



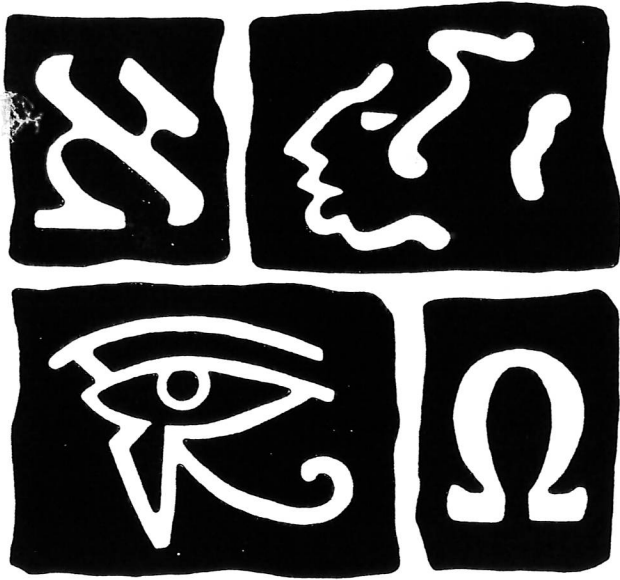
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**Blood Vengeance in
the Old Testament
and the Book of Mormon**

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**Preliminary
Report**

FOUNDATION FOR
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BLOOD VENGEANCE IN THE OLD TESTAMENT AND THE BOOK OF MORMON

The first admonition of a criminal nature in the Bible is found in Genesis 9:6.¹ "Whoso sheddeth man's blood, by man shall his blood be shed: for in the image of God made he man."² The Old Testament and the Book of Mormon each ascribe great significance to the concepts expressed in this instruction to Noah and his sons. This study examines similarities and differences between the two scriptures in the requirement of capital punishment for murder and the legal system through which that punishment was inflicted. There are major disagreements among contemporary Old Testament scholars regarding that legal system, the religious significance of capital punishment and the proper method for studying the law of ancient Israel. These differences are briefly characterized in the context of the Old Testament discussion.

The Old Testament

Genesis

Genesis 5:6 has been understood as divine legislation establishing a legal responsibility to execute the murderer. While such legislation is clear elsewhere in the Old Testament,³ the statement in Genesis (authorized version) is equally open to interpretation as a prophecy that men will in fact seek vengeance, that bloodshed will follow bloodshed.

In the Hebrew text, the "letter beth in the word be'Adam, (translated here as by man) may also be understood as meaning as payment for or instead of."⁴ The sense of the verse is then as rendered in the New English Bible: "He that sheds the blood of a man, for that man his blood shall be shed" ⁵ This weakens the legislative interpretation by its silence on the identity of the avenger. Yet, it remains consistent with verse 5 in which it is announced that the Lord (not man) will require a reckoning. The point here is merely that the human administration of capital punishment is not clearly required prior to the time of the codes found in books subsequent to Genesis.⁶

That the reckoning required by God does not always demand the blood of the murderer is demonstrated by the story of Cain and Abel. Though Cain was cursed and banished, he was not executed. In fact, when he expressed fear for his life, the Lord effectively forbade capital punishment by threatening sevenfold vengeance on his slayer and by marking him so that he would not be slain unknowingly.⁷

Aaron Schreiber argues that the death penalty was not inflicted because Cain had not been warned beforehand of such a punishment, and because of the possible lack of knowledge that his blows would end Abel's life. For Schreiber it is not clear that the murder was premeditated.⁸ These rationales which would remove the homicide from the class of those punished by death are not available to Latter-Day Saints. Cain is identified as a "murderer from the beginning" in Ether 8:15. Also, the Pearl of Great Price account makes it clear that his killing of Abel was an intentional, premeditated act, motivated by greed.⁹ In view of the sacrificial offerings made by Adam

and by Abel¹⁰ and the threat of death in Cain's instructions from Satan,¹¹ it would be disingenuous to suggest that Cain did not understand the nature of the deed. Latter-Day Saints are thus led to the conclusion that the execution of a murderer is not invariably required by God. This is not to say that there has been forgiveness of the sin.

Genesis 9 is important for other concepts related to blood vengeance. In the dietary prohibition of verse 4, blood is identified with life.¹² This explains partially why blood plays such a significant role in sacrifice and atonement and why the murder prohibition is expressed in terms of shedding of blood.

