



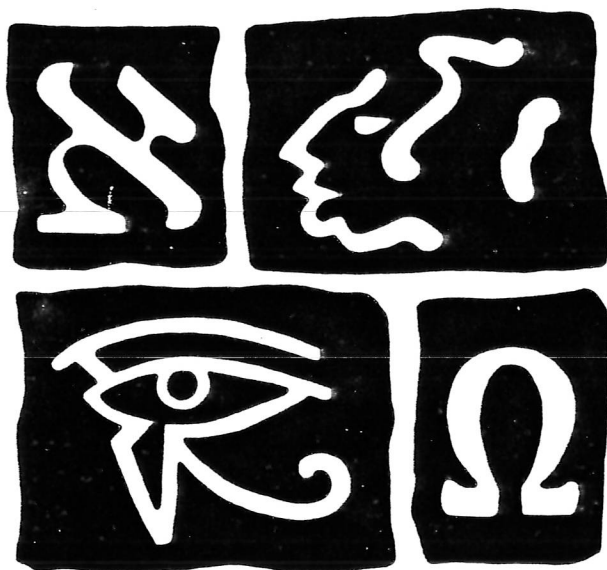
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Perspective**

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NEPHI'S SLAYING OF LABAN: A LEGAL PERSPECTIVE

Fred Essig
Dan Fuller

Few passages in the Book of Mormon have inspired more criticism and moral outrage than the account of Nephi slaying the unconscious figure of Laban. Many point to this episode as evidence against the Book of Mormon being an inspired document. In this study we will attempt to examine the legal as well as the extra-legal ramifications of this incident. Since the law of ancient Israel was inexorably tied to the religious and moral code of the Israelites, any attempt to divorce the two would be patently artificial. Therefore, while this study will emphasize what we know about the operation of justice, that, by necessity implies a discussion of Israel's relationship to her lawgiver, Yahweh.

In analyzing this slaying, a determination must be made of which Hebrew law codes would most likely have applied during Nephi's time. The Book of Mormon places the slaying between 592 and 598 B.C.¹ The primary sources for Hebrew law of that time are the law codes of the Old Testament. They are three in number: the Code of the Covenant (Exodus 21-23:33), the Deuteronomic Code (which includes Deuteronomy 19), and the Priestly Code (which includes Numbers 35).² Although there is some difference of opinion among scholars about the compilation dates of these various codes, the general consensus is that the Code of the Covenant was compiled before 800 B.C.,³ the Deuteronomic Code around 700 B.C.,⁴ and the Priestly Code in about 350 B.C.⁵ Comparing these dates to the date of slaying, it can be seen that the Code of the Covenant and the Deuteronomic Code were in existence before the time of the slaying and date in roughly the same time period as the slaying. The Priestly Code, however, was compiled after the exile in Babylon and almost 250 years after the slaying.

In post-Biblical times, the Jewish Rabbis compiled additional legal codes. The most noted of these are the Mishnah and the Talmud. The earliest copy of the Mishnah, however, was not compiled until around 200 A.D.,⁶ 800 years after the time of Nephi. The Talmud was not compiled until 500 A.D.,⁷ and thus dates 1100 years after Nephi's time.

In accordance with these dates, this paper will draw primarily from the Code of the Covenant and the Deuteronomic Code and scholars' interpretations of these Codes. Reference will also be made to the Priestly Code, the Mishnah, the Talmud, and other Rabbinic sources. However, the use of these latter codes will basically be limited to those areas of law in which the Code of the Covenant and the Deuteronomic Code are lacking.

I. The Setting

Following the reign of King Solomon in 922 B.C., Israel was divided with the Kingdom of Israel in the north and the Kingdom of Judah in the south. In 721 B.C. the Kingdom of Israel was conquered and her ten tribes led away captive to Assyria.

Hezekiah, the king of the Southern Kingdom from 715-687 B.C. sought to avoid a like fate. The fate of Israel was viewed as a manifestation of Yahweh's anger and His righteous judgment falling upon a covenant breaking people. While Hezekiah's reforms were well intentioned, whatever positive effect they had was lost as Judah, under King Manasseh (687-642 B.C.), reverted to her sinful practices.

Although Judah remained a vassal of Assyria throughout this period, the Assyrian kingdom was showing signs of decline. In its stead rose two powerful but hostile peoples who were to rival for the gem that was Judah. Judah herself was split between the pro-Egyptian and pro-Babylonian factions which sought to ally Judah to her enemies.

In a final attempt to purify what remained of Israel, King Josiah (640-609 B.C.), upon discovering the Deuteronomic law in the temple in 621 B.C., embarked on an ambitious program to return the "Bride" to the "Bridegroom".⁸ The attempt, though admirable, proved to be too little, too late.⁹

In 597 B.C. King Nebuchadnezzar of Babylon, not pleased at the prospect of losing Judah to Egypt, lay siege to Jerusalem and conquered her. His puppet king, Jehoiakim, had betrayed him and had stopped the payment of tribute.¹⁰ Upon entering Jerusalem the Babylonian army ransacked the temple, killed Jehoiakim and placed Zedekiah on the throne, exacted heavy tribute and led 10,000 of Judah's leaders and most righteous citizens captive into Babylon.¹¹ This event was to be repeated in ten years when Zedekiah made the same mistake as his predecessor and turned to Egypt. The result, however, of this treason was the utter destruction of Jerusalem and the complete severing of the covenant established at Sinai.

II. The Factual Statement of the Case

Chapters 3 and 4 of 1st Nephi contain the account of the slaying. These chapters state that the Lord commanded Nephi's father, Lehi, to send his sons to Jerusalem to acquire the plates of brass from Laban. Nephi's brothers murmured and said that it was a hard thing that was required of them. Nevertheless, Nephi and his brothers journeyed to Jerusalem.¹²

After casting lots, the brothers determined that Laman would approach Laban about obtaining the plates. After entering Laban's house, Laman indicated his desire to have the plates of brass, which contained the genealogy of Lehi. Upon learning this, Laban became angry.¹³ He thrust Laman out from his presence and told him: "Behold thou art a robber, and I will slay thee."¹⁴ Laman fled from Laban.

After this failure Nephi's brothers were about to return to their father in the wilderness. However, under Nephi's persuasion they decided to again try to obtain the plates. Gathering together all of the family's gold, silver, and riches, they went in unto Laban and indicated their desire to obtain the brass plates in exchange for their wealth.¹⁵ Laban, upon seeing that the property was exceeding great, lusted after it. He thrust the brothers out and sent his servants to slay them, so that he could obtain their property. The brothers left the property and fled from the servants.¹⁶

An angel of the Lord appeared before the brothers. He commanded that they go to Jerusalem again, for the Lord would deliver Laban into their hands. Laman and Lemuel doubted, wondering how it was possible that the Lord would deliver Laban into their hands, for he was a mighty man, and he could command fifty men.¹⁷

Nephi encouraged them to be faithful in keeping the commandments of the Lord, for He is "mightier than Laban and his fifty, yea, or even than his tens of thousands."¹⁸ Surely the Lord is able "to destroy Laban."¹⁹ With this encouragement the brothers chose to follow Nephi to the walls of Jerusalem.

It was night when they approached the city. While the brothers hid without the walls, Nephi crept into the city and headed towards the house of Laban.²⁰ He states: "I was led by the Spirit, not knowing beforehand the things which I should do."²¹ As he approached the house of Laban, he saw a man who had fallen to the earth before him. The man was drunken with wine. Nephi came to him and found that it was Laban.²²

Nephi drew Laban's sword from its sheath. The hilt was of pure gold and the blade was made of the most precious steel. At this time, Nephi was constrained by the Spirit to kill Laban. He recognized, however, that he had never before shed the blood of man. He shrunk from the task and did not want to slay him.²³

The Spirit spoke again, pointing out that the Lord had delivered Laban into Nephi's hands. Nephi recited to himself that Laban had sought to take away his life, and that he would not hearken unto the commandments of the Lord, and that he had taken away the family's property.²⁴

Again the Spirit told Nephi to slay Laban, for the Lord had delivered him into his hands. The Spirit stated that "the Lord slayeth the wicked to bring forth his righteous purposes," and that "[i]t is better that one man should perish than that a nation should dwindle and perish in unbelief."²⁵

Nephi then recognized that his people could not keep the commandments of the Lord unless they had the law that was engraven upon the brass plates. He also knew that the Lord had delivered Laban into his hands, so that he might obtain the records according to His commandments.²⁶

After considering all of these matters, Nephi obeyed the voice of the Spirit. He took Laban by the hair of the head and smote off his head with his own sword.²⁷

Nephi then donned the garments, armor, and sword of Laban and went forth to the treasury of Laban. In the voice of Laban he commanded Laban's servant to accompany him into the treasury and then to his elder brethren without the walls of Jerusalem.²⁸

As they obtained the plates and headed for the walls, Laban's servant spoke to Nephi many times concerning the elders of the Jews, for Laban had been out by night among them. Once the two were outside the walls and within view of Nephi's brothers, the brothers fled, thinking that Nephi was Laban. Nephi called after them, and they ceased their flight.²⁹

At this point Laban's servant was about to flee to Jerusalem. The brothers, however, were desirous that Laban's servant should tarry with them so that the Jews might not know concerning their flight into the wilderness and pursue and destroy them. Nephi, being a man large in stature, seized the servant of Laban. After Nephi had spoken an oath to the servant, the servant took courage and agreed to tarry with them. The brothers then took the plates of brass and the servant of Laban and returned to their father in the wilderness.³⁰

III. The Law of Homicide in General

Under Mosaic law there were three general categories of homicide: (1) justifiable homicide; (2) murder; and (3) manslaughter.³¹ Justifiable homicides included those that were permissible, e.g., killing a burglar at night, and those that were obligatory, such as the participation in public executions, killing another in self-defense, killing to prevent a man from killing another, or committing rape, or the killing in public of persistent heretics and apostates.³² If, on the other hand, the killing was intentional, the result of either malice or premeditation, it was murder. Evidence of this intention was prior enmity or hatred (malice), lying in wait, ambushing or guile, or striking another intentionally in any manner calculated to kill. Otherwise, the killing was deemed to be the less severe crime of manslaughter.³³

Talmudic law greatly refined the distinctions between premeditated (intentional) and unpremeditated (unintentional or accidental) homicide. Under this system homicide could be either: (1) justifiable homicide (see above); (2) homicide resulting from misadventure or innocent mistake, for which no guilt attached, e.g., trespasser accidentally killed by landowner where landowner was not aware of trespasser's presence; (3) negligent homicide, e.g., in above example where landowner had invited deceased onto premises and accidentally killed him; (4) culpable homicide or homicide where one was guilty of criminal negligence or intentional wrongful conduct, e.g., a person who deliberately launched a projectile, not deadly if it struck the part of the body aimed at, but which miscarried and struck the person in a more vital spot resulting in death; or (5) murder or an intentional killing absent mitigating circumstances.³⁴

With this background we now turn to a consideration of Nephi's position before the law. What were the mitigating circumstances, if any, that would have operated to lessen Nephi's culpability arising from the slaying of Laban? We would expect a person in Nephi's position to set forth the very best arguments he had in defense of his actions. While Nephi's statements in this regard will be examined, other potential defenses, not specifically mentioned by Nephi, will also be examined.

IV. Burglary as a Justification

Any householder who kills a burglar in the act of housebreaking at night is justified and incurs no liability. If the burglar escapes and is later caught the householder may take no action except that he may bring a damage action later. Likewise, if the housebreaking occurs during the day, there is no justification and killing the intruder would be unlawful. The distinction between night entry and day entry is likely due to the presumption that persons are more likely to be home at night and any intruder is presumed to know that. The threat to human life is being protected against here, not the threat to property.³⁵

In Jeremiah 2:34 the prophet indicates that he found blood of innocent poor men, killed, but not in the act of housebreaking. The

term "mahteret" as used by Jeremiah implies breaking at night--an indication that violent death to the housebreaker had become an all too common occurrence in Jerusalem.³⁶

It is abundantly clear that Laban's stealing of property as related by Nephi in no way vises to the level of burglary worthy of death. Not only was there no house involved but there was no affirmative act of breaking in progress at the time of the killing.

V. Theft as a Justification

While Nephi does not accuse Laban of burglary, he does seek to justify his actions by recalling the theft of their property or inheritance by Laban when the brothers sought to purchase the plates. There may be a legitimate argument on Laban's side in his refusal to sell the plates. The records were likely public records and Laban as a public official was entrusted with their safe keeping. The attempt by the brothers to purchase these records may have been nothing more than a simple bribe.³⁷ It is also possible that the brass plates may well have been sacred or consecrated property or "hekdeshe". It was forbidden for man to obtain any benefit whatsoever from consecrated property as long as it retained its sanctity.³⁸

Likewise, certain property, although in the possession of the "owner," did not grant the owner absolute dominion and power over it: (1) leaven on Passover; (2) Oxen condemned to death; (3) fruit of the Orlah (1st three years). While one may possess such items, enjoyment is limited, neither may it be bought or sold.³⁹

How we might classify the plates of brass, although potentially important as a justification for Laban's actions, is beyond the scope of this paper. While Laban was probably not justified in appropriating the family's property, the right to possess property in Israel was not a natural right. Theft, therefore, was considered a private wrong and not a wrong against the state. Theft was expiated by payment of monetary damages and never by the penalty of death.⁴⁰

The fact that the Decalogue was Ancient Israel's criminal code need not lead to a contrary result. The prohibition against

theft in Ex. 20:15 may refer not to the tort of stealing property, but to the more serious crime of manstealing.⁴¹ This prohibition was aimed at preventing the sale of Israelites outside the covenant community, i.e., Joseph sold into slavery, for just as with death, the person is lost to Yahweh forever.⁴² While the death penalty is prescribed for this crime, no form of punishment is affixed in the scriptures. While decapitation by the sword was in effect for murder, the later Talmudic law punished manstealing by strangulation, even though the loss of an Israelite to slavery in a foreign land was akin to the loss of life by murder.⁴³

We have no evidence either in Nephi's account or elsewhere that Laban was either accused of or may have been guilty of the capital crime of manstealing. There may, however, be a symbolic connection tying Laban to this crime akin to the apostate city argument discussed later.

