolve of converts with a unique background. Because of their “many murders,” the Ammonites deeply feared that any further shedding of blood might take them beyond the scope of forgiveness (Alma 24:11–13). After these people arrived in the land of Zarahemla, their oath, which had been tested in blood, was honored by the Nephites, who continued to grant them exemption from active (but not economic) military duty (see Alma 27:24), as is discussed above.

## The Use of Military Force in Law Enforcement

### 1. *Dealing with Robbers*

Good evidence establishes that most legal systems in the ancient Near East distinguished quite specifically between thieves and robbers.<sup>75</sup> Under these laws, a thief was usually a local person who stole from his neighbor. The *gannab* (thief), if apprehended, was dealt with judicially. The local government tried and punished him civilly, most often by a court composed of his fellow townspeople. A robber, on the other hand, was typically an outsider, a

brigand or highwayman. Since the *gazlan* (robber) was not considered a member of the community necessarily entitled to the protections of law, he could be dealt with by military force and martial law. In most instances, it was the army's task to free the countryside of robbers, and the military could execute outlaws summarily.<sup>76</sup>

Thus, one of the main uses of military force in the ancient Near East was in combating and executing the bands of robbers and brigands who infested the lands. The same was also true in the New World. There is little question that robbers posed serious military threats to the peace and well-being of many ancient cities. Seeing these robbers as military opponents (whatever their political, economic, ideological, or religious motives may have been) is necessary to understand how they were dealt with in the Book of Mormon.

How severely robbers were treated in the ancient world seems to have varied with the seriousness of the problem they caused at a particular time and with the ability of the central government to do something about them.<sup>77</sup> In the ancient Near East, robbers' raids sometimes involved large-scale destruction.<sup>78</sup> Other times they attacked just to restock their supplies or supplement their meager income off the land.<sup>79</sup> The military strength of some of these robber groups cannot be doubted: one band nearly captured the city of Alexandria from the Romans.<sup>80</sup> They were more threatening than foreign invaders.<sup>81</sup> 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.<sup>82</sup> Josephus accused Albinus of taking kickbacks from brigands.<sup>83</sup>

The task of clearing the countryside of the menace of robber bands was the responsibility of the local governmental authorities. Thus, for example, the Babylonian

Code of Hammurabi distinguishes between *sarāqu* (to steal)<sup>84</sup> and *habātu* (to rob).<sup>85</sup> 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 descendant’s heirs.<sup>86</sup> The Egyptian Report of Wenamun may show this principle in action: Wenamun complained to the Ruler of Dor, “I was robbed in your harbor and since you are the chief of this land and since you are its [investigating] judge—retrieve my money!” Nevertheless, this crime committed on the seas seems to have been outside the jurisdiction of the territorial officer, and Wenamun was left to help himself.<sup>87</sup>

Thus, a heavy responsibility fell upon the local authorities if a robber—but not a thief—were 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.”<sup>88</sup> Many Babylonian, Ugaritic, and Phoenician kings left inscriptions boasting that they had successfully eradicated the robbers from their territory, and Ipuwer laments the unsafe conditions in Egypt due to these brigands.<sup>89</sup> 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.<sup>90</sup>

Although the evidence varies regarding capital punishment of thieves in the ancient Near East, it is unequivocal concerning the death penalty for robbers. For example, thieves were executed under the Code of Hammurabi, Sections 6–13 and 21, for several types of theft, such as 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 that legal system. The evidence for capital punishment for theft under biblical law is even less conclusive, and possibly nonexistent. For robbers, however, the Code of Hammurabi, Section 22, clearly imposed capital punishment.<sup>91</sup> In Egypt, the death penalty applied even if a person could not prove that he had come by his wealth through an honest livelihood, presumably as opposed to having stolen it.<sup>92</sup> 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.<sup>93</sup> The mode of punishment in at least one case was crucifixion.<sup>94</sup> Decapitation by the sword also seems to have been a likely mode of execution.<sup>95</sup>

Finally, the leaders of robber bands were treated especially notoriously. Josephus reports that Herod put to death a robber-chief named Ezekias, who headed a “large horde,”<sup>96</sup> and records the arrest of another brigand-chief Eleazar, who was sent to Rome for trial even though he was not a Roman citizen.<sup>97</sup> We do not know why Eleazar was sent to Rome; perhaps it was for public humiliation, execution, or display as part of a triumph.