The statement that the murderer's blood would be shed has led various interpreters to a belief that the mode of execution must literally spill the blood. In Talmudic Law the murderer was to be executed by the sword. There are, however, no reports of judicial executions by the sword.¹³ Similar interpretations have been found among early leaders of the Church of Jesus Christ of Latter-Day Saints.¹⁴

However, in the Bible itself the manner of execution for murder is not specified. Stoning appears to be the standard form of judicial execution.¹⁵ Anthony Phillips has argued that communal stoning was the normal penalty for murder in the law of the Israelite nation.¹⁶ According to Genesis 9:5 the Lord requires satisfaction from the animal which kills a man as well as from a murderer. This parallelism, together with the law on stoning of the goring ox,¹⁷ suggest that stoning would also be the penalty for murder. In any case it makes little sense to adopt a literal

interpretation of the punishment specified in Genesis 9:6 and a figurative interpretation of the crime described in the same sentence in the same terms. Reasonable literalism would require exempting from the punishment any murderer who perpetrated the deed without literally shedding blood.

The admonition of Genesis 9:6 offers the reason that man is made in the image of God. Following this, it has been claimed that all bloodshed is a disparagement of God.¹⁸ This concept of the theological significance of bloodshed explains the major differences between Israelite homicide law and that of other ancient Near East nations.

Methodology

Within modern Old Testament scholarship there are at least three divergent approaches to the study of Israel's law. For convenience they may be referred to as the historical, conceptual, and textual approaches. Of course, no one can use one approach to the complete exclusion of the others. The divergence is one of emphasis.

Those following the historical approach may succeed in presenting a coherent picture of the development of the law.¹⁹ But they may easily make mistakes in assigning apparently inconsistent texts to different time periods, with the result that their developmental theories are supported by their developmental assumptions rather than real evidence.²⁰

Those following the conceptual approach are intent on understanding the biblical law collections as a coherent whole, resolving apparent inconsistencies by inferring reconciling principles

or defining fine distinctions.²¹ Those following this approach are more likely to overlook the influence of their own attitudes regarding justice and consistency. They may fail to recognize the extent to which inconsistency and unenforceability may exist within the law of a particular time and place.²²

Those following the textual approach place much less emphasis on implied principles and somewhat more emphasis on the texts as they stand.²³ This approach may lead to failure to understand particular texts by failing to consider related texts together.²⁴

There are significant disagreements among the scholars regarding the law of murder and blood vengeance in the Old Testament. These disagreements result in part from differing methodologies and in part from the characteristic errors of each methodology. This study will note such disagreements without attempting to resolve them.

The Law

There is a "paucity of legislation regarding murder" in the ancient Near Eastern codes.²⁵ Only two of the 282 laws in the Code of Hammurabi refer to murder, though others concern other forms of homicide.²⁶ Neither of those laws is a general provision on murder, nor is there one found in the Middle Assyrian Laws.²⁷

There is no lack of legislation on murder in the Old Testament codes. In addition to the general prohibition of murder,²⁸ there are laws which help to clarify what is meant by giving specific examples.²⁹ Among the scholars, however, we find disagreement on the meaning of the prohibition.

There are difficulties with the meaning of the verb "to kill" used in the sixth commandment. It is used infrequently in the Old Testament, but is used not only of murder but also of unintentional killing.³⁰ The noun form in Numbers 35:11,12 refers to one who commits manslaughter. It is also used in verse 16 for the murderer.³¹

Confusion with the elements of Old Testament murder seems to flow from Exodus 21:13,14. Verse 13 suggests that if premeditation is absent, the killing is not murder but is an act of God. Verse 14 makes it clear that if premeditation is present, the slayer is a murderer. The context suggests that the law-maker intended these verses as a full explanation of verse 12. Bernard Jackson concludes that premeditation rather than intention is the critical factor in a case of murder.³²

However, as Anthony Phillips has noted, "premeditation is irrelevant if one strikes another person with a stone (Exodus 21:18; Numbers 35:17), beats a slave so that he dies that day (Exodus 21:20), or through fighting with another causes death to a third party (Exodus 21:22-5)."³³ Phillips goes on to point out that deliberately striking one with a dangerous weapon is murder if the victim dies, regardless of premeditation or intention to kill.³⁴ Only if the death were extremely accidental would the act be manslaughter rather than murder.³⁵

Haim H. Cohn concluded from these sources that willfulness or premeditation is required. He interpreted Numbers 35:16-18 as an evidentiary rule, the use of a deadly instrument establishing either willfulness or premeditation.³⁶ In view of the very real possibility of a deadly instrument being used in a sudden, unpre-

meditated quarrel with intent to assault but not to kill, Cohn's solution describes a more complex system of law than required by the texts. It does have the virtue of greater correspondence between his definition of Old Testament murder and the modern concept. But with such a harsh evidentiary rule, the Old Testament law is no more appealing for that irrelevant virtue.

Bernard S. Childs makes a brief, unconvincing explanation based on a concept of historical development.³⁷ Henry McKeating's work on the development of the law of homicide makes no attempt to deal with this issue.³⁸ De Vaux is content with a mere reference to "intentional homicide."³⁹

Phillips' approach, which amounts to a negative definition of murder as homicide which is not entirely accidental, appears to account for the texts most reasonably. Though it may ignore historical development, such an error would not affect the comparison to the law of Book of Mormon peoples who did not leave Jerusalem until long after the latest of the texts.