VI. Attempted Murder or Self-defense as a Justification

In the case of Nephi, any argument of self-defense can be easily dismissed. Justification in defense of life or chastity was available only where there was an immediate threat. Nephi was hardly threatened by the drunken figure of Laban.

With respect to attempted crime, generally no guilt attached unless the substantive offense was completed.⁴⁴ But, as Professor Elon has noted, the potential harm of attempted crime did not go unnoticed. "Extra-legal punishments have indeed been inflicted time and again on attempts, especially of murder."⁴⁵ Even had such an extra-legal punishment been appropriate in our case, it is doubtful that Nephi could lawfully have been the "self-appointed" executioner.

It should also be noted in regard to attempted murder that not only was no substantive crime committed against Nephi and his brothers, but Laban did not actively participate in the attempt because he "sent his servants." According to some commentators, under Hebrew criminal law only the actor or agent and not the principal is liable, for it is supposed that the agent should have obeyed God's commands, over those of a man.⁴⁶ Although the principal

may not be within the jurisdiction of the judicial system, he is nevertheless viewed as the eventual recipient of divine justice, and whenever a capital crime was committed by an agent, the principal would be taken by God from this world.⁴⁷ Even with this restriction, the local courts were admonished to administer flogging and severe punishment for long periods so as to deter the using of others to accomplish criminal ends.⁴⁸

VII. Minors and Age of Accountability

In 1 Nephi 2:16 Nephi describes himself as being "exceeding young" and large in stature. Later, when he prevents Zoram from returning to Jerusalem he characterizes himself as a "man large in stature" (1 Nephi 4:31). For purposes of Nephi's accountability under the law there are three possible cases given in the literature: (1) over 20 years of age, (2) between 13 and 20, and (3) under 13.

If Nephi were over 20 there is no question that he would have been totally responsible under all the laws of Israel, both civil and criminal. He would have clearly been a member of the covenant community as an "adult" male in Israel.

The case for the 13-20 range is less clear. On the one hand there is authority for the proposition that only upon reaching the age of 20 was a Hebrew able to fully distinguish good from evil.⁴⁹ There are several passages in the Old Testament that evidence an increased liability and responsibility upon reaching 20 years of age: Ex 30:14 (offerings to the Lord only required of those over 20); Lev. 27:3 (consecration value of males between 20-60); Num. 1:3, 20, 22; 26:2 (only males over 20 numbered as eligible for warfare); Num. 14:29; 32:11 (only those under 20 allowed to enter the promised land).⁵⁰

While modern Jewish practice holds that a boy of 13 has reached the age of accountability, the age or antiquity of this "rite of passage" is fixed during the 14th century A.D. by one writer and the 1st century A.D. by another. The argument favoring age 20 as the more historical figure holds that even with the setting of age 13 in Jewish practice, such youths were not possessed of a full panoply of rights until age 20.⁵¹ Finally, Professor Elon has noted that there is dicta to support the proposition that since divine punishment was not imposed for sins committed under age 20, then man ought not therefore to punish in those cases.⁵²

On the other side of the dispute are those who insist that a male under 13 years of age and a day, not 20, was considered a minor according to Talmudic law.⁵³ "It was with puberty that an Israelite boy became an adult and consequently a full member of the covenant community, being able to take part in religious duties, marriage, law and warfare."⁵⁴ Professor Horowitz notes that a boy of 13, with signs of puberty, was a "gadol," an adult with respect to social, moral and religious duties. Such persons had full legal capacity with certain minor exceptions with respect to real property.⁵⁵

A "pa'ut", or a child from 6-13 under the Rabbinic system had quite limited capacity, i.e., no tort liability. Nevertheless, such children were to be punished by order of the court for theft and similar grave offenses in order to deter them from evil, i.e., flogging was common.⁵⁶ In fact, one scholar has noted in reference to murder that while there are no provisions in the Old Testament concerning murder by those not technically liable under the criminal law, i.e., women, children, or slaves, there can be little doubt that the state would have treated them harshly, i.e., like the goring ox. The offender would have to suffer the death penalty, like the ox, in order to cleanse the community of the blood guilt.⁵⁷ This position, however, seems excessive in light of the requirement of intent in murder. Whether a child could form such an intent is questionable. Nevertheless, it seems likely that the offender would suffer a substantial punishment, perhaps short of death, in order to deter the guilty party and others from such conduct in the future.

How significant is it that Nephi calls himself a "man"? After reading Nephi's account, his physical description as well as the record of his mental processes, one is hard pressed to argue for a Nephi under 13 years of age. Further, even if we accept the argument that a male under 20 was not an adult, i.e., did not have a knowledge of good and evil, and hence not technically criminally responsible, we are still left with severe punishment for deterrence sake. Simply put, Nephi probably could not have escaped punishment for the slaying of Laban solely on the basis of a minority status argument.

VIII. Duress

An additional defense to be considered on Nephi's behalf is that of duress. The Biblical law codes record only one instance in

which this defense could be invoked: a betrothed woman raped in the country was presumed to be forced into the act. Consequently, no action was taken against her.⁵⁸ The early Rabbinic codes likewise made little provision for the defense of duress.⁵⁹ Thus it would appear that there was no such defense in Biblical law that could have been invoked by Nephi.⁶⁰ Nevertheless, a single commentator has made the broad statement that in Biblical law "[a]cts committed under duress would likewise not be considered punishable."⁶¹ In light of this statement and the fact that later Rabbinic codes incorporated duress as a defense,⁶² it seems worthwhile to treat the subject briefly.

In post-Mishnah Jewish law, no person was criminally responsible for any act unless he committed it willfully. Furthermore, an act was not willful if it fell within one of the five established categories of duress.⁶³ Two of these categories have particular application to Nephi's slaying of Laban: duress by threat of death and duress by force majeure.

The defense of duress by threat of death applied when a person killed in order to escape death. The killer was not criminally responsible because his criminal intent was deemed to have been excluded or superceded.⁶⁴ The threat had to be one of immediate death, however, and the person must have acted in order to save his life.⁶⁷

Nephi could have argued that he killed Laban under the duress of a threat of death. The duress would have resulted from Nephi's knowledge of Laban's attempts on his life, the proximity to Laban's home and his death-seeking servants, and possibly the fact that Laban was wearing his armor and sword when Nephi came upon him. Despite these considerations and the fact that Nephi was undoubtedly influenced by them, the argument is weak. As the scriptural account stands, the threat of death was not immediate since Laban had fallen to the earth in a drunken condition and none of Laban's servants were present.⁶⁶ Also, Nephi slew Laban primarily as a means of obtaining the plates, not as a means of escaping death.⁶⁷

The defense of duress by force majeure could also have been raised. The defense could be invoked if a person was moved to

commit an act by some external force. It did not matter that the person acted with knowledge, so long as the action was against the actor's will.⁶⁸

Under this defense Nephi could argue that he was induced to kill Laban by an exterior force--the Spirit--and that he acted against his will. Support for the existence of compulsion is found in Nephi's reluctance to slay Laban after the Spirit "constrained" him to kill.⁶⁹ The difficulty, of course, is that although Nephi was reluctant to kill at first, he did not act against his will when he killed. Rather, he acted knowingly and freely. Moreover, there is no Jewish law precedent establishing that the Spirit can be the required "exterior force."

An alternative interpretation of the force majeure defense is illustrated by case law. If a man fell ill and his doctors prescribed the consumption of prohibited food for his cure, then the patient would not be liable to punishment even though partaking of such food was a criminal offense. This was so because his intent was not criminal, but medical.⁷⁰ Using this example, a strong argument could be made that Nephi's intent in killing was not criminal but spiritual; he sought to obey a commandment of the Lord. He seems to have had no desire to slay Laban and was repulsed by the thought. Here again, however, the rule was narrowly interpreted and would not hold up for all offenses. For example, a man could not commit adultery for medical reasons.⁷¹ Similarly, it seems reasonable to assume that a man could not kill for religious reasons in Rabbinic times and expect to fall within this defense.

As these examples show, Nephi could have argued for the defense of duress. However, there are serious doubts about the existence of the defense in Nephi's time. Furthermore, the rules must be stretched to fit Nephi's case within them.

IX. Lack of Two Witnesses

The Deuteronomic Code provided that "[o]ne witness shall not rise up against a man for any iniquity, or for any sin, in any sin that he sinneth: at the mouth of two witnesses, or at the mouth of three witnesses shall the matter be established."⁷² Under Hebrew law at least two witnesses of a homicide were required to convict;

circumstantial evidence was not sufficient.⁷³ In Rabbinic law, and probably ancient Hebrew law, the witnesses must have witnessed the whole event together.⁷⁴

The strongest protection that Nephi would have had from a murder conviction is the two witness requirement. The scriptural account makes no mention of witnesses to Nephi's nocturnal slaying of Laban.⁷⁵ The absence of witnesses is no surprise, for the streets of Jerusalem in Nephi's day were probably unlighted and deserted. Few would venture out on them at night without lampbearers and armed guards.⁷⁶ Furthermore, Nephi took no unnecessary chances; he dispensed with the armed Laban by cutting off his head and then donned Laban's armor and garments.⁷⁷

Additional evidentiary requirements at the trial would probably have protected Nephi also. Although the Bible contains few evidentiary requirements besides that of two witnesses, the Talmud and other Rabbinic sources are replete with them. It is not known which of the Rabbinic requirements applied in Biblical law, but it appears that many of them were part of the law.⁷⁸

As a preliminary matter, several classes of people were considered unqualified to give reliable testimony in court and were therefore excluded. These included the following: women, slaves, minors, the insane, mutes, the deaf, the blind, professional gamblers, usurers, robbers, those who took things by force though they paid for their value, tax collectors, heathens, those who violated an oath, herdsman, self-debased persons, and all those who either did not know the laws of the Torah, or knowingly transgressed them. Likewise, relatives of the defendant were not eligible to give testimony, and if two witnesses were related to each other, their testimony was not valid. Additionally, the witnesses could not be related to the judges.⁷⁹

Under these rules, even if there were witnesses to the slaying of Laban, they could have been disqualified to the extent that these rules applied in 600 B.C.

Other rules also disqualified witnesses' testimonies and often resulted in acquittal. In criminal cases, there had to be no basic contradiction in the testimonies, or an acquittal resulted.⁸⁰

Elaborate identification requirements of the accused were imposed.⁸¹

A stern warning was read to the witness.⁸² Hearsay was barred.⁸³ Finally, the witnesses had to testify that the accused had been warned by them beforehand against committing that particular offense.⁸⁴

In view of these stringent requirements, "it is not to be wondered at that death-sentences were rare" during Rabbinic times.⁸⁵ Although not all of the above requirements would have applied in Nephi's day, some of them probably did. Thus, Nephi would have been afforded considerable protection under the law.

Evidentiary protections had their limits, however, at least in Rabbinic times. Kings could lawfully execute murderers acquitted for lack of evidence if they considered it necessary for the public good.⁸⁶ Moreover, the Rabbis provided that when the judges were convinced of the guilt of a murderer, yet the testimony of the witnesses was insufficient, the judges could imprison the person and provide him a scanty diet of bread and water until he died of starvation.⁸⁷

Despite the two witness rule, Nephi also might have been subject to the dangers of self-incrimination as a witness against himself. If he used care to make no voluntary confessions, however, he would have been safe, for neither the Bible nor the Talmud provides for interrogation of the accused as part of a criminal trial. Thus, there would be no room for an attempt to extort a confession.⁸⁸

Whether Nephi could have been convicted on a voluntary confession not elicited by interrogation is a more difficult question. In post-Biblical times, it is clear that he could not have been so convicted. Nephi would have been given the opportunity to say anything he wished in his defense, but would not have been allowed to say anything to his detriment. If he had said anything to his own prejudice, he would have been silenced and reprimanded by the court.⁸⁹

In Biblical law the conclusion is uncertain. The extreme paucity of scriptural passages relating to self-incrimination has made scholars hesitant to expound on the legal acceptability of the confession in the criminal law.⁹⁰ At least four instances of confessions are recorded in the Bible,⁹¹ but Talmudic scholars have generally dismissed these either as confessions after trial and conviction made solely for the purpose of expiating the sin before God, or as exceptions to the general rule.⁹² One recent

scholar, however, has concluded from the accounts in 2 Samuel 1 and 2 Samuel 4 that criminal confessions were acceptable in Biblical law.⁹³ Such ambiguity surrounding the Biblical passages makes it difficult to determine whether Nephi could have been convicted on the strength of a voluntary confession.