The foregoing description of ancient Near Eastern robber militarism parallels precisely the tactics and treatment of the robber bands in the final years of the Nephite reign of judges.<sup>98</sup> The robbers in the land of Zarahemla were militant. They came as invading armies, in siege warfare (see 3 Nephi 4:16), with military power capable of defying “whole armies” (Helaman 11:32; cf. 3 Nephi 2:11, 17; 4:1, 11). They suffered from shortages of supplies, for they, like the Near Eastern robbers, lived off the land (see 3 Nephi 4:3, 19–20). Their military strength was terrifying—they 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 (see Helaman 2:13). 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 Nephi 4:11).

The Nephite government made little effort to deal with the robbers judicially. Helaman sent soldiers after the robber Gadianton, who fled, fearing that he would “be destroyed” (Helaman 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 assassins already intending “that they might be executed according to the law” (Helaman 2:10), that is, the law permitted their immediate execution. Similarly, using “every means in their power” (Helaman 6:20), the Lamanites “did hunt the band of robbers” and “utterly destroyed” them in Lamanite lands (Helaman 6:37). “An army of strong men” was sent into the wilderness to “search out” and “destroy” the robbers who arose after the famine of Nephi (Helaman 11:28). The robber Giddianhi “was overtaken and slain” (3 Nephi 4:14), even though he could have been taken prisoner. The rank and file robbers under Zemnarihah were summarily slain if they would not become prisoners (see 3 Nephi 4:27), and even as prisoners they were “condemned and punished according to the law” if they did not make a covenant “that they would murder no more” (3 Nephi 5:4–5). Thus, such robber activity was clearly under the jurisdiction of martial law among the Nephites.

Similarly, clearing the Nephite countryside of robbers was a responsibility of the government. Helaman took official action against them (see Helaman 2:10), as the Nephites and Lamanites again did later (see Helaman 11:28). The government of Lachoneus consolidated the Nephites and built fortifications against the robbers (see 3 Nephi 3:24–25; 4:3–4). No private plaintiffs were necessary in such cases, as was usually the practice in initiating civil

suits in ancient Near Eastern courts of law. The government considered itself responsible. Only when the robbers were “not known unto those who were at the head of government” were they “not destroyed out of the land” (Helaman 3:23). Mormon took pains to exonerate Helaman from any insinuation that Helaman had allowed the secret oaths of the Jaredite robbers to leak out of the records in his custody (see Helaman 6:26). By the same token, Mormon duly noted whenever the government successfully defeated the robbers (see Helaman 6:37; 11:10; cf. 4 Nephi 1:17).

Clearly, the Nephites and Lamanites summarily imposed the death penalty upon robbers in this era of their history. The mode of punishment for Zemnarihah was hanging (see 3 Nephi 4:28), a form of execution related to crucifixion (cf. Deuteronomy 21:22–23; Galatians 3:13),<sup>99</sup> and 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 (see 3 Nephi 4:28–33).<sup>100</sup>

## 2. *The Annihilation of Apostate Cities*

Another governmental use of military force that the law of Moses mandated was the destruction of apostate cities, as recorded in Deuteronomy 13:12–16:

If thou shalt hear say in one of thy cities, . . . certain men, the children of Belial, are gone out from among you, and have withdrawn the inhabitants of their city, saying, Let us go and serve other gods, which ye have not known; then shalt thou enquire, and make search, and ask diligently; and, behold, if it be truth, and the thing certain, that such abomination is wrought among you; thou shalt surely smite the inhabitants of that city with the edge of the sword, destroying it utterly, and all that is therein, and the cattle thereof, with the edge

of the sword. And thou shalt gather all the spoil of it into the midst of the street thereof, and shalt burn with fire the city, and all the spoil thereof every whit, for the Lord thy God: and it shall be an heap for ever; it shall not be built again.