The Penalty

With the exception of Jackson, the scholars agree that murder demanded the death penalty. Exodus 21:12 is worded in an absolute way which, for Phillips, Greenberg, and Paul rules out the possibility of composition for homicide in Israelite law.⁴⁰ Numbers 35:31-34 explicitly forbids taking satisfaction⁴¹ or payment⁴² for the life of a murderer.

Even the goring ox who kills a man or woman must be killed. In accord with the requirement of Genesis 9:5 the ox is treated as a

murderer. If the owner knew the ox to be vicious and failed to restrain it, he was also subject to death. Ransom may be accepted for the life of the owner of the ox.⁴³ Greenberg infers the principle that ransom is allowed "for a homicide not committed personally and with intent to harm."⁴⁴

Other Near Eastern laws recognize the right of the family of a victim to accept a settlement in lieu of the slayer's death.⁴⁵ The goring ox provisions of the Code of Hammurabi and the laws of Eshnunna prescribe payment and impose no death penalty on the ox.⁴⁶ To some, this evidences the Israelites' unique emphasis on the sanctity of life and the extent of their concept of blood-guilt.

In contrast, Jackson concludes that there was a period in which Israel permitted composition for homicide to some extent. His evidence is very slender, and in his interpretation of Numbers 35:31-34, appears to be erroneous. He claims that prosecution was a family responsibility, that they might decide not to prosecute since only ransom was prohibited. He takes verses 34 and 35 as mere theological objections to pardon, rather than a generalization of the responsibility to prosecute and cleanse the land by shedding the blood of the murderer.⁴⁷ In view of Israel's role as a covenant people and the emphasis on purity of the community, Jackson's interpretation is unlikely.⁴⁸

Blood Guilt

Following unlawful homicide, the innocent blood which has been spilled cries out for vengeance,⁴⁹ unless concealed by the murderer⁵⁰ and covered by the earth⁵¹ which may reject it.⁵² Even if

covered it pollutes the land⁵³ and may affect the fertility of the soil and the whole nation.⁵⁴

"The land cannot be cleansed of the blood that is shed therein, but by the blood of him that shed it."⁵⁵ This general rule shows that the blood guilt attaches primarily to the slayer. "The fathers shall not be put to death for the children, neither shall the children be put to death for the fathers: every man shall be put to death for his own sin."⁵⁶ Thus, the vicarious punishment authorized by the Code of Hammurabi⁵⁷ is rejected by Israel's law.⁵⁸ The legal formula of Leviticus 20:9-16, "mot yumat damav bo" (his blood shall be upon him) means that where execution is lawful, "the blood of the guilty victim remains on his own person and does not attach itself to his executioners."⁵⁹ Though God may postpone punishment to a later generation,⁶⁰ man may not unless authorized by God.⁶¹

In the case of an unknown murderer, the land cannot be cleansed by the shedding of his blood. Yet, if the breach of covenant law is not atoned for, divine punishment will fall upon the community. The town nearest the corpse is responsible for propitiating God by a prescribed sacrifice and oath. If the procedure is followed, "the blood shall be forgiven them."⁶² Here, as in many of the texts, no word for "guilt" is used. Blood itself is said to do the damage.⁶³

McKeating has used these texts and others in an attempt to show historical development of the law of murder from a matter of private vengeance to one of national criminal law. The blood guilt

attaching to persons, their families, to places and land are interpreted as changing conceptions corresponding with a change in the nature of the law, though always stated in theologized terms.⁶⁴

For purposes of this study, it is sufficient to note that blood guilt is unavoidably attached to the slayer and that it also affects the entire community by polluting the land.

Greenberg has noted that blood guilt results from the shedding of innocent blood and is not always liable to a legal penalty. Since the avenger of blood may slay the manslayerer outside the city of refuge without incurring blood guilt (Numbers 35:27), it may be inferred that the accidental homicide is not guiltless. Blood guilt may be incurred without any legal penalty by "being an indirect cause of death" (Genesis 42:22) or by persons in authority when those for whom they are responsible commit murder (I Kings 2:5, 31-33).⁶⁵

Blood Vengeance

The custom of blood vengeance is rooted in tribalism and the concepts of honor or dishonor of the group.⁶⁶ But, according to Good, de Vaux's theory does not account for the custom in Assyria, where it is found in Middle Assyrian Laws A10 and B2 according to which a murderer is handed over to the next of kin who decides whether to take his life or property.⁶⁷ The custom may also have roots in a felt need to maintain the existing balance between the working and fighting forces of distinct and occasionally warring tribes.