In spite of the lack of two witnesses of the killing and other evidentiary protections, there would still have been the danger of conviction on the testimony of false witnesses. In 1 Kings 21, for example, Naboth was put to death for blasphemy at the mouths of two false witnesses. Individuals hesitated to testify falsely because if caught, they would receive the punishment that the person they testified against would have received.⁹⁴ However, Naboth's case shows that such witnesses could be acquired. The likelihood of false witnesses testifying against Nephi is increased by the fact that those who acquired the false witnesses in Naboth's case, the elders,⁹⁵ were closely associated with Laban.⁹⁶

The absence of witnesses of Nephi's slaying of Laban as well as other evidentiary protections would likely have resulted in an acquittal under Hebrew law. However, this result is tempered by the dangers of self-incrimination and the possibilities of subverting the law through the use of false witnesses.

X. The Administration of Justice

The effect on ancient Hebrew jurisprudence of the events of Sinai cannot be understated. The Decalogue given to Moses was to become Israel's criminal code at least down to the time of the Exile. As time passed, breach of any of the Sinaitic covenants came to be viewed as a threat to the entire covenant relationship. The community came to treat the breach as a crime and executed judgment against the offender to propitiate Yahweh.⁹⁷ This practice, once in place, was in stark contrast to law codes of neighboring peoples which treated murder as a matter to be dealt with by members of the deceased's family.⁹⁸ While it has generally been accepted that blood feuding was also practiced in Israel, it ceased to be practiced at some time after Sinai when the tribes bound themselves into one kin group. As different tribes or clans combined, crimes within the new community were no longer handled by blood feud but by the authority of the state

or community.⁹⁹ Eventually, the family of the victim played little or no part in either trying, convicting or executing the guilty party. Anyone who took the law into his own hands would himself be guilty of murder.¹⁰⁰

In Biblical law, as we have noted, any non-justifiable homicide was treated as criminal. When the killer took the life of another he was understood to gain control of the deceased's blood (2 Sam. 4:11), which if not released by the execution of the (intentional) murderer, would cry to Yahweh for delivery from its new master (Gen. 4:9-10). Recognizing, however, that homicide may be unintentional or at least less culpable, the Lord made provision in Ex. 21:13 for places of local sanctuary to which the slayer could flee. He would enter the sanctuary and take hold of the horns of the altar, thus placing himself under the protection of Yahweh and thereby precluding, at least in theory, forcible removal.¹⁰¹ This action would be an admission on the part of the slayer that, although he had shed the blood of a fellow member of the covenant community, his act was unintentional. The elders of the community, i.e., each male head of household, would then consider the case. If premeditated or wilfull murder were found, the killer would be removed from the altar and promptly executed. If, on the other hand, the killing were determined to be unintentional or accidental (act of God), then there was no need to propitiate Yahweh for the criminal law had not been violated.¹⁰² The only recorded examples of this process which we have in the Old Testament concern political refugees and not criminals. While Adonijah (1 Kgs. 1:50) was able to leave the sanctuary under oath, Joab was executed in the sanctuary itself after having sought asylum in the royal shrine at Jerusalem. Solomon used Joab's murders of Asahel and Amasa as an excuse to legitimately break sanctuary (1 Kgs. 2:28).

The problem with this early system of local sanctuaries was that the removal and trial of the killer was entirely in the hands of the elders of the local community, or the community where the killing occurred. Those elders would have been exceedingly reluctant to judge a killing unintentional for fear that through error on their part, they might become subject to direct divine intervention

for failure to execute a criminal and thereby cleanse the community. For the sake of fair and impartial trials, cities of refuge were established throughout the land to which one could flee. It was then the responsibility of the elders of those cities to do justice.¹⁰³

When the elders of the city where the killing occurred wished to contest the claim of accident or unintentional homicide, they would send a representative (go'el ha-dam) to plead their cause. This person, who has been called both the "Avenger of Blood" and the "Protector of Blood," had the duty of restoring the blood of the murdered man to its legitimate owner, Yahweh.¹⁰⁴

Normally, the killer would reach the sanctuary ahead of the go'el ha-dam simply because the elders of the city which was the situs of the crime would have to meet to determine premeditation on their own before they could dispatch the go'el ha-dam. If through his zealousness or the tardiness of the killer, the go'el ha-dam overtook and slew the killer en route, then he was apparently absolved of any liability regardless of the ultimate ruling on guilt.¹⁰⁵ It should be noted, however, that it was only the go'el ha-dam, the duly appointed official of the court of the first instance, who had the right to pursue and execute the killer.

If it was decided that the killer did not have the requisite intent to kill, hence not gaining possession of the dead man's blood, then under the early law the killer would probably be liable for tort damages to the family of the deceased. Numbers 35, evidences a change in this policy in that the killer was required to remain within the walls of the city of refuge until the death of the high priest of that city. Tort damages for the unintentional killing were expressly forbidden as a form of recompense or expiation. The exact date of this change is in dispute.¹⁰⁶

XI. Exodus 21:13

A. The Lying in Wait Requirement

Since we have established that in all likelihood Nephi's killing of Laban would not have been considered "justifiable" under the law, we now turn to a consideration of murder and manslaughter.

Felonious or willful murder, spoken of in Ex. 21:12-14, is characterized and differentiated from all other forms of homicide

by intent and motive. Verse 12 of this section of the Book of the Covenant indicates that if a man smites another, so that he dies, the smiter shall be put to death. Verse 13 then states an exception: "And if a man lie not in wait, but God deliver him into his hand, then I will appoint thee a place whither he shall flee." From these verses we learn that the murderer is one who lies in wait, who comes presumptuously with a set purpose.¹⁰⁷ The Hebrew words used to express these ideas are instructive. Lying in wait is called "sadah." The same term is used in describing the wily tactics of the hunter pursuing game.¹⁰⁸ The same word is also used in instances describing a man-hunt.¹⁰⁹ The expression "coming presumptuously" is termed "yazid", a word used in other passages to express insolent defiance of law or rights.¹¹⁰ Coming with a set purpose is expressed by the word "be-'ormah," meaning prudence, foresight or in a baser sense, craftiness.¹¹¹

One would be hard pressed to find any of these elements of intent, motive or premeditation in Nephi's account. He expressly states in 1 Nephi 4:6 that he was led by the Spirit, "not knowing beforehand the things which I should do." His refusal to slay Laban even after the Spirit told him that the Lord had delivered him into his hands indicates, not only an unwillingness to kill, but an absence of malice toward Laban.

But scholars' interpretations of Exodus 21:12-13 vary. We have previously noted, for example, that some commentators feel that intentionally striking another in any manner with intent to kill, absent justification, was considered to be murder.¹¹² Thus, when an actor intends the consequences of his actions, as apparently did Nephi, he would be guilty of murder. This position, however, seems inconsistent with the view that the lesser crime of manslaughter encompassed what our common law would call involuntary and voluntary manslaughter, e.g., one intends death to result from his actions but the intent is formed in the heat of passion.¹¹³ Since the intent is "tainted" as it were, the actor is less culpable and less deserving of the punishment of death. The argument as applied to Nephi would involve the constraint of the Spirit in commanding Nephi to act. This constraint may well have amounted to a "tainting" of his intent and a consequent mitigation in criminal liability from murder to manslaughter. As mentioned, the penalty for manslaughter

would have been either confinement in a city of refuge until the death of the high priest or payment of expiation to the deceased's family with the former being the more likely during the time of Nephi.

Several other scholars have taken another approach to Exodus 21:13, however they take the position that the verse is not based on the absence of intent to kill, but the absence of premeditation. Bernard Jackson has stated his position on Exodus 21:13 and premeditation as follows:

"Premeditation means that the action in question was the result of a preconceived design, not of a desire formed on the spur of the moment. Thus, not every intentional act is premeditated. In the Mishpatim [Exodus 21:13 is part of the Mishpatim], as they now stand, death was demanded only for premeditated homicide. The privilege of asylum was offered even to the intentional murderer, if his act was unpremeditated. This is the meaning of the distinction drawn in Ex. 21:13: 'But if he did not lie in wait for him, but God caused him to meet him.'"¹¹⁴

In Jackson's opinion, this interpretation of Exodus 21:13 carried over into the later Deuteronomic and Priestly Codes.¹¹⁵ Numbers 35:22-3 illustrates this definition of unpremeditated homicide: "But if he attacked him suddenly without enmity, or hurled any implement at him without lying in wait, . . . and he died, but he was not his enemy, nor was he seeking evil for him," then the slayer shall be protected.¹¹⁶ Verse 22 makes it "abundantly clear that intentional but unpremeditated homicide was not regarded as murder."¹¹⁷ This distinction between premeditated and all other homicide is not unique to Biblical law. There is a wealth of comparable rules in other early systems.¹¹⁸

If Jackson's interpretation of Exodus 21:13 correctly states the law in Jerusalem in 600 B.C., then Nephi would have had a strong substantive argument in his defense. Nephi would not have been guilty of murder unless his slaying of Laban was premeditated. His slaying would not have been premeditated unless it was the result of a preconceived design, not of a desire formed on the spur of the moment. The scriptural account indicates that Nephi had no preconceived design, for he was "led by the Spirit, not knowing beforehand the things which [he] should do."¹¹⁹ Moreover, if Nephi had a desire to kill Laban, which the scriptural account indicates that he did not have,

the desire was certainly formed on the spur of the moment, for upon being constrained by the Spirit to slay Laban, Nephi shrunk and did not want to slay him.¹²⁰

B. The Defense of Delivery into Thy Hand

Distinct from scholars' consideration of the Exodus 21:13 requirement of lying in wait, are interpretations of the phrase that God deliver the person killed into the hands of the slayer.¹²¹ Scholars agree that it is difficult to ascertain the precise meaning of this clause.¹²² Although some commentators pass the clause off as having little significance, others find it to be a "profound theological concept" with a far more purposeful construction than seems commonly allowed for.¹²³ Certainly the element of divine providence in this law is unique.¹²⁴ It "acknowledge[s], in a very real sense, the government of God in human affairs."¹²⁵

The various interpretations of the clause are similar to those found in the King James Version of the Bible.¹²⁶ The most common meaning attached to the clause is that when a killing is accidental, then the cause in one sense is not the person, but God.¹²⁷ As a consequence, the killer did not have to be executed because it was as though the killing had been committed by God himself.¹²⁸

The attitude of the Rabbis on the involvement of God in Exodus 21:13 differs in some respects from this interpretation, however. Their comments are found in an Amoraic utterance that was preserved by Simeon ben Laqish.¹²⁹ The Rabbis' thoughts are developed through a discourse that associates Exodus 21:13 with 1 Samuel 24:13. The teaching is simple. "God is absolutely just. So He will deliver over to an unwitting homicide (an Exodus 21:13 killer) only a man deserving death. . . .In other words, the man [killed] will be, say, a murderer who, owing to lack of witnesses, escaped his proper punishment."¹³⁰

This argument is an old one. "Philo explains that the description of God as delivering the victim to the killer implies a defense of the latter on the ground that the victim is a criminal, who by his resourcefulness evaded earthly justice."¹³¹ Both the Philo explanation and that given by Simeon ben Laqish add a further element of justice: the unwitting killer must himself be guilty of some offense, otherwise

God would not use him in this fashion and allow him to be penalized through banishment to a city of refuge for the manslaughter.¹³²

Simeon indicates that the unwitting killer must be guilty of a previous accidental killing. The more plausible view, however, is that of Philo:¹³³ The unwitting killer need only be guilty of some minor previous offense--which may or may not be a deliberate one.¹³⁴

Why was the Exodus passage elucidated in the Rabbinic discussion by associating it with 1 Samuel 24:13? There are several reasons, all of which center around the entire chapter of 1 Samuel 24.¹³⁵ In this chapter, Saul takes 3,000 men and pursues David. While Saul was sleeping in a cave, David came upon him. David's men told David that this is the day of which the Lord said: "Behold, I will deliver thine enemy into thine hand, that thou mayest do to him as it shall seem good unto thee."¹³⁶ Some of the men encouraged David to kill Saul,¹³⁷ David, [however,] spared his life. Saul awoke, and David, from a distance, told Saul that the Lord had delivered him into his hand, but David had refrained from killing him. Yet Saul, David pointed out, had lain in wait to take David's soul.¹³⁸ Saul, in his reply, acknowledged that the Lord delivered him into David's hand, but David had not killed him.¹³⁹

The similarity between Exodus 21:13 and this chapter is remarkable. In the chapter is found the only reference to the word sadha, "to lie in wait," in the Bible, aside from its occurrence in Exodus 21:13.¹⁴⁰ Furthermore, there are repeated references to God's deliverance of Saul into David's hand and David's opportunity to kill Saul. The murderous Saul had not yet killed David, but he had attempted to do so.¹⁴¹ He fits well the description of a "murderous character, who cannot be summoned before an earthly tribunal, but whom God will deliver over to vengeance."¹⁴² The message of this Rabbinic discussion may be that under Exodus 21:13 David would have been justified in intentionally killing Saul because of Saul's wickedness. He was not required to do so,¹⁴³ but would have been justified if he had so chosen.¹⁴⁴