Alma 16:9–11 records the utter destruction of the wicked city of Ammonihah by Lamanite soldiers. There are several affinities between that account and the ancient Israelite law regarding the annihilation of apostate cities. Alma, who had been the Nephite chief judge, was likely well aware of this legal provision, even though he lacked both the desire and the power to destroy Ammonihah by military force. Still, his concept of justice would have included the idea that an apostate city ought to be destroyed and anathematized in a specific way. Since the inhabitants of Ammonihah satisfied every element of the crime of being an apostate city, their fate would naturally have been viewed as being in accordance with divine justice administered by God; after all, the building and razing of cities in a land of promise is divine, not human, work.

Consider the following elements: (1) This law pertains to “certain men [who] are gone out from among you.” The people in Ammonihah had clearly gone out from among the Nephites, for they had “forgotten the tradition of [their] fathers” (Alma 9:8), and Alma condemned them as apostates: “If this people, who have received so many blessings from the hand of the Lord, should transgress contrary to the light and knowledge which they do have, . . . it would be far more tolerable for the Lamanites than for them” (Alma 9:23). (2) The law of Moses was concerned to assure national purity and unity by exposing and suppressing apostate insurgency and sedition, and in fact the Ammonihahites were plotting to overthrow the government in Zarahemla (see Alma 8:17). (3) The law specifically applied when men had led a city to withdraw from God and to serve other gods, in violation of Exodus 20:3 and Deu-



teronomy 5:7, and it was concerned with the prevention of any form of illicit worship of Yahweh (see Deuteronomy 12:1–8). Alma averred that the men in Ammonihah had undertaken to study ways to pervert the nation, specifically to turn it away from the Lord Yahweh's statutes, judgments, and commandments (see Alma 8:17). (4) Deuteronomy describes these offenders as "the children of Belial." Likewise, Alma made it a matter of record that "Satan had gotten great hold upon the hearts of the people of the city of Ammonihah" (Alma 8:9).

The law of Deuteronomy required officers to investigate the situation thoroughly, to enquire, search, and ask to assure that the offensive condition in fact existed. Alma did this, too. After being rejected, Alma was instructed to return to preach in the city, to give them the necessary warning that they would be destroyed if they did not repent (see Alma 8:16). Acting as the two required eyewitnesses (see Deuteronomy 17:6), Alma and Amulek preached against the people, then stood and witnessed an awful scene of utter abomination (see Alma 14:9). As revolting as this experience was for them, it completed the case against the city and sealed its fate (see Alma 14:11).

The prescribed mode of execution of the inhabitants of an apostate city was by the "sword, destroying it utterly" (Deuteronomy 13:15). This is the only text in the law of Moses that calls for slaying by the sword. Significantly, Amulek twice focused his remarks on the manner in which the people of this city would be killed: "Ye would even now be visited with utter destruction; yet it would not be by flood, as were the people in the days of Noah, but it would be by famine, and by pestilence, and the *sword*" (Alma 10:22, and again in verse 23). When the day of judgment came upon Ammonihah, the Lamanites did "slay the people and destroy the city" (Alma 16:2), certainly by the sword, their primary weapon of hand-to-hand combat. Slaying the city "by the edge [mouth] of the sword"

has also been explained as meaning “by the word of prayer.”<sup>101</sup> Alma’s prayer eventually overwhelmed his captors in this city, also showing forth the power of the word (see Alma 4:19–26).

Additionally, the law demanded that the property in the city be totally destroyed by fire, “and it shall be an heap for ever” (Deuteronomy 13:16). As Alma recorded, “Every living soul of the Ammonihahites was destroyed, and also their great city, . . . [and] their dead bodies were heaped up upon the face of the earth” (Alma 16:9, 11). Alma does not mention fire, but burning would have been natural enough. “ ‘All that is in it’ relates to men, cattle, and the material property of the town, and not to men alone [as in Deuteronomy 20:13–14].”<sup>102</sup> Deuteronomy 13 describes the only situation under biblical law in which everything must be destroyed.