Greenberg notes these concerns in the Assyrian and Hittite laws in which the loss of the family of the victim is to be made good by giving them replacement persons, sometimes more than one and

sometimes including the slayer himself.⁶⁸ It must be noted, however, that the similarity between these laws and the early custom of requiring blood vengeance is limited to economic motivation and the next-of-kin playing some role. The results for the murderer, the honor of the victim's clan and the balance between the two clans are not comparable to the results under a blood vengeance system.

De Vaux recognizes that "blood-vengeance does not operate within the group, but the guilty man is punished by his group or expelled from it."⁶⁹ This fact, also recognized by Phillips, is the source of Phillips' denial that blood vengeance operated within Israel.⁷⁰

De Vaux claims that "the custom persisted after the tribes had settled in Canaan," and cites Joab's killing Abner (2 Samuel 3: 22-27, 30).⁷¹ Phillips takes the covenant at Sinai in which Israel accepted the law and the Lord accepted Israel as a decisive point after which Israel must be treated as a single clan group rather than a loose federation of tribes, for purposes of construing its law.⁷² Blood vengeance then, even in de Vaux's understanding, could not operate within Israel as an accepted custom. Joab's act of vengeance was outside the law as immediately recognized (2 Samuel 3:28, 29) but belatedly dealt with (I Kings 2:32, 33).

In fact, there are no unambiguous examples of the normal exercise of blood vengeance in Israel.⁷³ The Midianites on whom Gideon avenged his brothers' deaths were non-Israelites (Judges 8:18-21). When the Gibeonites (part of Israel by treaty) secured vengeance by the death of Saul's descendents, the treaty had been broken by Saul and their separate identity had been reasserted

(2 Samuel 21).⁷⁴ Amaziah's execution of his father's assassins (2 Kings 14:5-6) was not merely an act of blood vengeance but also the execution by the king of the conspirators who had murdered the prior king (2 Kings 12:20). Finally, there is the fictitious case of the Tekoite woman (2 Samuel 14:6-7) in which the blood avenger seeks the life of one who had slain his own brother. As de Vaux recognized, given his understanding of the identity of the blood avenger, the reference to him in this story must be explained away,⁷⁵ since blood vengeance did not operate within the family.

The Avenger of Blood and Cities of Refuge

The avenger of blood (go'el haddam), literally "redeemer of blood"⁷⁶ is referred to only as executing the murderer in the course of his flight to a city of refuge (Numbers 35) and in the fictitious story of the woman of Tekoah (2 Samuel 14:11). "Once, in Numbers 35:12, go'el alone is used of the avenger of blood. But the fact that all the major Versions read the full phrase, go'el haddam, which also appears in all six subsequent uses of the term in Numbers 35, indicates that either, and more probably haddam has dropped out of the Masoretic Text, or that it was inserted in the Versions because of the necessity to indicate that this was not the person ordinarily understood by the designation go'el."⁷⁷ The go'el or redeemer was a kinsman with the responsibility to redeem or purchase land for sale due to poverty in order to keep it within the family (Ruth 4:3,4).

The view that blood vengeance was practiced in Israel depends on the similarity of the terms go'el and go'el haddam,⁷⁸ on assumptions about historical development of the law, and on scholarly

tradition. In that tradition, the establishment of cities of refuge is viewed as sanctioning blood vengeance and attempting to hold it in check to some extent.⁷⁹

Phillips, following an earlier suggestion, views the go'el haddam as the official designated by the murderer's city to inflict execution on ~~its~~ behalf once he had fled to obtain sanctuary at a city of refuge.⁸⁰ On this understanding the mention of the go'el haddam by the Tekoite and her request that he be stayed from slaying "any more", become intelligible. He may be presumed to have performed other executions, and there is no question of blood vengeance within the family.

In Phillips' view, the cities of refuge were established in order to remove the case of an alleged accidental killing from the jurisdiction of the local court. In view of the concepts of blood guilt and community responsibility, the local court "would have been exceedingly reluctant to judge a killing unintentional for fear that through error on their part, they might find themselves subject to direct divine action for failure to execute a criminal."⁸¹ There is considerable scholarly disagreement over the question of the actual use of the cities of refuge and when they may have been in use.⁸² In view of present purposes, the absence of any significant original evidence relating the cities to blood vengeance, and Phillips' accounting for the evidence more coherently than the traditional view, there is no need to discuss the use of the cities of refuge, whether theoretical or practical.

The Law

"Wo unto the murderer who deliberately killeth, for he shall die."⁸³ This warning was given by Jacob in his exhortation to the people of Nephi.⁸⁴ It is more similar to the New English Version of Genesis 9:6 than to Exodus 21:12, for example, because there is no indication that the punishment is required to be administered by man. Indeed, the context suggests that the death referred to is a spiritual death. Those who shall "perish" include the foolish (verse 28), the rich (verse 30), the deaf (verse 31), and the blind (verse 32). This catalogue of sinners subject to death concludes with the admonition "Remember, to be carnally-minded is death, and to be spiritually-minded is life eternal." (verse 39) This makes it clear that spiritual death is discussed and not criminal law. Thus, the references to law in verses 25-27 refer to divine commandments other than legislation intended for societal enforcement.