Would Nephi have been similarly justified under Exodus 21:13? It seems likely that if there was such a defense in 600 B.C., Nephi could have satisfied its requirements. The major condition to invoking the defense is that the victim of the slaying must be a

criminal who by his resourcefulness has evaded earthly justice. The scriptural account of the slaying suggests that Laban was just such a person. He did "not hearken unto the commandments of the Lord," and he was a "wicked" man.¹⁴⁵ Evidence of his criminality could have been shown in his unlawful seizure of the family's property¹⁴⁶ and his attempts to slay Nephi and his brothers.¹⁴⁷ Laban's general ruthless and greedy character suggests that he was possibly guilty of other crimes as well, perhaps including murder.¹⁴⁸

Likewise, Laban seems to have met the requirement that the victim escape punishment for his crimes before an earthly tribunal. This is shown by his confiscation of the family's property and his attempted murders, all with no apparent concern for legal action against him. The powerful position that he held in Jerusalem also suggests that he may have been beyond the reach of legal process for his crimes.¹⁴⁹

Nephi's case also complies with the two specific elements of Exodus 21:13 in much the same way that David's encounter with Saul complied. First, just as David did not lie in wait for Saul, but chanced to come upon him, Nephi chanced to come upon the drunken Laban in the street. Second, it is clear from the scriptural account that Laban was delivered into Nephi's hands by the Lord, just as Saul was delivered into David's hand. The account of David's actions mentions this fact three times;¹⁵⁰ the Book of Mormon notes this five times.¹⁵¹

There may be a weakness in this argument, however. Under Simeon's interpretation the killer must have committed a previous accidental killing. Nephi had never committed such an act, for the account states that he had never before shed the blood of man.¹⁵² Philo did not feel that a homicide was required, however. In his view a minor offense would suffice to justify banishment instead of the death penalty for the killing. Here again, however, there is no indication that Nephi committed even a minor offense before the killing. Thus, the defense may not have applied. On the other hand, it may be that a previous offense was not actually required. This is suggested by the anomaly that if this was a required element of the defense than a person who had committed some previous wrong could use the defense to avoid the death penalty for murder, while an innocent individual could not. David's opportunity to kill Saul in 1 Samuel 24 lends support to the conclusion

that perhaps no previous offense by the killer was actually required. In that chapter it appears that David would have been justified in killing Saul, yet there is no indication that David had committed a previous offense.

Regardless of the application of the defense, Nephi could have been afforded protection through it only if it was Hebrew law in 600 B.C. As this discussion has shown, the defense may have existed during the time of King David, but this would have been around 1050 B.C.--450 years before the time of Nephi. Furthermore, whereas the clause "but God deliver him into his hand" is found in the Code of the Covenant in Exodus 21:13, it is not found in the later Deuteronomic Code, nor is it found in the Priestly Code. Based upon these findings, one commentator has concluded that by the time of the Deuteronomist no attempt was made to understand unintentional killing as an act of God.¹⁵³

On the other hand, the law may well have carried over from the time of King David. First, it is generally recognized that the Deuteronomic Code was only intended for the general populace, so many technical points were omitted.¹⁵⁴ The short clause in Exodus 21:13 could have been one of those points. Second, Exodus 21:13 was probably interpolated.¹⁵⁵ A likely interpolator would have been the Deuteronomist, which would place the interpolation around 700 B.C.¹⁵⁶ and increase the likelihood that the defense existed in 600 B.C. The references in 1 Nephi and Deuteronomy to the Lord's deliverance of persons into the hands of another also suggest that the law may have been applicable during the time of Nephi.¹⁵⁷ Nevertheless, it is simply not known whether the defense existed during Nephi's time.

XII. The Talmudic Law of Homicide

In the refinements in the law of homicide under Talmudic law there existed a crime falling between murder and manslaughter which might fit the fact situation before us. The charge of "culpable homicide" could be levied as a result of criminal negligence or intentional wrongful conduct such as: (1) the excessive use of force (fatal) in defense of self or another, (2) the killing of

another with the honest belief that that person was guilty of a capital crime but before a court had pronounced sentence, and (3) acting as an accessory or abettor of murder--one who hires another who kills.¹⁵⁸

Apparently, the punishment for this offense was not strictly within the normal framework since the crime fell between intentional murder and accidental homicide. As such, the local courts would not normally have jurisdiction, and neither would the killer be allowed to seek sanctuary in a city of refuge, for such was reserved for accidental killers only. Being caught "in between" the law, as it were, the killer could be slain, anytime, anywhere by the go 'el ha-dam. In addition, the king of Israel always had authority to execute such persons in accordance with royal law for the sake of social order and stability.¹⁵⁹

Nephi may well have used "excessive force" in an attempt to prevent an atrocity, (Sanh. 79a) at least in symbolic terms, i.e., attempting to prevent the loss of a new nation to idolatry. Perhaps and more likely, he may have killed Laban in an honest belief that Laban was guilty of a capital crime and hence deserving of death. Implicit in this position is the notion of self-help. Under exigent circumstances "lynching" by a mob without "due process" was only allowed where the mob witnessed the commission of the crime (Mishna Sanh. 9:6). Likewise, the priest officiating in a state of uncleanness could be put to death by his fellow priests without any judicial proceeding.¹⁶⁰ The circumstances of Laban's killing, however, do not appear to warrant Nephi's invocation of any such self-help procedure under the law.

Finally, we have no basis for assuming that Nephi was authorized by any judicial or quasi-judicial body to act as a go'el ha-dam. Without any such cloak of authority or any other such immunity, Nephi may have done the only thing open to him under the law of culpable homicide, assuming it was in effect, and that was simply to flee as far and as fast as he could.

XIII. The Defense of Obedience to a Commandment of the Lord

Hebrew law is unique in one primary respect. "Unlike other systems of the law, [Hebrew] law makes no clear distinction between the human law (relationship between a man and his fellowmen) and

the divine law (relationship between man and God)."¹⁶¹ The penetration of religion into the law puts a face on the details of this law different from that of religiously neutral formulations.¹⁶² This reflects the fundamental premise of Hebrew law, as stated by Isaiah, that "the Lord is our lawgiver."¹⁶³

With "the revealed will of God [as] the sole source of" Hebrew legislation,¹⁶⁴ it is not surprising to find that the Divine Lawgiver could except or amend the law that he had given. Indeed, the ability to except the laws seems to have been provided for in the Hebrew Codes themselves. A section, for example, in the Code of the Covenant indicated that God would send his Angel before the people and that the people must "obey his voice."¹⁶⁵ This section of the Code appears to have been interpolated during Hezekiah's reform between 700 B.C. and 726 B.C.¹⁶⁶ Thus it is placed not far from Nephi's time in 600 B.C.

Jeremiah, a contemporary of Nephi,¹⁶⁷ noted a similar command from Israel's Lawgiver, wherein the people were commanded to "[o]bey my voice."¹⁶⁸ A further example of this aspect of Hebrew Law is the Lord's statement that "man doth not live by bread only, but by every word that proceedeth out of the mouth of the Lord doth man live."¹⁶⁹

Several accounts in the scriptures confirm that these mandates of Israel's Lawgiver were an intrinsic part of Hebrew law. They show that those who acted in obedience to the voice of the Lord were justified under the law, even though their actions were proscribed by a previously given law of God.¹⁷⁰

Perhaps the clearest example of this defense is found in a modern scriptural explanation of the law in Abraham's time. In Doctrine and Covenants Section 132 the Lord commands Joseph Smith to "[g]o . . . and do the works of Abraham; enter ye into my law and ye shall be saved."¹⁷¹ After this admonishment the Lord points out several instances wherein Abraham's works were justified. The first of these is when "God commanded Abraham, and Sarah gave Hagar to Abraham to wife."¹⁷² From the context of these passages it is clear that Sarah's giving of Hagar to Abraham as a wife was in violation of a law.¹⁷³ "Why then did Sarah do it?" Because the act was in compliance with another "law."¹⁷⁴ What "law" would supercede the previous law? The answer is given in verse 35 where it asks: "Was Abraham, therefore, under

condemnation [for violating the previous law]? Verily I say unto you, Nay; for I, the Lord, commanded it."¹⁷⁵ The ancient law that superceded all of God's previous laws was the law that God commanded the act to be done. This was a complete defense to the violation of a previous law, so that individuals, such as Abraham and Sarah, would incur no punishment for the violation.

The second "work" of Abraham discussed in D & C 132 applies the "defense of God's command" to killing. The two applicable sentences state: "Abraham was commanded to offer his son Isaac; nevertheless, it was written: Thou shalt not kill. Abraham, however, did not refuse, and it was accounted unto him for righteousness."¹⁷⁶ This verse teaches that even though the ancient law forbade killing, God's command that a person kill superceded the previous law and justified the action.

The third "work" of Abraham treated in Section 132 is his receipt of concubines. The concubines received by Isaac, Jacob, Moses, Solomon, and David are also discussed.¹⁷⁷ In these verses the Lord indicates that each of these individuals as well as Solomon and Moses and many others of His servants have received more than one wife or concubines.¹⁷⁸ The law that these actions violated is apparently Deuteronomy 17:17, where it states that a king, and probably others, shall not "multiply wives to himself." Despite the obvious violation of this law in ancient times by some of these individuals,¹⁷⁹ the Old Testament and the Doctrine and Covenants indicate that their acts were justified and there were no penalties inflicted.¹⁸⁰ What law superceded the law against multiplying wives and justified their acts? The law that God commanded them.¹⁸¹

The examples of this defense are not confined to those listed in Doctrine and Covenants 132. Ancient Israel's law of war, for example, was based on the principle of God's command. Doctrine and Covenants Section 98 states: "And again, this is the law that I gave unto mine ancients, that they should not go out unto battle against any nation, kindred, tongue, or people, save I, the Lord, commanded them."¹⁸² Under this law, the Israelites slew the men, women, and children of the Hittites, the Amorites, the Canaanites, the Perizzites, the Hivvites, and the Jebusites.¹⁸³ The killings were justified under Hebrew law because God, through his prophet, had commanded them.¹⁸⁴

In addition to wartime slayings, the Lord has commanded other slayings, especially of the wicked. Though these slayings were at the express command of God, they were often outside the framework of the law and without legal process.¹⁸⁵ Yet the killings were justified. The Bible records several such slayings, each at the express command of God. They include the slaying of 3,000 men who worshipped the golden calf,¹⁸⁶ the killing of the worshipers of the idol at Peor,¹⁸⁷ and the stoning of the Sabbath breaker.¹⁸⁸ In each of these accounts the slayers were justified in their actions and were not penalized.¹⁸⁹

All of these scriptural examples seem to suggest that at one time in Ancient Israel a slayer had a complete defense to a charge of murder if the slaying was committed at God's command. There remain, however, two primary obstacles to Nephi's use of this defense. First, although this defense apparently existed in early Israelite times, would it have been recognized as a defense in 600 B.C.? Second, could sufficient evidence of the defense have been adduced?

As to the first question, there is no definitive answer. The defense could have existed, since it was such an integral part of Israel's society in early times. Nevertheless, there are strong indications that it would not have been recognized as a defense in Nephi's day. One such indication is the fact that all of the scriptural examples cited above occurred during the time of King Solomon or before; none occurred after his death in approximately 975 B.C. There is good reason for the appearance of this defense prior to that date. In early Israelite history Israel's leaders were prophets. These included such men as Abraham, Isaac, Jacob, and Moses. It was to such inspired men that commands of God which deviated from previous commands were given. Since they were the leaders of Israel, the fact of receiving a command from God was not challenged and those who acted according to their command were justified under the law.

With the death of these great Patriarchs, judges and kings began to reign over Israel, not prophets. Initially, these rulers associated themselves closely with the prophets, and the rulers directed that acts be done, though contrary to previous law, because they had been so directed by the Lord through His prophets.¹⁹⁰ That these men were acting according to the command of God was again not challenged.

Beginning with the reign of the Kings, however, the relationship between the king and the prophets was gradually severed.¹⁹¹ By the time of Nephi, a general apostasy had occurred and the prophets were being slain by wicked rulers and citizens.¹⁹² In such an environment it is not surprising to find little involvement of God in the law,¹⁹³ and to find Nephi's defense that God commanded him to kill in jeopardy. The defense had apparently not been relied upon for many years, and in Nephi's case, it was not carried out through a ruler whose authorization from God would not be questioned.

Nephi's second problem would be proving that he had been so commanded. Little precedent for such proof exists because in previous cases the existence of the defense had gone unchallenged. Certainly his first line of proof would have been to have God indicate to his judges that he had acted in accordance with a Divine command. This does not seem out of line with the ancient law.¹⁹⁴ However, considering the corruption among the judges of Nephi's day, this mode of proof is not as likely to have been successful as in a day of righteous judges.