Finally, the law states that the ruins “shall not be built again” (Deuteronomy 13:16). The rabbis debated whether this ancient text meant “never again” or simply not “as it was formerly.”<sup>103</sup> The fate and subsequent history of Ammonihah supports the latter interpretation: “People did not go in to possess the land of Ammonihah for many years. . . . And their lands remained desolate” (Alma 16:11). When the desolation of Nehors was later rebuilt, it was not as it had formerly been, but as a military outpost (see Alma 49:2).

Thus, this episode in the Book of Mormon conforms precisely with the legal provisions of Deuteronomy 13. It is a remarkable instance of the falling of the wrathful sword of divine justice (see Alma 54:6) pursuant to God’s law.

### *3. Purification following Destruction*

Quite possibly the Nephites were concerned with ritual purification following certain kinds of war. After the destruction of the city of Ammonihah, for example, the land of Ammonihah was apparently deemed untouchable for

just over seven years (there are eight years, nine months and five days between the destruction in Alma 16:1–2 and the commencement of fortification in Alma 49:1–2). This period likely accomplished some kind of ritual cleansing. In support of this possibility, I have found one case when an early Christian synod removed the ban requiring the island of Cyprus to remain unoccupied for seven years after its inhabitants had been annihilated.<sup>104</sup> I have found no other evidence, however, of such a seven-year purification period. Other evidence of Nephite concern for ritual purification after battle may possibly be found in the ceremony performed after the death of King Noah (see Mosiah 19:24), or in the counting and disposal of the corpses of the war dead by throwing them into the river for burial in the depths of the sea (see Alma 3:3; 44:22).

### Conclusion

The foregoing evidence gives but a glimpse into the legal side of the Nephite world of warfare. From it, however, one can confidently conclude that the Nephites conducted their lives in accordance with rules, regulations, concepts, customs, laws, and prohibitions, even in times of war. Their norms regulated and directed individual and collective military behavior, and they were notably consistent with and similar to ancient Israelite directives on the conduct of war. At no discernable point are inconsistencies apparent between the Book of Mormon and the ancient Israelite, rabbinic, or other derivative Jewish ethical concepts, whether with respect to the effects of war; the initiation of hostilities; the conscription and enlistment of soldiers; the rules of martial purity, humanity, honor, and restraint; or the use of arms against robber bands and apostate cities.

Since these long-standing religious and military attitudes must have been second nature to the prophet-historian Mormon, who spent most of his life as com-

mander-in-chief of the Nephite armies, it is little wonder that his record consistently reflects an expert's awareness of such details. His record also characteristically views the total breakdown of the rule of law in the final days of Nephite warfare as the ultimate Nephite catastrophe: "How can a people like this, that are without civilization . . . expect that God will stay his hand in judgment?" (Moroni 9:11, 14). "O the depravity of my people! They are without order and without mercy. . . . They are without principle, and past feeling" (Moroni 9:18, 20). Without obedience to the laws of war, the Nephite doom on the field of battle was sealed.

### Notes

1. For a convenient discussion of the Babylonian sources, see Victor H. Matthews, "Legal Aspects of Military Service in Ancient Mesopotamia," *Military Law Review* 94 (1981): 135–51. I am grateful to William Hamblin for drawing to my attention the martial codes from India in the *Laws of Manu* (200 B.C. to A.D. 200), Georg Buhler, tr., *The Laws of Manu* (Oxford: Oxford University Press, 1886; reprinted New York: Dover, 1969), 230–48; and from Iran, see W. E. West, tr., *Pahlavi Texts* (Oxford: Oxford University Press, 1892), 86–90. I also acknowledge the assistance of Robert I. Eaton in researching and drafting parts of this paper.