Jacob's teaching is notable for making explicit that it is intentional killing which is forbidden. In the Old Testament the requirement of intention is implicit in the contrasting provisions for accidental homicide.

Nephi also noted that "the Lord God hath commanded that men should not murder; lie, steal, envy, contend, etc., "for whoso doeth them shall perish."⁸⁵ Here again it is unreasonable to suppose that the penalty refers to capital punishment.

In possible contrast to these laws attributed or clearly attributable to God, Mosiah in his great speech to his people reports having punished the iniquitous "according to the law which has been

given to us by our fathers."⁸⁶ While Mosiah may have referred to the "fathers" as the intermediate source through whom the law was received from God, other references also suggest a distinction between divine law and the enforced legal system. The law on murder is clarified in Alma 1:14. Nehor, a murderer, is condemned to die, according to the law given by Mosiah and acknowledged by the people. The people must abide by the law because of that acknowledgment.

Similarly, Helaman 6:23 notes that murder is "contrary to the laws of their country and also the laws of their God." That there was a distinction between laws of man and of God is also clear from Alma 30. Verse 3 tells us that the people of the time "were strict in observing the ordinances of God according to the law of Moses." Verse 9 states that if a man did not believe in God, there was no law to punish him for failure to serve God, presumably including failure to observe dietary and sacrificial laws. In succeeding verses this is contrasted with murder, robbery, adultery and crime generally.

No distinction between laws of the country and laws of God is apparent in the Old Testament.⁸⁷ The Book of Mormon distinction suggests the possibility of recognition that murder could be prohibited and punished by God without exacting the death penalty and that the death penalty was an institution of human rather than divine law.

However, we must conclude that the Nephites of Alma's time believed the death penalty to be required by God. In addition to the reason cited above for following the law in executing Nehor,

Alma explained that if Nehor were spared, his victims' "blood would come upon us for vengeance."⁸⁸ This clearly evidences a fear of divine retribution, justified only by the belief that God requires the execution of the murderer at the hands of the people. Thus, while the Nephites recognized a greater distinction between laws of man and of God than the Israelite nation in the old world, the death penalty for murder was not merely a human requirement in their eyes.

In addition, Alma noted the deterrent effect of the penalty prescribed for murder.⁸⁹ and felt it necessary. Amulek made it clear that it was a just law.⁹⁰ Helaman sought to execute the secret robbers and murderers according to the law.⁹¹ Thus, while the teachings of Jacob and Nephi concern only the spiritual death of murderers and other sinners, the Book of Mormon law requiring capital punishment for murder is clear.

Suspension of the Punishment

It appears from the words of some Book of Mormon prophets that the murderer could repent and be forgiven. King Benjamin taught that salvation comes to no one who knowingly rebels against God except through repentance and faith in Christ.⁹² Alma taught his son Corianton that it is not easy for one who murders "against the light and knowledge of God" to obtain forgiveness. This implies that it is possible.⁹³ Mormon records that the Lord commanded him to write to the Gentiles commanding them to repent of murder, among other sins, to be baptized and receive a remission of sins.⁹⁴ Repentance, faith, and baptism are thus taught as requirements for

forgiveness of murder. The shedding of the murderer's blood is not mentioned.

The possibility of forgiveness without a death penalty is evidenced by the words of the king of the converted Lamanites to his people. He gave thanks that God had forgiven them of their "many sins and murders" and had "taken away the guilt from their hearts, through the merits of his Son" following their repentance. While it was all they could do to repent sufficiently, it was accomplished without their execution.⁹⁵

Suspension of the death penalty was also allowed in the case of the captured Gadianton robbers and murderers if they repented and covenanted to murder no more. Those who would not were executed according to law.⁹⁶

It may be that the apparent suspension of the penalty is more apparent than real. The term "murder" seems to be used rather loosely in the Book of Mormon. There is no account of murders committed by the converted Lamanites. The reference to their many murders may have contemplated only the killings they had done under compulsion in the context of unrighteous war.⁹⁷ In that case they would not have been murders justifying the death penalty.⁹⁸

Though the Gadianton robbers "did commit many murders, and did do much slaughter among the people,"⁹⁹ one may find legal justification for the suspension of the death penalty in the absence of specific provable cases or in the fact that the robber band had grown to great size and was effectively at war with the armies of the Nephites. Such rationalizations are contradicted, however, by the execution of the unrepentant "according to the law." Those

executions could not have been legally justified solely on the basis of "threatenings against their brethren,"¹⁰⁰ and the executed were otherwise in the same criminal class as those set free.