The other form of proof that Nephi could have offered would have been to show that a Divine command to kill Laban was likely. This could be done by showing that Laban's wickedness¹⁹⁵ was as great as the wickedness of other Israelites whose destruction was commanded by God.¹⁹⁶ Alternatively, Nephi could adduce evidence showing that his situation paralleled that of Moses' day when the Israelites utterly destroyed the inhabitants of the Land of Canaan. This would include a showing that Laban was wicked,¹⁹⁷ that the killing would reduce the likelihood of Israel becoming unrighteous,¹⁹⁸ and that the Lord had delivered Laban into Nephi's hands.¹⁹⁹

XIV. The Law of Retribution

An additional defense for Nephi that merits consideration is the law of retribution. Doctrine and Covenants Section 98:23-32 outlines the requirements of this law. This law was revealed in modern times on August 6, 1833. The law has particular relevance to ancient Israel since it "is the law [that] the Lord gave unto [his] servant Nephi, and [Nephi's] fathers, Joseph, and Jacob, and Isaac, and Abraham, and all [the Lord's] ancient prophets and apostles."²⁰⁰

The essence of the law was that if a man (hereinafter referred to as the "offender") smote another man or his family three times, and the offended party did not revile or seek revenge against the offender, the offended party was then to warn the offender in the Lord's name that he should come no more upon the offended party or his family, including his children's children to the third and fourth generation.²⁰¹ If the offender then came upon the offended party or his children, the Lord had delivered the offender into the hands of the offended party. If the offended party then chose to spare the offender, he would be rewarded for his righteousness. "Nevertheless, thine enemy is in thine hands; and if thou rewardest him according to his works thou art justified; if he has sought thy life, and thy life is endangered by him, thine enemy is in thine hands and thou art justified."²⁰²

If the above requirements were satisfied, then the retribution was completely justified. On the other hand, if the offended party failed to satisfy the requirements because he reviled or sought revenge against the offender during any one of the first three offenses, then the offenses would be accounted as being meted out as a just measure unto the offended party.²⁰

Nephi's ability to invoke this law as a complete defense would depend upon two matters. First, were the requirements of the law satisfied, and second, was this a temporal law in 600 B.C.? The question of satisfying the Section 98 requirements is difficult to resolve because of the absence of facts in the Book of Mormon account. This absence makes the proof of successful compliance more difficult, but does not foreclose all possibilities.

In order to be completely justified in his act, Nephi or his family would have to have been smitten by Laban on at least three, or possibly four, occasions. No retribution against Laban could have been taken for the first three smitings. Furthermore, a warning would have to have been given to Laban after the third offense.

Perhaps the most difficult requirement to satisfy is the three or four smitings that would justify taking Laban's life. Laban's rejection of Laman's attempt to acquire the plates would probably constitute one offense, for the record indicates that Laban thrust Laman out from his presence and told him: "Behold, thou art a robber, and I will slay thee."²⁰⁴ Laman then fled from Laban's presence.

Laban's rejection of the brothers' second attempt to obtain the plates would also likely have been a qualifying offense. On that occasion Laban thrust all four brothers out and sent his servants to slay them. They fled from the servants and hid in the cavity of a rock.²⁰⁵

Aside from these two incidents, the Book of Mormon records no other attempts by Laban to take the life of Nephi or a member of his family. Consequently, the defense would probably have failed. Nevertheless, this result is not certain, for some facts may have been left out of the record. With this thought in mind, it can certainly be said that additional attempts by Laban to kill Nephi or his family are consistent with the Book of Mormon and Bible accounts of Nephi's time.

If there were other attempts by Laban to take the life of a member of Nephi's family, they were probably against Lehi. 1 Nephi 1:20 records that the Jews became angry with Lehi and "sought his life" after he testified publicly of their wickedness. Since Laban was a "wicked" man who would "not hearken unto the commandments of the Lord," it is likely that he would have been one of those who was angered by Lehi's words.²⁰⁶ The record also shows that Laban had little or no compunction about killing. The attempts on the brothers' lives suggest this.

The record further indicates that Lehi and his sons knew that Laban was dangerous well before Laman's first approach to Laban. 1 Nephi 5, for example, suggests that Lehi's primary concern for his sons was not the dangers of the wilderness, but rather the dangers his sons would face in the hands of Laban.²⁰⁷ Certainly this knowledge of Laban's character helps explain why Laman and Lemuel murmured when Lehi asked them to obtain the plates and why they told Lehi that it was a hard thing that he required of them.²⁰⁸ The casting of lots to decide who would first go in unto Laban also suggests substantial familiarity with Laban's dangerous propensities.²⁰⁹

The Bible also implicates Laban. The books of Jeremiah and Ezekiel, for example, do this by specifying which groups of people were aligned against the prophets.²¹⁰ In Jeremiah 1, the kings of Judah, the princes of Judah, and the priests and people of the land

are cited as those who would fight against the prophet Jeremiah.²¹¹ During this period, the elders of the Jews sought to take the lives of the prophets by charging them with treason.²¹² Since it was members of these groups that most likely sought to kill Lehi and that drove him out of Jerusalem,²¹³ Laban could have been one of the offenders because of his close association with these groups. In particular, Laban appears to have been a member of or associated with the elders of the Jews and the princes of Judah.²¹⁴

Even if it could be shown that Laban made an attempt on Lehi's life, this may not suffice, for the law in Section 98 seems to require a fourth attempt before a killing is justified.²¹⁵ Of course, it is possible that two attempts were made on Lehi's life, however, there is no evidence of this. It may also be that Nephi's finding of Laban in the street qualified under the law. This seems doubtful, however, since Laban had fallen to the earth because he was drunken with wine.²¹⁶

An additional requirement of the law of retribution was that the offended party warn the offender not to come against the party or his family again. The warning was to be given after the third offense. There is no evidence that this requirement was satisfied. It is possible that one of the brothers warned Laban during one of the two visits to his house, but this seems unlikely. In light of this fact and the absence of evidence of additional offenses by Laban, it is doubtful that Nephi would have satisfied the full requirements of the law of retribution. Possibly some protection would still have been afforded by the law even if some elements were not complied with, but the law is unclear on this point. With this conclusion, we now turn to the question of whether the law of retribution was a part of Israel's temporal law in 600 B.C.

In its early days the law in ancient Israel incorporated the simple and effective lex talionis, the law of retaliation.²¹⁷ Under this law private revenge was customary not only for homicide, but also for mayhem and rape.²¹⁸ According to the Biblical text, capital punishment for willful murder, for example, did not require due process of law: the family goel (avenger) was "himself prosecutor, judge, and executioner" and he put the murderer to death when he met him.²¹⁹

These aspects of the law were particularly prevalent during the time that Israel was organized into 12 distinct tribes or clans.²²⁰

The law of retribution in Section 98 is consistent with this early arrangement of Israel's law. After the required attempts were made on a person's life under this law, the offended party was allowed to reward the offender "according to his works."²²¹ This private revenge was allowed without making supplication to any court of law. Rather, the family member, known as a goel in ancient law, could himself serve as prosecutor, judge, and executioner of the offender after he had given the required warning.

As Israel's tribes were melded into one nation, the system of criminal justice changed. A transition was made from tribal revenge to judicial procedure.²²² Eventually, the State came to have exclusive jurisdiction over most criminal cases. No family goel could seek revenge for an offense; instead a public officer was substituted. Cities of refuge were also established to which a killer could flee for judgment to be pronounced.²²³

This later system of justice is inconsistent with the law of retribution. While the law of retribution allows a family member to seek revenge against an offender under appropriate conditions, Israel's later system of justice would deny such a right prior to a judicial determination and then would allow sanctions to be carried out only by the State-appointed goel. Because of this inconsistency, it seems reasonable to conclude that the law of retribution ceased to be a part of Israel's law at the same time that other forms of private revenge ceased and punishment of crime became a concern of the State as a whole. The question then is at what time did this transition occur?

One commentator, Phillips, takes the position that murder was of no concern to the family or clan of the deceased and could not be avenged privately from the time that Israel entered into the covenant relationship at Sinai or shortly thereafter.²²⁴ This would place the transition from private revenge to State justice during the time of Moses around 1490 B.C. This is a minority position, however. The more widely held view is that the transition occurred around the time of King David during the monarchic period in roughly 1050 B.C.²²⁵

This latter view is consistent with the law as given in Section 98. Verse 32 of that section indicates that the law was given to Abraham, Isaac, Jacob, Joseph, and all the other ancient prophets and apostles. Thus, Moses was given the law, and the transition from private revenge to state justice seemingly did not occur when the children of Israel were at Mount Sinai. It could, of course, be argued that the law of retribution given to Moses was intended as a spiritual law only, and not a temporal law. This, however, seems highly improbable for two reasons. First, the law of war given in the six verses following the law of retribution in Doctrine and Covenants section 98 was clearly a temporal law, as it is found in the Old Testament today.²²⁶ This being the case, it would seem unlikely that the "law" immediately preceding it would be a spiritual law only.

Second, if this was not a temporal law during the time of Moses, then it would mean that under a spiritual law that the Lord had given a killing would be justified, while under the temporal law of the Lord the same killing would merit the death penalty. Such a result seems extremely improbable.

The idea that the transition to state justice had occurred by the time of David, and thus the law of retribution had fallen into disuse by that time, is also consistent with Section 98 because by David's time the rulers of Israel were no longer prophets. Doctrine and Covenants 98:32 states that the law was given to prophets. The early leaders of Israel, such as Moses, were prophets and they could be expected to apply the law as given by the Lord. By David's time, however, king's reigned in Israel. Section 98 says nothing of their receipt of the law of retribution. On the contrary, rather than causing the law received through the prophets to be strictly applied, "the personal influence and power of most of the monarchs operated to weaken and to nullify the Torah of Moses [the prophetic teaching of Moses]. Strong, able and statesman-like rulers created and necessarily administered 'secular' legislation, the king's law."²²⁷

Since the law of retribution was probably no longer in use by David's day in 1050 B.C., it was not likely recognized as a temporal law 450 years later in Nephi's day. By that time its only significance was probably spiritual. Further evidence that the law was not temporally applied in 600 B.C. arises from the fact that

it is absent from the law codes in the Old Testament. This absence from the codes, however, does not jeopardize the position that the law of retribution was extant in Moses' day. The commentators acknowledge that the Old Testament laws in the scriptures are not all that were in effect in ancient times.²²⁸ This is not surprising when one recognizes that although the law was given to Moses around 1490 B.C., the commentators feel that the earliest Biblical code, other than the Ten Commandments, was not put into writing until around 800 B.C., 690 years after Moses.²²⁹ One commentator has stated that as "to the particulars of [Moses'] Torah, precisely what portions of the whole Pentateuch [the five books of Moses], traditionally ascribed to him, really came from Moses personally . . . as to [that question] there is the widest divergence of opinion. . . . Phrases, verses, sometimes even whole passages of the present text were later interpolations; other parts again, may have been copied out of older writings."²³⁰

Interestingly, at least one probable instance of interpolation is directly related to the allowance of private revenge in the law of retribution. In its present form the Book of the Covenant, Ex. 21:12 provides for the death of a man who kills another. As shown above, Ex. 21:13 provided an exception, but this is inconsistent with private revenge since a hearing is required to be held before an official to determine if the killer had lain in wait. According to one commentator, however, verse 13 was probably an interpolation.²³¹ Originally then, verse 12 alone applied to homicide, and consistent with the Decalogue, the Book of the Covenant made no distinction between lying in wait to kill and not lying in wait. Consequently, no official judgment on lying in wait would have been required, and private revenge would have been consistent with the original law.

As this discussion has suggested, the law of retribution was probably extant as a temporal law during the time of Moses, but appears to have been lost by the time of King David. Thus, the law would not have been available to Nephi as a defense. Moreover, it is very doubtful that Nephi could have satisfied the requirements even if the law did exist in 600 B.C.

XV. Nephi as the Lord's Executioner: Man vs. Nation

The argument for slaying Laban that seems to be the most compelling for Nephi is the idea that it is better that one man should die than that a whole nation perish in unbelief (1 Nephi 4:13). While apologists have made much of the moral and religious values seemingly favoring Nephi's position, the law on this subject is elusive. Logically, of course, the Lord, as the lawgiver and judge, has the ultimate power and authority to execute His judgment whenever and however He pleases. What evidence or parallels exist supporting the argument that Nephi was acting on behalf of God and hence was not responsible, i.e. no blood guilt, for the death of Laban?

It seems clear that from Sinai to exile the concept of communal identity superseded the individual in importance.²³² King Josiah's reforms (640-609 B.C.) reflect a sense of a community struggling for survival. Civil offenses between individuals are less significant than the national purification of Israel's religion. The centralization of worship at Jerusalem, the attempted abolishment of pagan sacrifices and idolatry, the renewed emphasis on charity toward the dependent members of society and the extension of the covenant relationship to women bespeak an attempt by a sincerely troubled monarch to ward off communal disaster.²³³ The Deuteronomic reforms reflected the desire to rid Israel of the contamination brought upon her by contact with the neighboring Canaanite peoples. The laws provided that whenever apostasy occurred, the offenders were to be immediately rooted out and destroyed.²³⁴

The Talmudic law surely reflected the concept of community over individual:

Where heathens threaten to kill a whole group unless one of them is delivered up for being killed, they must rather all be killed and not deliver anyone; but if the demand is for a named individual, then he should be surrendered.²³⁵

Might Laban have been the "named individual" who was to be sacrificed for the salvation of the group? We have noted that Laban may have been deserving of death in that, as Nephi records, "he would not hearken unto the commandments of the Lord." What evidence do we have of Laban's activities that would support Nephi's charge?