2. See Alexander Rofe, "The Laws of Warfare in the Book of Deuteronomy: Their Origins, Intent and Positivity," *Journal for the Study of the Old Testament* 32 (1985): 23–44.

3. See, for example, Paul D. Hanson, "War, Peace, and Justice in Early Israel," *Bible Review* 3 (Fall 1987): 32–45.

4. For a skillful discussion of methodology employed in studying biblical law, see Reuven Yaron, "Biblical Law: Prolegomena," in B. Jackson, ed., *Jewish Law in Legal History and the Modern World* (Leiden: Brill, 1980).

5. For example, a Jewish man could give his wife an extraordinary conditional divorce (*get*) in war time, so that, if he did not return from battle, she would become legally single (TB *Ketubbot* 9b; Menachem Elon, *The Principles of Jewish Law* [Jerusalem: Keter, 1975]), 422).

6. George Horowitz, *The Spirit of Jewish Law* (New York: Bloch, 1953), 147–48; TB *Sanhedrin* 20b; TB *Sotah* 44b. The antiquity of this

distinction is unknown, but the classic example of a war of obligation was the conquest of Canaan.

7. TB *Sotah* 44a.
8. Maimonides, *Mishnah Torah Kings IV*, 1–5; cited in Horowitz, *Spirit of Jewish Law*, 153.
9. Horowitz, *Spirit of Jewish Law*, 153.
10. Hans Boecker, *Law and Administration of Justice in the Old Testament and Ancient Near East* (Minneapolis, Minnesota: Augsburg, 1980), 45.
11. Ze'ev Falk, *Hebrew Law in Biblical Times* (Jerusalem: Wahrman, 1964), 87–92.
12. Elon, *Principles of Jewish Law*, 667.
13. See Lionel Casson, *Travel in the Ancient World* (London: George Allen, 1974), 154.
14. Allan C. Johnson, "Roman Egypt to the Reign of Diocletian," in Tenney Frank, ed., *An Economic Survey of Ancient Rome*, 2 vols. (Paterson, New Jersey: Pageant, 1959), 2:594. For rules and edicts prohibiting people from departing by sea without purchasing an exit pass, see *ibid.*, 2:715, nos. 64, 66, 68.
15. Horowitz, *Spirit of Jewish Law*, 149.
16. *Ibid.*, 149–50.
17. Abraham Bloch, *A Book of Jewish Ethical Concepts* (New York: Ktav, 1984), 262.
18. Matthews, "Legal Aspects of Military Service," 139.
19. Quoted in *ibid.*, 140.
20. *Ibid.*
21. Horowitz, *Spirit of Jewish Law*, 147.
22. Alan H. Gardiner, "Piankhi's Instructions to His Army," *Journal of Egyptian Archaeology* 21 (1935): 219–20.
23. Roland de Vaux, *Ancient Israel*, 2 vols. (New York: McGraw Hill, 1965), 1:214.
24. Matthews, "Legal Aspects of Military Service," 143.
25. TB *Sotah* 42a.
26. Compare also Code of Hammurabi 26; Hittite Laws 42.
27. TB *Sotah* 44a; italics added.
28. *Ibid.*
29. Horowitz, *Spirit of Jewish Law*, 154; see TB *Sotah* 43a (italics added).
30. "Puberty," *Encyclopedia Judaica* 13:1351; George Mendenhall, "The Census Lists of Numbers 1 and 26," *Journal of Biblical Literature* 77 (1958): 52, 60; George W. Buchanan, "The Old Testament Meaning of the Knowledge of Good and Evil," *Journal of Biblical Literature*

75 (1956): 114–17. See Numbers 1:3, 20, 22, 24, 26, 28; 14:29; 26:2; 32:11; 1 Chronicles 27:23; 2 Chronicles 25:5.