Other loose uses of "murder" occur in Alma's account of his torment and conversion and in Moroni's description of the situation following the extermination of the Nephites. Alma reports that he had murdered many of God's children, but immediately explains that he meant that he had "led them away unto destruction," presumably a spiritual destruction.¹⁰¹ Moroni reports that "the whole face of this land is one continued round of murder and bloodshed; and no one knoweth the end of the war."¹⁰² The context suggests that "murder" is here equated with homicide even in war.

The loose usage and the absence of detail on forgiven "murders" suggest that the cases of apparent suspension of the penalty should not be interpreted in that way. On the other hand, unless this interpretation is adopted with respect to the Gadianton band, the execution of the unrepentant according to law makes little sense.¹⁰³

Blood Guilt

The pre-Israelite, Biblical conception of the blood of the slain innocent crying to God from the ground for vengeance¹⁰⁴ is also found in the account of the pre-Israelite Book of Mormon people--the Jaredites. The guilt may attach to persons other than the actual perpetrators and will ultimately be avenged by God. In Ether 8:22 we find the prophecy that a nation which permits murderous secret combinations to spread over the nation will be destroyed. This is the reason given for the destruction of the Jaredites and of the

Nephites. The prophet writes that the blood of the saints shall not always cry from the ground for vengeance and yet not be avenged. In verse 24 it is stated that the blood of the slain cries for vengeance on the secret combinations and on those who built it up. This would include more than the actual slayer of the innocent; in this case it includes those who have joined in a clan-like organization with the slayer with the aim of perpetrating murder and defending the guilty.¹⁰⁶ While these prophetic comments are occasioned by the account of a murderous secret combination among the Jaredites, they are made by the last Nephite prophet¹⁰⁷ and are properly attributed to the Nephite culture. These same concepts were taught by Alma to his son Helaman with reference to the Jaredite experience.¹⁰⁸

The concept of the blood of the innocent crying for vengeance is also found in 2 Nephi 26:3; 2 Nephi 28:10, Alma 14:10,11; Alma 20:18; and Mormon 8:27,40,41.

In 3 Nephi¹⁰⁹ the Lord declares that the destruction of cities by flood, earthquake, and fire at his crucifixion was his action taken "that the blood of the prophets and the saints shall not come up any more unto Him against them." 3 Nephi 10:12 informs us that those who were saved had not shed the blood of the saints. Divine vengeance was not extended to the whole nation at that time, but whether the selection was based on individual guilt or on guilt attributed to entire cities is not perfectly clear. Chapter 8, verse 15 reports that some cities remained, though many were slain in the damage. The survivors lamented the loss of their kindred,¹¹⁰ but the generalized, impersonal references to "our brethren" in "that great city Moronihah"¹¹¹ suggest that it may have been a lamentation

for entire cities, all descended from a common ancestor. The Lord's punishing a whole people is to be contrasted with the law of the Nephites which did not allow vengeance or punishment of any but the guilty (Alma 34:11).

That the "Great Spirit" sends great punishments upon a whole people because of their murders was also recognized by the Lamanite King Lamoni before his conversion.¹¹² The punishment of a people for the murders and iniquities among them may be avoided (or at least postponed) by the prayers of the righteous.¹¹³ Abinadi prophesied that the shedding of his blood would testify against King Noah "at the last day."¹¹⁴ However, he also generalized his prophecy that Noah would suffer physical death in the same way he did "Thus God executeth vengeance upon those that destroy his people."¹¹⁵

These scriptures do not present a clear, consistent picture of the time and manner of the Lord's vengeance or on whom it may be taken. Because many of them mention other iniquities in addition to bloodshed, it is unclear whether blood guilt alone would bring about the described result. However, it is clear that the Book of Mormon peoples believed that the shedding of innocent blood would be redressed, if only at the last day.

A very important aspect of blood guilt is implicit in Alma's statement that if the people spared the murderer rather than executing him according to law, the blood of the victim would bring vengeance upon the group.¹¹⁶ This same concept is implicit in the Old Testament commandment that the land not be defiled by blood not avenged on the killer,¹¹⁷ and in the oath which the elders of a city must take as part of the ceremony to put away the blood guilt for an unsolved homicide.¹¹⁸

A similar concept of the transference of guilt for failure to take action against it is expressed in Jacob 1:18,19 and Mosiah 2:28. If the consecrated priests and teachers fail to teach the people, they become answerable for the sins of the people. This is explained in terms of their blood spotting the teachers' garments. The blood itself is said to attach to the derelict teacher. Just as in the Old Testament texts, no word for guilt is used.¹¹⁹ "Blood" itself conveys the concept.

Blood Vengeance

There is no evidence of a system of blood vengeance operating within the legal systems of any of the Book of Mormon peoples. There is no mention of an avenger or redeemer of blood, either as next of kin to the victim or as official executioner.