Given that Laban was a military leader in Jerusalem (he was in his armor when killed and he commanded a garrison of fifty) and that it is likely that he was a civic leader as well (he had been out among the elders of the Jews), it is fair to assume that Laban would have been one of the princes ("Sarim") or rulers under Zedekiah. Indeed, Professor Phillips maintains that Jehoshaphat (873-849 B.C.) abolished the local jurisdiction of the elders, heads of households, and appointed royal officials with judicial and military authority over the fortified cities, of which Jerusalem was one.²³⁶

If we assume that Laban was a "prince" or a ruler in Jerusalem, it is probable that his position afforded him numerous opportunities to do good or to do evil. The prophets Jeremiah and Ezekiel, Laban's contemporaries, as well as the prophet Isaiah had little good to say about the rulers at Jerusalem. Earlier, Isaiah had lamented the plight of the faithful city full of justice and righteousness "but now (700 B.C.) [it is full of] murderers" and corrupt princes.²³⁷ A hundred years later we find Jeremiah foretelling the destruction of the wicked city of Jerusalem unless Israel returns to her God, and quickly.²³⁸ Jeremiah is, of course, tried and acquitted for prophesying against the people. In the course of this account, reference is made to another prophet, Urijah, a contemporary of both Jeremiah and Lehi. Urijah was put to death by King Jehoiakim (609-598) after being tried by the king, his mighty men and his princes.²³⁹ Is it possible that Laban was one of the accusers of the Prophet Urijah thereby causing Lehi to fear for the lives of his sons in the hands of Laban (1 Nephi 5:5)? We of course do not know the answer, but the circumstances legitimately raise the question.

After Zedekiah is placed on the throne by Nebuchadnezzar and the rulers and more righteous Israelites (some 10,000) are led away captive to Babylon (597 B.C.), Jeremiah sees in vision two baskets of figs. One basket contains good, tasty figs or those persons led away captive for "their good" and those who will someday return and rebuild Israel. The other basket contains figs not fit to eat. Zedekiah and his princes and the residue who remain in Jerusalem, because of their gross iniquity, will be destroyed by "the sword, the famine, and the pestilence."²⁴⁰

The prophet Ezekiel, writing in exile from Babylon (one of the "good figs"), associates the iniquity of Jerusalem with Sodom.²⁴¹ He describes Jerusalem as the "bloody city" where the inhabitants "eat with the blood" and lift up their eyes toward idols, and shed blood.²⁴²

With this prophetic condemnation of a city and a people, especially after the first deportation in 597 B.C., we might conclude that Laban had been a participant in this evil and thus sparing his life could have been viewed as secondary to preserving communal purity. But again, viewing these events twenty-five hundred years later we are left with little hard evidence.

XVI. The Significance of the Sword

When reading the words of Old Testament prophets to the wicked, it is interesting to note the form of punishment that is often foretold. God avenges by the sword.²⁴³ Reference to this form of execution is pervasive in Jeremiah and Ezekiel. Through the army of Nebuchadnezzar, these prophecies are fulfilled as Jerusalem is finally destroyed (587 B.C.) and "the king of Babylon slew the sons of Zedekiah in Riblah before his eyes: also the king of Babylon slew all the nobles of Judah."²⁴⁴ That this was God's doing and his judgment on a wicked people is further evidenced by Jeremiah in Lamentations 2:21:

The young and the old lie on the ground in
the streets: my virgins and my young men
are fallen by the sword; thou has slain
them in the day of thine anger; thou hast
killed, and not pitied. (Emphasis added)

It later became the law that kings could order the execution of rebels and of offenders against the crown even without judicial conviction. Judgments of kings were executed with the sword.²⁴⁵

It may be significant that Nephi slays Laban with a sword. Under the Mosaic Law there were 36 capital crimes for which four methods of execution were prescribed. Decapitation with the sword was the proper form of execution for only two crimes: murder and communal apostasy.²⁴⁶ It has been suggested that Laban may very well have been guilty of murder, i.e., Urijah and others.²⁴⁷ The crime of communal apostasy, or apostasy of a city, is legally much more obscure. Not only is there no example of the technical crime of an apostate city, but the Talmudic scholars declared that "there never was nor ever will be a conviction in such a case"

(Sanh. 71a). The requirements as set forth by Maimonides illustrate exactly why there has never been such an instance.²⁴⁸ Even the perverse and wicked Jerusalem on the eve of her destruction did not qualify because she was never assigned to a particular tribe (one of the requirements). Since Laban was not part of an "apostate city," it is unlikely that we should view him as a "seducer" of such a city and hence worthy of death. In any event, seducers were to be stoned, not decapitated.²⁴⁹

Nephi's final argument, on the other hand, has to do with the necessity of obtaining the word of God as recorded on the plates so that his people will not spiritually perish in the new land. Laban, the obstacle to this goal, is perhaps symbolically slain by the sword, not only as a type of the fate to befall Jerusalem just ten years later, but his death by the sword is in lieu of the death or apostasy of not just a city, but an entire nation. The poetic justice here is apparent.

That Nephi was acting on behalf of the Lord as executioner is further evidenced by the fact that Nephi, before the Spirit constrains him to kill Laban, draws Laban's sword "from the sheath thereof." In Ezek 21:3 the prophet foresees the slaying of Jerusalem by the sword: "Thus saith the Lord; Behold, I am against thee, and will draw forth my sword out of his sheath. . . ." (Emphasis added). Just as Laban was delivered into Nephi's hands for destruction, so Jerusalem is to be delivered by God into the hands of "brutish men, and skilful to destroy."²⁵⁰

Finally, we have noted in the ancient Hebrew law of homicide, the idea that the blood of the victim is on the head of or owned by the killer and he must either flee to a sanctuary or be executed so that the blood of the victim will not cry out to Yahweh. In defense of Nephi on this matter, there is Ezek 33:1-5, placing culpability on the heads of those slain instead of the slayers:

Again the word of the Lord came unto me, saying,
Son of man, speak to the children of thy
people, and say unto them, When I bring the sword
upon a land, if the people of the land take a
man of their coasts, and set him for their
watchman:

If when he seeth the sword come upon the land,
he blow the trumpet, and warn the people;
Then whosoever heareth the sound of the
trumpet, and taketh not warning; if the sword

come, and take him away, his blood shall be upon his own head.

He heard the sound of the trumpet, and took not warning; his blood shall be upon him. But he that taketh warning shall deliver his soul.

XVII. The Chances of Justice

Nephi was never apprehended for the slaying of Laban. Consequently, no criminal proceedings would have been brought against him.²⁵¹ If, however, he had been arrested, he probably would have relied on some of the arguments brought out in this paper. Aside from the merits of these arguments, however, what are the chances that Nephi would have received a fair trial?

The original judicial body in Israel was the local elders.²⁵² However, by the time of the trial of Jeremiah it appears that the "princes of Judah" had taken over the judicial functions of the elders at least in Jerusalem.²⁵³ As Jeremiah was a contemporary of Nephi's,²⁵⁴ those princes would probably have been Nephi's judges.

Regardless of who the judicial body was, "justice" was not to be found in Jerusalem in 600 B.C. As noted previously, Isaiah described the administration of justice in Jerusalem in his time as in the hands of the corrupt.²⁵⁵ He identified the elders and princes of Judah "as oppressors of the people," and made "many prophetic allusions to bribery and injustice in the gate."²⁵⁶ Certainly, as Jerusalem ripened for destruction through wickedness in Nephi's day, only greater injustices could be expected. The prophet Ezekiel testified of this fact.²⁵⁷

Aside from the general injustices of the times, Laban was a close associate of the elders of the Jews and probably of the princes of Judah.²⁵⁸ He was an elder of the Jews himself and possibly a prince of Judah.²⁵⁹ Since one of these bodies of men would have been Nephi's judges, it seems unrealistic to expect Nephi to have been dealt with impartially.²⁶⁰ While Nephi could have sought an appeal or pardon from King Zedekiah for any injustice, this recourse would have offered little hope. Pardons were rarely given, and appeals virtually never worked because the accused was executed forthwith, before the appeal could be completed.²⁶¹ Thus, despite the arguments on Nephi's behalf, it is unlikely that they would have served to protect him.²⁶²

In addition to these complications, if Nephi had been apprehended, he would probably have been charged for other wrongs as well, such as taking the plates, armor, and sword of Laban. Although the substance of the charges for these actions and the potential defenses are beyond the scope of this article, it is clear that the chances of an acquittal would have been jeopardized by them.

XVIII. Conclusion

Biblical and Rabbinic law provides numerous defenses to a charge of murder. Many of these, however, such as the justifications of burglary, theft, self-defense, and minority status, do not apply to Nephi's slaying of Laban. Additionally, defenses like duress and attempted murder were probably not part of the Jewish law when the slaying occurred in 600 B.C.

Probably Nephi's strongest defense would have been the procedural requirement of two eye-witnesses for a murder conviction, for no witnesses are mentioned in the scriptural account. There would still have been the possibility of false witnesses, however.

A substantive defense offering some hope of protection is that found in Exodus 21:13 to killers who do not lie in wait. The variety of interpretations of the passage, however, make its application in 600 B.C. uncertain.

An additional defense not formally recognized by scholars, but with some support in the scriptures, is that of obedience to a commandment of the Lord. Although Nephi plainly comes within its requirements, it probably would not have been recognized in Jerusalem at the time of the slaying.

Doctrine and Covenants Section 98 provides an ancient justification for murder known as the Law of Retribution. Although the section makes clear that it was the law given to Nephi, apparently the law had only a spiritual significance by the time of Nephi, its technical and temporal application having ended by the time of King David.

Despite the measure of safety that these defenses would have afforded Nephi, it is doubtful that he would have been dealt with justly, for in 600 B.C. justice in a trial at the town gate was not to be found. Furthermore, Nephi would have been judged by either the princes of Judah or the elders of the Jews, and both were groups with which Laban was closely associated.

An overriding concern is the inexorable link between law and religion in Ancient Israel. Until we more thoroughly understand the role of *Diety* in the daily affairs of ancient Israel and how that role was perceived by the Israelites, we may neither condemn nor extol the acts of Nephi. This does not signal a retreat to the popular justifications typically extended on Nephi's behalf, but rather a simple recognition of the reality of a legal system and of a society derived from God.

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1. The slaying occurred after the beginning of the reign of Zedekiah and prior to the destruction of Jerusalem in 587 B.C. 1 Ne. 1:4, 13; 5:4.

2. The Decalogue of Exodus 20 and the Holiness Code of Leviticus are not listed because they are not primarily legal in nature.

3. The Jewish Encyclopedia (New York & London: Funk & Wagnalls Co., 1904), 7:636 (hereinafter referred to as "Jewish Encyclopedia"). The Code of the Covenant may well have been compiled as early as the time of King David or shortly thereafter, which would be around 1050 B.C. See E. Good, "Capital Punishment and Its Alternatives in Ancient Near Eastern Law," Stanford L. Rev., 19 (1967), 948, n. 8 (hereinafter referred to as "Good"); A. Phillips, Ancient Israel's Criminal Law (New York: Schocken, 1970), pp. 159-160 (hereinafter referred to as "Phillips").

4. Good, p. 948.

5. Jewish Encyclopedia, 7:637.

6. Jewish Encyclopedia, 7:638.

7. This early volume is referred to as the Babylonian Talmud. G. Horowitz, The Spirit of Jewish Law (New York: Block Publishing Co., 1953), p. 16 (hereinafter referred to as "Horowitz"); Jewish Encyclopedia, 7:646.

8. 2 Kgs. 23:1-20.

9. Jer. 11:9-13; J. Bright, A History of Israel, Philadelphia: Westminster Press, 1972), pp. 319-326.

10. 2 Kgs. 24:1; Jer. 36:29.

11. 2 Kgs. 25:13-18, Jer. 24:1-10; also see J. Davis and J. Whitcomb, A History of Israel (BMH Books, 1980) p. 484. Actually, Jehoiakim's eight year old son Jehoiachin reigned for a few months in the interval between Jehoiachin's death and the placement of Zedekiah on the throne. 2 Cron. 36:8-10.

12. 1 Ne. 3:2-9.

13. 1 Ne. 3:11-13.

14. 1 Ne. 3:13.

15. 1 Ne. 3:14-24.

16. 1 Ne. 3:25-27.

17. 1 Ne. 3:29-31.

18. 1 Ne. 4:1.

19. 1 Ne. 4:3.

20. 1 Ne. 4:5.

21. 1 Ne. 4:6.

22. 1 Ne. 4:7-8.

23. 1 Ne. 4:9-10.

24. 1 Ne. 4:11.

25. 1 Ne. 4:12-13.

26. 1 Ne. 4:14-17.

27. 1 Ne. 4:18.

28. 1 Ne. 4:19-25.

29. 1 Ne. 4:26-29.

30. 1 Ne. 4:30-38.

31. Ex. 21:13-14; 22:2; Num. 35:20-25.

32. M. Elon, The Principles of Jewish Law (Jerusalem: Keter Publishing House Jerusalem Limited, 1975), p. 476, (hereinafter referred to as "Elon").