31. Dead Sea Scrolls, 1QSa (*Rule of the Congregation*) 1:11.

32. Buchanan, "The Old Testament Meaning of the Knowledge of Good and Evil," 114–20, and Robert Gordis, "The Knowledge of Good and Evil in the Old Testament and the Qumran Scrolls," *Journal of Biblical Literature* 76 (1957): 123–38, argue that the expression to "know good and evil" refers to reaching the age of sexual maturity. Louis F. Hartman, "Sin in Paradise," *Catholic Biblical Quarterly* 20 (1958): 26–40, and Herold S. Stern, "The Knowledge of Good and Evil," *Vetus Testamentum* 8 (1958): 405–18, take issue with giving a sexual interpretation to the fall of Adam, but they still agree that the age of majority in ancient Israel was twenty. See also Joseph M. Baumgarten, "On the Testimony of Women in 1QSa," *Journal of Biblical Literature* 76 (1957): 266–69; Sidney B. Hoenig, "On the Age of Mature Responsibility in 1QSa," *Jewish Quarterly Review* 48 (1957–58): 371–75; Joseph M. Baumgarten, "1QSa 1.11—The Age of Testimony or Responsibility?" *Jewish Quarterly Review* 49 (1959): 157–61; Gershon Brin, "From . . . and Onward/Upward," *Journal of Biblical Literature* 99 (1980): 161–71.

33. Ze'eb Weisman, "The Nature and Background of Bahur in the Old Testament," *Vetus Testamentum* 31 (1981): 441–50. The primary and primitive meanings of this term are "young men," "men chosen to engage in war and associated functions," men "selected for a special campaign," "selected warrior" (*ibid.*, 441, 443–44, 450).

34. "Bahūr as a designation of status is close to *na'ar*" (*ibid.*, 449). See also G. Johannes Botterweck, Helmer Ringgren, and Heinz-Josef Fabry, *Theologisches Wörterbuch zum Alten Testament* 5:507, 515–16; John MacDonald, "The Status and Role of the Na'ar in Israelite Society," *Journal of Near Eastern Studies* 35 (1976): 147–70, especially 157–66, extensively discussing the biblical use of this term, meaning "squire," "a young man of good birth," serving in the elite corps of the army, carrying out a variety of entrusted missions, living "by a code of conduct strictly adhered to, no matter what" (*ibid.*, 169).

35. E. A. Speiser, "Census and Ritual Expiation in Mari and Israel," in *Oriental and Biblical Studies* (Philadelphia: University of Pennsylvania Press, 1967), 178.

36. *Ibid.*, 183–84.

37. *Ibid.*, 185.

38. Mendenhall, "Census Lists of Numbers 1 and 26," 54.

39. Speiser, "Census and Ritual," 175.

40. Matthews, "Legal Aspects of Military Service," 142, citing

the cautious census instructions of Samsi-Addu. See also Speiser, "Census and Ritual," 177.

41. See Terrence L. Szink, "An Oath of Allegiance in the Book of Mormon," in this volume.

42. De Vaux, *Ancient Israel*, 1:214.

43. *Ibid.*, 1:259.

44. Rofe, "Laws of Warfare in the Book of Deuteronomy," 24.

45. *Ibid.*, 24 n. 4, citing Cyrus H. Gordon, *Ugaritic Manual* (Rome: Pontifical Biblical Institute, 1955), 186.

46. Stephen D. Ricks, "'Holy War': The Sacral Ideology of War in the Book of Mormon and in the Ancient Near East," in this volume, examines other aspects of holy war.

47. De Vaux, *Ancient Israel*, 1:258–59.

48. *Ibid.*, 1:259.

49. Rofe, "Laws of Warfare in the Book of Deuteronomy," 26.

50. De Vaux, *Ancient Israel*, 1:259.

51. TB *Rosh ha-Shanah* 29a.

52. TB *Eruvin* 17a.

53. The manuscript is unclear whether this text was intended to read "whether" or "whither" (see *Book of Mormon Critical Text* [Provo: F.A.R.M.S., 1987], 2:621). "Whither" seems to fit the context here (cf. Alma 43:22–23). Typically, however, ancient oracles were asked a "yes-no" question about going to war, which would tend to favor reading "whether." Either way, the Israelite prophet's answer was not limited by the terms of the request (see 1 Kings 22:15–25).