References to men rather than the Lord, seeking vengeance for the blood of their slain are always in the context of wickedness or war. One factor contributing to the great extent of the Jaredite civil war was Shiz's oath to avenge himself of the blood of his brother Lib.¹²⁰ This was quite irrelevant to any system of punishing the shedding of innocent blood, for Lib was not innocent. He had been slain in a war aimed at wresting from him the kingdom he obtained by murder,¹²¹ and there was no effective judicial system other than force in operation at the time.

In his letter to Moroni, Ammoran stated his intent to avenge the blood of his "murdered" brother upon the Nephites.¹²² His brother Amalickiah had been slain in his sleep by a Nephite general and his servant who sneaked into the camp of the enemy.¹²³ Although

not in battle, this was in the context of Amalickiah's offensive war against the Nephites. The other references to men seeking revenge give less detail, but in each case it is made clear that the desire is wicked or on the part of wicked people in the context of war.¹²⁴

Just as there was no blood vengeance system operating within the law, there were also no cities of refuge. Nor are there any cases of unintentional slayers seeking asylum. Under the law of the Nephite judges, no one had power to impose the death penalty except the governor of the land.¹²⁵ This obviates any need for a city of refuge as a means of removing jurisdiction over a capital crime from its location to an impartial place as suggested by Phillips. Within the legal and social systems of the Book of Mormon there was no need for a city of refuge. Blood vengeance was asserted only in the context of war and a breakdown of the legal system.

Conclusion

We have seen that the prohibition of murder is seen as divine legislation in both the Old Testament and the Book of Mormon and that the death penalty was seen as divinely required by each of those cultures. In each there was one case which suggested that the death penalty is not invariably demanded. It is difficult to evaluate those cases--Cain's because of his unique position in the family of man, and the Gadianton robbers' because of the loose usage of "murder" in the Book of Mormon.

Though one Book of Mormon reference warns against deliberate killing, there is not enough information to define murder and

manslaughter for the Nephite culture. There is no such lack of information in the Old Testament. Though most scholars find intention or premeditation an element of biblical murder, this does not account for all the relevant laws.

The concept of blood guilt is pervasive in each of the scriptures studied. Innocent blood shed cries from the ground for vengeance which will be taken ultimately by God if not by execution of the murderer. In each culture, the blood guilt transfers to a community which fails to impose the penalty on the murderer. God's punishment may extend to the family or nation of the guilty, but man may not lawfully take vengeance, or punish any but the guilty.

Though most scholars believe blood vengeance was practiced within Israel, there is no clear evidence for this in the Old Testament or other documents of the period. There is some reason to believe it was not practiced within Israel. The Book of Mormon includes no examples of or references to an avenger of blood or cities of refuge for the manslaughterer. In the time of the Judges, authority for capital punishment was vested only in the governor and not in local communities. There was no need for cities of refuge within that system. Book of Mormon references to blood vengeance are always in the context of war or other breakdown of the legal system. Blood vengeance is consistently condemned as a wicked practice, though the judicially determined death penalty for murder is necessary to purge the community of blood guilt.

NOTES

1. "Homicide," Encyclopedia Judaica, viii, p. 944, Jerusalem, 1971.
2. Authorized Version. Unless otherwise noted all Bible references in this paper are to the King James Authorized Version.
3. Exodus 21:12,14; Leviticus 24:17,21; Numbers 35:16-21,31-33; Deuteronomy 19:11.
4. A. M. Schreiber, Jewish Law and Decision-Making: A Study Through Time, Philadelphia, 1979, p. 41 (hereafter cited as Schreiber). Also, B. Jackson, "Reflections on Biblical Criminal Law," Essays in Jewish and Comparative Legal History. Studies in Judaism in Late Antiquity x. Leiden, 1975, pp. 46f (original unavailable for this study; hereafter cited as Jackson "Reflections" with page numbers as reprinted in Schreiber), as noted in A. Phillips, "Another Look at Murder," 28 Journal of Jewish Studies 105, 122 (1977)(hereafter cited as Phillips, "Another Look").
5. Genesis 9:6, The New English Bible, New York, 1971.
6. See note 3. In any case current critical opinion assigns the Genesis passage to "late times." M. Greenberg, "Some Postulates of Biblical Criminal Law," Yehezkel Kaufmann Jubilee Volume, Jerusalem 1960, reprinted in Schreiber p. 146 (hereafter cited as Greenberg, "Postulates.").
7. Genesis 4:11-15.
8. Schreiber, pp. 40-41.
9. Moses 5:31-33, The Pearl of Great Price, Salt Lake City, 1971.
10. Moses 5:5-6, 20.
11. Moses 5:29.
12. Also in Leviticus 17:11.
13. "Capital Punishment," Encyclopedia Judaica v, pp. 142-44, Jerusalem 1971.
14. For brief quotations and summary, see M. R. Gardner, "Mormonism and Capital Punishment: A Doctrinal Perspective, Past and Present," 12 Dialogue : A Journal of Mormon Thought 9ff (1979).