33. Horowitz, p. 162; Elon, p. 475.

34. Horowitz, pp. 192-195.

35. Phillips, pp. 92-93; Ex. 22:1-2.
36. Jewish Encyclopdia, 3:430.
37. H. Nibley, An Approach to the Book of Mormon (Salt Lake City, Utah: Deseret, 1978), p. 99 (hereinafter referred to as "Nibley").
38. Elon, p. 197; (Bava Mezia 56a, Talmudic Tractate).
39. Elon, p. 198.
40. Ex. 22:1-4; H. Goldin, Hebrew Criminal Law and Procedure (N.Y.: Twayne Publishers, 1952), pp. 55-56 (hereinafter referred to as "Goldin").
41. Phillips, pp. 11-13; Ex. 21:16; Deut. 24:7.
42. Phillips, pp. 130-131.
43. Goldin, p. 37.
44. Elon, p. 471.
45. Responsa, Maharam of Rothenberg = Meir B. Baruch of Rothenberg, ed. Prague, No. 383; Darkhei Moshe, Hoshen Mishpat 420, n. 7. Also see, Elon, p. 471.
46. Elon, pp. 167-168.
47. Kid 43a; Yad, Roze'ah 2:2-3; Sifra, Kedoshim, 10:5. Also see, Elon, p. 470.
48. Yad, Roze'ah 2:5. Also see, Elon, p. 470.
49. G. Buchanan, "The Old Testament Meaning of the Knowledge of Good and Evil," JBL 75 (1956), 114-120.
50. See, G. Brin, "The Formulae From . . . And Onward/Upward," JBL, 2:99 (1980), 169-170; also see, Buchanan, in his discussion of practice in Qumran: "Rule of the Congregation." p.114.
51. Buchanan, citing Leopold Low and Dr. K. Kohler for Jewish Bar Miz Vah practice. p. 119.
52. Elon, pp. 472-473; T. J. Bik. 2:1, 64c: t.j. Sanh. 11:7, 30b, Sanh. 82b.
53. Goldin, p. 168, n. 1.
54. Phillips, p. 14, citing L. Kohler, Hebrew Man (London: E. T., 1956), p. 87. The Talmudic scholars placed the age of reason at 12 for a female and 13 for a boy. Nid 45b, Yad, Ishut 2:1, 10.
55. Horowitz, p. 243.
56. Horowitz, pp. 241-243; M. T. Theft I; H. M. 349, 3.
57. Phillips, p. 91.
58. This provision is found in the Deuteronomic Code in Deuteronomy 22:25-27; See also Z. Falk, Hebrew Law in Biblical Times (Jerusalem: Wahrmann Books, 1964), p. 76, (hereinafter referred to as "Falk").
59. Horowitz, p. 574.
60. The absence of discussions of duress in Biblical times by commentators also suggests that there was no such defense in Biblical law except for Deuteronomy 22:25-27. See generally Horowitz, pp. 574-575; Elon, pp. 471-472.
61. Falk, p. 76. The only citation given by the commentator that relates to Hebrew law, however, is the same as that just given, the rape of a woman in the countryside. Ibid.
62. Falk, p. 76; Elon, pp. 471-472.
63. Elon, p. 471.
64. Ibid.
65. Ibid.
66. 1 Ne. 4:7-19.
67. 1 Ne. 4:13, 17.
68. Horowitz, p. 574.

69. 1 Ne. 4:10-18.
70. Elon, p. 472.
71. Ibid.
72. Dt. 19:15. For similar Biblical provisions with more direct application to homicide, see Deuteronomy 17:6 and Numbers 35:29-30. The Old Testament provides an example of the use of two witnesses in a capital case in 1 Kings 21. In that account Naboth is stoned for blasphemy at the mouths of two witnesses. 1 Kgs. 21:10, 13-14. It may be, however, that the two witnesses were merely introduced into the text by later editors. Good, p. 973, n. 125.

It is probable that in the ancient judicial procedure of Israel the testimony of a single witness originally would have been sufficient. During the period of the united monarchy of Solomon, however, it appears that the requirement of two witnesses was adopted. The new legislation was inserted by the Deuteronomist. Phillips, p. 23.

An anomaly in the law is the reference to "two or three" witnesses. Dt. 19:15. This usage did not mean that three witnesses were required on some occasions. It was simply the Hebrew way of saying that there must be at least two witnesses. B. Jackson, Essays in Jewish and Comparative Legal History (Leiden: E. J. Brill, 1975), p. 161 (hereinafter referred to as "Jackson"). For a discussion of the reasons behind the requirement see Jackson, pp. 153-171 and Goldin, pp. 234-236.
73. Horowitz, p. 162.
74. Elon, p. 605, citing Makkot 1:9 (Talmudic Tractate).
75. 1 Ne. 3-4; Nibley, p. 95.
76. Nibley, pp. 93-95.
77. Since Laban was wearing armor, the only way of dispatching him quickly, painlessly, and safely was to cut off his head. Nibley, p. 94. By donning armor, Nephi was unlikely to be challenged in the streets and the armor could easily be wiped clean. Such a procedure was not unusual in times of war. Nibley, p. 95.
78. Horowitz, p. 647.
79. J. Ostrow, "Tannaitic and Roman Procedure in Homicide," Jewish Quarterly Rev. 52 (1961-62), 245-247.
80. Elon, p. 582.
81. Elon, p. 600.
82. Elon, p. 582.
83. Jewish Encyclopedia, 5:279.
84. Elon, pp. 599-600. The Rabbis admitted that they could find no express scriptural support for this requirement. Horowitz, pp. 167-168. It seems clear that this requirement did not apply during the time of Nephi, as it crept into the law at a very late day. Jewish Encyclopedia, 1:170.
85. Jewish Encyclopedia, 1:170. One scholar has noted that the Jewish jurists interpreted the Biblical law so that "it became almost impossible to impose a death sentence." Goldin, p. 24.
86. Elon, pp. 551-552.
87. Jewish Encyclopedia, 4:358.
88. Elon, p. 615.
89. Elon, pp. 582-583.
90. S. Shilo, Book Review, "Self-Incrimination in Jewish Law," Israel L. Rev. 6 (1971), 437.
91. Josh. 7:19-20; Judges 17:1-4; 2 Sam. 1:16; 2 Sam. 4:8-12.
92. Elon, p. 614.
93. Shilo, p. 436. Another scholar, however, feels that these

passages can be reconciled with the Talmudic rule against self-incrimination. Falk, pp. 70-71.

94. Dt. 19:16-21.

95. 1 Kgs. 20:8, 11.

96. See 1 Ne. 4:22, 24, 26-27.

97. Phillips, pp. 11-12. During the pre-exilic period no new crimes were added which could not be derived from the Decalogue. Phillips, p. 153.

98. Phillips, p. 86; Middle Assyrian Laws A-10, B-2; Code of Hammurabi 1-4, 174.

99. Phillips, p. 84; M. Sulzberger, "Ancient Hebrew Law of Homicide," JQR 5 (1914-1915), 127, 289, 559, 582-585 (hereinafter referred to as "Sulzberger").

100. Phillips, Ibid.

101. Phillips, p. 100.

102. Phillips, p. 101.

103. R. de Vaux, Ancient Israel, (New York & Toronto: McGraw-Hill Book Co., 1965), 1:160-163 (hereinafter referred to as "de Vaux").

104. Phillips, pp. 86, 98; Sulzberger, pp. 308-310; A. Phillips, "Another Look at Murder," JJS 28 (1977), 105, 111.

105. Dt. 19:6; Phillips, p. 104-105.

106. According to Sulzberger, at p. 613, by 850 B.C. "every man knew that the element of civil damages or private satisfaction was eliminated from homicide cases, and that the state alone had jurisdiction of this high crime." On the other hand, A. Phillips in "Another Look at Murder," JJS, 28 (1977), 105, 119 claims that the detention of the unintentional killer in the city of refuge (Num. 35) was the result of post-exilic priestly legislation. This position is supported by H. McKeating, "The Development of the Law on Homicide In Ancient Israel," VT 25 (1975), 46, 55 (hereinafter referred to as "McKeating").

107. Sulzberger, p. 291.

108. Gen. 10:9; 25:27-28; Lev. 17:13.

109. 1 Sam 24:11; Lam. 4:18.

110. Dt. 17:12-13; 18:20, 22; Isa. 13:11.

111. Sulzberger, p. 291; Prov. 1:4; 8:5, 12; Josh. 9:4. The nature of the instrument used is viewed as indicative of the killer's state of mind or intent. For example, Num. 35:16 provides that the intent is presumed to be murderous where the instrument is made of iron. This presumption may have afforded conclusive evidence of premeditation. Elon, p. 476. In Nephi's case, however, one could argue that even though he uses an instrument of iron, a sword, it was not his but Laban's. The inference being of course that Nephi had no premeditated designs otherwise he would have come prepared with his own weapon of some kind. Also see, Sulzberger, p. 338.

112. Horowitz, p. 112.

113. Sulzberger, p. 306.

114. Jackson, p. 91. See also D. Daube, "Direct and Indirect Causation In Biblical Law," VT 11 (1961), 246, 255 (hereinafter referred to as "Daube"). Another commentator also seems to have adopted the distinction between intentional and premeditated homicide by allowing for manslaughter when a killing results from a quarrel between two persons. See Sulzberger, p. 292.

115. Jackson, p. 91.

116. Ibid.

117. Ibid.
118. Jackson, n. 100 & 101 and accompanying text on pp. 91-92.
119. 1 Ne. 4:6. Nephi recognized that the Lord was able to destroy Laban, but his reaction when he was constrained by the Spirit to kill Laban indicates that he did not contemplate carrying out the act himself. See 1 Ne. 4:3, 5-18.
120. 1 Ne. 4:10.
121. Actually, some commentators' interpretations of the lying in wait requirement are not entirely isolated from the requirement that God deliver the person slayed. Jackson, for example, considers the second requirement to be a fundamental part of his interpretation of Ex. 1:13. See Jackson, p. 91. Nevertheless, a separate analysis of the two elements facilitates an understanding of the rule and is a common way of approaching the scripture.
122. Sulzberger, 292; Daube, p. 254.
123. Daube, pp. 255-256.
124. See Good, p. 951. The element of divine providence does not seem to have any counterpart in the ancient near eastern codes.
125. Sulzberger, p. 291.
126. See Daube, p. 254; Phillips, p. 99.
127. Daube, p. 253. An alternative meaning that has been attached to the clause is that it represents a kind of technical legal term for unintentional manslaughter. Fensham, "The Role of the Lord in the Legal Sections of the Covenant Code," VT 26 (1976), 262.
128. Phillips, p. 100.
129. Daube, p. 266. It appears that a good deal of thought was devoted to this disquieting clause. Ibid. The existence of only one comment by the Rabbis on it "argues not neglect, but profound interest coupled with reverence and caution." Ibid.
130. Daube, p. 267.
131. Ibid.
132. Ibid.
133. Ibid.
134. Ibid.
135. For a more detailed discussion of why 1 Sam. 24 was used see Daube, p. 268.
136. 1 Sam. 24:4.
137. 1 Sam. 24:10.
138. 1 Sam. 24:11. The King James version of the Bible does not use the words "lie in wait". However, the Hebrew word for this, sadha, is identical to the Hebrew word used in Exodus 21:13. In fact, these are the only two occurrences of this word in the Bible. Daube, p. 268.
139. 1 Sam. 24:18.
140. Daube, p. 268.
141. Simeon ben Laqish did not consider Saul's failure to kill David to be a serious matter. See Daube, p. 268. Saul was guilty of other wrongs as well. See 1 Sam. 13:13; 15:19, 15; 19:1-2; 22:17-19.
142. Daube, p. 268.
143. 1 Sam. 24:4.
144. This interpretation is somewhat weak, however, since Ex. 21:13 is generally viewed as an exception to murder and the equivalent of manslaughter. Also, it seems inconsistent with the Rabbis' reference to an "unwitting killer."
- The Ex. 21:13 principle that a killing is not murder when God delivers the person slain into the hands of the slayer may also have

provided some justification for Israel's killing of the original nations that occupied Palestine. In most of the battles recorded in the Old Testament, before Israel destroyed a nation, Yahweh told Israel that He would deliver the people into their hands. See Dt. 7:2, 23; 20:10-18. This view, however, seems tenuous since Exodus 21:13 would result in the lesser crime of manslaughter. This view also counters the position of Anthony Phillips. Phillips, p. 83. In his view the word kill in the sixth commandment applies only to a killing within the covenant community. Thus, it could "never be used to describe death in war", for even in civil war, the declaration of war would sever the covenant relationship. Phillips, p. 83. Interestingly, the Israelites who broke the covenant made at Sinai through wickedness also severed the covenant relationship. With the covenant broken, another Israelite under this interpretation could slay the covenant-breaker without violating Israel's law. Under such an interpretation Nephi could argue that Laban's wickedness severed his covenant relationship, thus allowing Nephi to slay him without violating the law.

145. 1 Ne. 4:11, 13.

146. 1 Ne. 3:25-26; 4:11.

147. 1 Ne. 3:13-14, 25-27.

148. Simeon ben Laquish felt that the victim generally had to be a murderer in order to invoke the defense. Nevertheless, he found the requirement unnecessary in Saul's case. See Daube, pp. 267-268. Philo thought that the victim's commission of a crime would suffice, no murder was required. See Daube, p. 267.

Laban's attempts to kill Nephi and his brothers are paralleled by Saul's attempts to kill David. If David was justified in slaying Saul because of the attempts on his life, then Nephi would likewise seem to have been justified in slaying Laban under this law.

149. See Nibley, pp. 96-105.

150. 1 Sam. 24:4, 10, 18.

151. 1 Ne. 3:29, 31; 1 Ne. 4:11, 12, 17.

Evidence that Laban was delivered into Nephi's hands by the Lord could be adduced by showing the unlikelihood of finding a man of wealth on the dangerous streets of Jerusalem at night without lamp-bearers or armed guards. See Nibley, pp. 93-95.