54. Horowitz, *Spirit of Jewish Law*, 150.

55. Bloch, *Jewish Ethical Concepts*, 262–63, citing *Shohar Tov*, Psalm 7:1.

56. Horowitz, *Spirit of Jewish Law*, 150–51, citing also Maimonides, *Mishnah Torah Kings*, VI, 7.

57. Rabbi Chamam b. Chanina (third century), *Midrash Proverbs* 25:21, cited in Bloch, *Jewish Ethical Concepts*, 263, citations deleted.

58. Bloch, *Jewish Ethical Concepts*, 263.

59. Josephus, *Contra Apion* II, 30.

60. *Governmental and Judicial Ethics in the Bible and Rabbinic Literature* (New York: Ktav, 1980), 187.

61. De Vaux, *Ancient Israel*, 1:256.

62. Horowitz, *Spirit of Jewish Law*, 152.

63. Falk, *Hebrew Law in Biblical Times*, 118–20.

64. Horowitz, *Spirit of Jewish Law*, 151; TB *Kiddushin* 87.

65. De Vaux, *Ancient Israel*, 1:256; see also Hanson, "War, Peace, and Justice in Early Israel," 32–45.

66. De Vaux, *Ancient Israel*, 1:81, 89.
67. Yochanan Muffs, "Abraham the Noble Warrior: Patriarchal Politics and Laws of War in Ancient Israel," *Journal of Jewish Studies* 33 (1982): 82.
68. Similar provisions applied in talmudic times. See TB *Sanhedrin* 20b.
69. Josephus, *Antiquities* IV, 24, cited in Bloch, *Jewish Ethical Concepts*, 262–63.
70. See, for example, Mark Davis and Brent Israelson, "International Relations and Treaties in the Book of Mormon," F.A.R.M.S. Preliminary Report, 1982.
71. George Mendenhall, *Law and Covenant in Israel and the Ancient Near East* (Pittsburgh: Colloquium, 1955), 30.
72. The exact meaning of this phrase is uncertain, but it probably means to "swear" an "oath of allegiance" (see David Lorton, *The Juridical Terminology of International Relations in Egyptian Text through Dynasty XVII* [Baltimore: Johns Hopkins University Press, 1974], 132).
73. *Ibid.*, 176–81.
74. I. Gelb, "The Vassal-Treaties of Esarhadon," *Bibliotheca Orientalis* 19 (1962): 159–62; F. Charles Fensham, "Clauses of Protection in Hittite Vassal-Treaties and the Old Testament," *Vetus Testamentum* 13 (1963): 133–43; Joseph Fitzmyer, "The Aramaic Suzerainty Treaty from Sefire in the Museum of Beirut," *Catholic Biblical Quarterly* 20 (1958): 444.
75. The legal definitions of theft and robbery, especially in the laws of ancient Israel, have been analyzed thoroughly by Bernard S. Jackson, "Some Comparative Legal History: Robbery and Brigandage," *Georgia Journal of International and Comparative Law* 1 (1970): 45–103; Bernard S. Jackson, *Theft in Early Jewish Law* (Oxford: Clarendon, 1972); and Bernard S. Jackson, "Principles and Cases: The Theft Laws of Hammurabi," in *Essays in Jewish and Comparative Legal History* (Leiden: Brill, 1975), 64–74. For a thorough legal treatment of robbers and robbery in the Book of Mormon, see my "Theft and Robbery in the Book of Mormon and Ancient Near Eastern Law," F.A.R.M.S. Working Paper, 1985.
76. Jackson, "Legal History: Robbery and Brigandage," 63. "Against them the laws of war operated" (Michaelis, *Commentaries on the Laws of Moses* [1814], iv. 280, cited in Jackson, *Theft in Early Jewish Law*, 16, 180, 251).
77. Jackson, *Theft in Early Jewish Law*, 153.
78. Henry Lutz, "The Alleged Robbers' Guild in Ancient Egypt," *University of California Publications in Semitic Philology* 10 (1937): 234.