152. 1 Ne. 4:10.

153. Phillips, p. 106.

154. Jewish Encyclopedia, 7:636.

155. Jackson, pp. 82, 92-93.

156. Good, p. 948.

157. See Dt. 20:13; 7:2.

158. Horowitz, pp. 193-194; Jewish Encyclopedia, 6:451-454.

Sanh 74a; Makkat 7b, 9b. This may have been a refinement in the law of principal and agent in that previously we noted that the principal was answerable to God but not to men, although he was likely punished by men, albeit extralegally.

159. Horowitz, p. 195; M. T. Murder 4-5.

160. Goldin, p. 191.

161. D. Bridger, ed., The New Jewish Encyclopedia (New York: Behrman House, Inc., 1962), p. 281.

162. See Good, p. 977. Manifestations of the active part that God played in Hebrew law are seen in the unique element of divine providence in Ex. 21:13, Good, p. 951, n. 22, and the consistent use of the words "sin" and "iniquity" in place of "crime" or "criminal law."

See Goldin, p. 11.

163. Isa. 33:22. See also Goldin, p. 11.

164. Goldin, p. 11.

165. Exodus 23:20-21.

166. Phillips, pp. 158, 174.

167. 1 Ne. 7:14.

168. Jer. 11:3-4. See generally Jere. 11:1-10. Notably, Israel had disregarded the command to obey the Lord's voice in early days as can be seen in Jeremiah 11:7-11. Yet those who acted according to his voice in early days seem to have been justified under the law, as will be discussed in the text.

169. Dt. 8:3. For additional Biblical references to the command to obey the voice of the Lord see Jer. 7:23 and Dt. 6:2; 8:6; 30:20.

170. In addition to the sources that will be cited in the text, the defense of obedience to a commandment of the Lord might also be related to A. Kirschenbaum's piece: "A Cog in the Wheel; the Defense of 'Obedience to Superior Orders' in Jewish Law," Israel Yearbook on Human Rights 4 (1974), 168-193.

171. Doctrine and Covenants 132:32 (hereinafter referred to as "D & C").

172. D & C 132:34. See also Gen. 16:1-4; Gal. 4:21-23.

173. The text does not specify what law was violated by this action. However, it appears to have been the law found in Genesis 24:3 that an Israelite should not marry a daughter of the Canaanites. Hagar was an Egyptian, Gen. 16:1, 3, and as such, was a partaker of the blood of the Canaanites by birth. Abraham 1:21-22. Alternatively, Abraham's work may have violated the law not to multiply wives, Dt. 17:17, or possibly an existing law against having concubines. See Jacob 2:27-33.

174. D & C 132:34.

175. D & C 132:35 (emphasis added).

176. D & C 132:36.

177. D & C 132:37-39.

178. D & C 132:38. See also Gen. 16:1-4; 25:1, 6; 29:28; 30:4, 9, 26; 2 Sam. 2:2; 5:13; 12:7-9; 1 Kgs. 11:1-4.

179. King Solomon, for example, is recorded as having 700 wives and 300 concubines. 1 Kgs. 11:3.

180. See D & C 132:37-39 and the Old Testament generally.

181. D & C 132:37-39; 2 Sam. 12:8.

Section 132 suggests that the defense was to be strictly construed, however. When David, for example, took unto him Uriah's wife, he violated the law because she was not given to him by the Lord. D & C 132:38-39.

182. D & C 98:33. See also D & C 98:34-38; Dt. 7:2; 20:17; 2:24; Num. 25:17; 31:1-2, 7.

183. Dt. 20:17; Josh. 10:40-43; 11:11-12.

184. Dt. 20:17; Num. 31:7. "But thou shalt utterly destroy them (the six nations) as the Lord thy God hath commanded thee." See also Good, p. 971; De Vaux, p. 259.

185. Elon, p. 552.

186. Ex. 32:26-28.

187. Num. 25:5.

188. Num. 15:32-36. The accounts of two other slayings at the command of God are recorded in Lev. 24:13-16 and Judg. 20:28-48.

189. That the killings were justified is inferred from a reading of the scriptural accounts. No punishments are mentioned in the scriptural accounts because the slayers were acting within the bounds of the law.

190. Examples of God's commands being transmitted to a king by a prophet include King David's receipt of wives by the Prophet Nathan, D & C 132:39, and Saul's receipt of a divine command from the Prophet Samuel to utterly destroy the Amalekites. 1 Sam. 15:1-3.

191. There were periods of time when a king would heed a prophet, however, apostasy was the most common condition.

192. This may be gathered generally from the books of the Prophets, including Isaiah, Jeremiah, and Ezekiel. The book of 1 Nephi in the Book of Mormon also describes these conditions. See also Nibley, pp. 75-105.

193. Examples of the divine element in Israel's law being removed include the disappearance of the words "but God deliver him into his hand" from Exo. 21:13, see footnote 94 and accompanying text, and the failure of the Kings of Israel to go to war only at God's command. See de Vaux, pp. 263-265.

194. In Genesis 31, for example, Laban, the brother of Rebekah, acted as a judge of Jacob and received revelation from God concerning the judgment. See Genesis 31:24, 29; C. Mabee, "Jacob and Laban," VT 30 (1980), 192, 194, 196, 198-199 (hereinafter referred to as "Mabee"). The divine nature that Israel's judges were supposed to possess seems to be suggested by Ex. 22:28 where the word "Gods" has been interpreted as referring to Israel's judges.

195. See footnotes 145-148 and accompanying text, supra.

196. See footnotes 186-189 and accompanying text, supra.

197. See footnotes 145-148 and accompanying text, supra. One of the reasons for the destruction of the people in the Land of Canaan was their wickedness. Dt. 9:5; 1 Ne. 17:32-38.

198. If Laban had not been slain, Lehi's posterity would have dwindled and perished in unbelief. 1 Ne. 4:13. Similarly, one of the reasons for the destruction of the people inhabiting Canaan was so that they would not teach Israel "to do after all their abominations." Dt. 20:18.

199. When the time came for Israel to destroy the people in Canaan, the Lord indicated to Israel that He had delivered the people into their hands. Dt. 20:13; Josh. 10:19; 11:6. Similarly, the Lord indicated to Nephi that He had delivered Laban into his hands. 1 Ne. 3:29; 4:11, 12, 17. The fact that the Lord had delivered Laban might be adduced by showing the court how unlikely it would be to find a man such as Laban on the streets of Jerusalem at night without lampbearers or armed guards. See Nibley, pp. 93-95. Nephi's brothers might also be able to testify that an angel had said that the Lord would deliver Laban into their hands. 1 Ne. 3:29. They may have been unable to so testify, however, because they were "interested" witnesses who were related to Nephi. Also, the testimony might have been excluded as hearsay.

200. D & C 98:32.

201. The warning requirement has interesting parallels in both Biblical and Rabbinic law. In some instances in the Bible if an appropriate warning was given, and the victim was subsequently killed, "the victim's blood would not pass to the hands of the killer, but

remained on the victim himself." Phillips, p. 86 See also Josh. 2:19; 1 Kgs. 2:37; Lev. 20:9. In Rabbinic times many crimes were not punishable unless immediately before the commission of the offense the offender was warned by two competent witnesses that it would be unlawful for him to commit the act. Elon, p. 474. See also Elon, pp. 480-81. It was also required by the Rabbis that before killing a man who was trying to kill another person, the offender had to be told "if you don't stop attacking that man I will kill you." Jewish Code of Jurisprudence, p. 427.

202. D & C 98:23-81.

203. D & C 98:23-26.

204. 1 Ne. 3:13-14.

205. 1 Ne. 3:25-27. There is some question here of whether Laban as a principal could be held liable for the acts of his servants as agents. Although there is some difference of opinion, Rabbinic scholars felt that a principal was generally not liable for the acts of his agents. Elon, p. 470. However, during Biblical times it appears that a man was responsible for the acts of his servants performed under his orders. Falk, p. 77.

206. 1 Ne. 4:11-13. The account in 1 Ne. also suggests that Laban was one who angered easily, as shown by his anger with Laman's attempt to obtain the plates. 1 Ne. 3:13.

207. 1 Ne. 5:2-8.

208. 1 Ne. 3:5.

209. Nibley, pp. 87-88.

210. The books of Jeremiah and Ezekiel are particularly relevant because they were written around Nephi's life-time.

211. Jer. 1:18-19.

212. Nibley, p. 85.

213. Ibid, pp. 75-76.

214. See footnotes 258-259, infra.

215. D & C 98 changes the verb on the fourth offense from the word "smite" to "come upon" you or your children. It is not clear if this is intended to change the substance of the law on the fourth offense, but read in context with the other passages, it does seem to require at least an attempted fourth offense.

216. 1 Ne. 4:7.

217. Goldin, p. 19.

218. Elon, p. 530.

219. Goldin, p. 19.

220. See Horowitz, pp. 68-69.

221. D & C 98:31.

222. Falk, p. 79.

223. See Sulzberger, pp. 308-309.

224. Phillips, p. 84.

225. See Falk, pp. 67-68; McKeating, p. 48 (Israel had become national by the monarchic or post-monarchic period, though some tribal elements still remained); Jackson, pp. 83-84 (ius talionis may have become obsolete during the time of the Judges); Sulzberger, p. 158 (during the time of David homicide, far from being a private wrong, had become the concern of the State).

226. See e.g., Dt. 20:10-12; Josh. 8:1-29.

227. Horowitz, p. 20.

228. Good, p. 975.

229. See footnote 3 and accompanying text, supra.

230. Horowitz, p. 19. See also Sulzberger, p. 323.

231. Jackson, pp. 43, 86.

232. Dt. 21:1-9; 17:13; 19:20.
233. A Phillips, Good, B.C., (Oxford University Press, 1977), pp. 26-27.
234. Ibid.
235. Jer. Talmud, Terumah 8:10, 46b; Tosefta, Terumah 7:20; Elon, p. 476.
236. The "elders" or heads of households no doubt retained some authority but lost their judicial power and civic preeminence which they had once had. Phillips, pp. 18-19. Also see, de Vaux, p. 154.
237. Isa. 1:21-23.
238. Jer. 6; Jer. 7:9-15.
239. Jer. 26:20-23.
240. Jer. 24:1-10.
241. Ezek. 16:49; also see Ezek. 9.
242. Ezek. 24:6; 33:25.
243. Jer. 5:17; 9:16; 11:22; 14:12, 15, 16, 18; 15:2, 3, 9; Ezek. 5:2, 12; 6:3, 11-12; 14:17; Num. 14:16; Lev. 26:25 and many others.
244. Jer. 39:6.
245. Elon, p. 528; Maimonides, Yad, Melakhim 3:8; Josephus, Antiquities 14:450, 464; Acts 12:2.
246. Goldin, pp. 26-28, 36.
247. Jer. 7:9-15; 26:20-23.
248. Maim. (m. t. Idolatry 4-5); Horowitz, pp. 177-178; Goldin, pp. 193-206. Requirements: 1. Those who led city away belong to it, out of the midst, are males, same tribe; 2. Must be 2 or more seducers; 3. Majority of inhabitants must have gone astray; 4. Villages (less than 100 persons) excluded; 5. Large cities (the majority of a tribe) excluded; 6. Jerusalem-excluded; 7. No city of refuge could ever become a seduced city--did not belong to a particular tribe; 8. Must be tried by court (later Sanhedrin)--witnesses; 9. Inhabitants are to be smitten by sword; 10. City is never to be rebuilt.
249. Ibid.
250. Ezek. 21:31; 23:9, 24.
251. At least this was the case in Rabbinic times. Elon, p. 582.
252. J. McKenzie, "The Elders in the Old Testament," Biblica 40 (1959), 522, 526 (hereinafter referred to as "McKenzie").
253. Jer. 26:10-12, 16; McKenzie, p. 526.
254. 1 Ne. 7:14.
255. Isa. 1:21; Phillips, p. 18. Isaiah prophesied between 740-701 B.C.
256. McKenzie, p. 539.
257. See generally, Ezek. 22:6, 12.
258. The servant of Laban's numerous references to the elders of the Jews when speaking to Nephi attest to the fact that Laban was closely associated with the elders. 1 Ne. 4:22, 26-27. That Laban would have been associated with the princes of Judah is made probable by the fact that the princes of Judah were drawn from the elders and that Laban himself fits the description of a prince of Judah. See 1 Ne. 3-4; McKenzie, pp. 528-529; Nibley, pp. 96-105.
259. Ibid. By comparing the description of Laban in 1 Nephi 3-4 with the descriptions in the works of John L. McKenzie and Hugh Nibley, it can be seen that Laban had many characteristics of a prince of Judah and thus may have been one himself.

260. The likelihood of injustice is further augmented by the disdain that the elders of the Jews would have had for Lehi and for the principles for which Nephi stood. See Nibley, pp. 75-76. Their rejection of righteousness would also make their acceptance of defenses with divine elements, such as the defense that God commanded an act, less likely.

261. Phillips, p. 21.

262. Nephi and his brothers seem to have had doubts about the results of any judicial procedure in Jerusalem for their acts. In 1 Nephi 4:36 Nephi wrote that he and his brothers were desirous that the servant of Laban should tarry with them so "that the Jews might not know concerning our flight into the wilderness, lest they should pursue us and destroy us."