79. Jackson, *Theft in Early Jewish Law*, 14–15; Lutz, “Robbers’ Guild in Ancient Egypt,” 234; 1 Samuel 25.
80. Lutz, “Robbers’ Guild in Ancient Egypt,” 242.
81. *Ibid.*, 238.
82. *Ibid.*, 232.
83. Josephus, *War of the Jews* II, 278.
84. Code of Hammurabi, Sections 6–10, 14.
85. *Ibid.*, Sections 22–23.
86. *Ibid.*, Sections 23–24.
87. Hans Goedicke, *The Report of Wenamun* (Baltimore: Johns Hopkins University Press, 1975), 31, 43. A somewhat similar provision making local officials responsible for highway robbery within their jurisdiction was enacted in England in 1676, 27 Eliz. ca. 13 (see Leon Radzinowicz, *A History of English Criminal Law and Its Administration from 1750* [New York: Macmillan, 1956], 3).
88. Jackson, *Theft in Early Jewish Law*, 11.
89. *Ibid.*, 15–16; Lutz, “Robbers’ Guild in Ancient Egypt,” 235.
90. Jackson, *Theft in Early Jewish Law*, 13–14, 39; Exodus 22:9, 11; Code of Hammurabi 103.
91. Jackson, “Principles and Cases: Theft Laws of Hammurabi,” 66–69. Jackson also discusses the biblical sources in depth in *Theft in Early Jewish Law*, 144–54.
92. Lutz, “Robbers’ Guild in Ancient Egypt,” 232.
93. Jackson, “Legal History: Robbery and Brigandage,” 79, 86.
94. Josephus, *War of the Jews* II, 253; see also the account of the two robbers (*kakourgoi, lestai*) crucified with Jesus in Matthew 27:38–44; Mark 15:27–32; Luke 23:32–43.
95. See Abimelech’s slaying of the Shechemite band in Judges 9:45; and Josephus, *War of the Jews* II, 260. Maimonides prescribes decapitation for murderers, *Sanhedrin* 15.12, and robbers are often associated with murderers. Compare Jackson, *Theft in Early Jewish Law*, 186.
96. Josephus, *War of the Jews* I, 204; Josephus, *Antiquities* XIV, 159, in Jackson, *Theft in Early Jewish Law*, 252.
97. Josephus, *War of the Jews* II, 253; and Josephus, *Antiquities* XX, 161, in Jackson, *Theft in Early Jewish Law*, 253–54.
98. For a more detailed discussion of the robber bands, see Daniel C. Peterson, “The Gadianton Robbers as Guerrilla Warriors,” in this volume. I agree with Peterson that the Gadianton robbers were ideologically and religiously motivated and thus should not be thought of exclusively as a secular threat. My purpose here is only to show how they were labelled and treated as robbers for legal purposes.

99. Martin Hengel, *Crucifixion* (Philadelphia: Fortress Press, 1977).

100. This execution followed ancient Israelite practice, as reflected in Maimonides, *Sanhedrin* 15.6; see "The Execution of Zemnarihah," F.A.R.M.S. Update, November 1984.

101. Lowenstein, cited in I. Drazen, *Targum Onkelos to Deuteronomy* (New York: Ktav, 1982), 155; compare Revelation 1:16.

102. C. F. Keil and F. Delitzsch, *Bible Commentary on the Old Testament* (Grand Rapids, Michigan: Eerdmans, 1949), 3:365.

103. Rabbi Jose, the Galilean, maintained that "[it shall not be built] *‘od* [again] implies 'not at all,' whilst [Rabbi Akiba] holds that *‘od* implies 'as it was formerly' " (TB *Sanhedrin* 113a).

104. Constantini Porphyrogeniti, *De Administrando Imperio* 47, in PG 113:366.