15. "Capital Punishment," Encyclopedia Judaica v, p. 142, Jerusalem 1971.
16. Phillips, "Another Look" at 112. In de Vaux's view, the method was whatever the avenger of blood chose. This is wholly reasonable on the basis of the traditional view of the role of the avenger of blood, a view which Phillips rejects. R. de Vaux, Ancient Israel i, p. 159, New York 1965.
17. Exodus 21:28.
18. "Homicide," Encyclopedia Judaica viii, p. 944, Jerusalem 1971 (citing Tosef., Yev. 8:4; Gen. R. 34"4).
19. R. de Vaux follows this approach in Ancient Israel, New York 1965, as do B.S. Childs in The Book of Exodus, Philadelphia 1974, p. 470, and H. McKeating in "The Development of the Law on Homicide in Ancient Israel," 25 Vetus Testamentum 46 (1975) (hereafter cited as McKeating).
20. For a thorough methodological criticism, see Greenberg, "Postulates."
21. Greenberg, "Postulates," Phillips, "Another Look" and A. Phillips, Ancient Israel's Criminal Law. A New Approach to the Decalogue, Oxford 1970 (hereafter cited as Phillips, AICL) follow this approach as does S.M. Paul, Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law, Vetus Testamentum Supplement xviii, Leiden 1970 (unavailable for this study).
22. For a thorough methodological criticism, see Jackson, "Reflections." For Greenberg's response to Phillips' argument and unorthodox conclusions see his review of Phillips, AICL in 91 Journal of Biblical Literature 535 (1972). While his criticism sometimes amounts to no more than a reassertion of his own views, Greenberg correctly notes some of Phillips' lapses into sophistic arguments in which a text is interpreted in light of the conclusion it is offered to support.
23. This is the approach of Jackson, "Reflections" and of H. J. Boecker, Law and the Administration of Justice in the Old Testament and Ancient East, Minneapolis 1980, which at page 17 cites Jackson with approval.
24. E.g., Jackson, "Reflections," p. 156.
25. E. M. Good, "Capital Punishment and Its Alternatives in Ancient Near Eastern Law," 19 Stanford Law Review 947, 951 (1967).
26. Id.; Schreiber, note p. 80. See texts of the laws printed in Schreiber.

27. Phillips, AICL, p. 86. See text of laws printed in Schreiber.
28. Exodus 20:13; 21:12; Leviticus 24:17; Numbers 35:30-31.
29. Exodus 21:13,14 differentiating unintentional homicide; and verses 18-23 differentiating assault.
30. Deuteronomy 4:41 ff.; Joshua 20:3. See Childs, op. cit. pp. 419-21 for a summary of scholarly thought on the subject.
31. Good, 19 Stanford Law Review at 951, note 19.
32. B. Jackson, "The Problem of Exodus 21:22-5," Essays in Jewish and Comparative Legal History. Studies in Judaism in Late Antiquity x, Leiden 1975, pp. 91 ff.
33. Phillips, "Another Look," p. 114 note 34.
34. Numbers 35:16-18.
35. Numbers 35:22-23; Deuteronomy 19:5.
36. "Homicide," Encyclopedia Judaica viii, p. 944, Jerusalem 1971.
37. Childs, op. cit. p. 470.
38. McKeating.
39. De Vaux, op. cit. p. 158.
40. Phillips, "Another Look," p. 109.
41. Authorized Version.
42. The New English Bible, op. cit.
43. Exodus 21:28-30.
44. Greenberg, "Postulates," p. 146.
45. Id.
46. See discussion in Boecker, op. cit. pp. 163 ff.
47. Jackson, "Reflections," p. 156.
48. Z.W. Falk, Hebrew Law in Biblical Times, Jerusalem 1964, pp. 20-21 (murder publicly prosecuted to preserve the purity of the community).

49. Genesis 4:10. In Phillips, AICL, p. 86, the author argues that the blood of the innocent victim cries for delivery from its new master. The slayer is said to gain control of the victim's blood (2 Samuel 4:11). "This explains the designation of Yahweh as the 'Seeker' ... of the blood of the murdered, for this blood had been taken out of his control (Gen. 9:5; 42:22; Px. 9:13; Ezek. 3:18,20; 33:6,8; cf. 2 Chr. 24:22). There was therefore an added reason why the murderer had to be executed"
50. Genesis 38:26.
51. Job 16:18.
52. Isaiah 26:21; Ezekiel 24:7.
53. Numbers 35:33-34; Psalm 106:38; also Deuteronomy 21:1-9.
54. 2 Samuel 21:1; A.R. Johnson, The Vitality of the Individual in the Thought of Ancient Israel, Cardiff 1964, pp. 71,72.
55. Numbers 35:33.
56. Deuteronomy 24:16; also 2 Kings 14:6. McKeating, p. 56 accounts for the contrary examples by making this a later insertion into the law, intended to limit the clan justice practice.
57. Laws 209 f, 229 f. See text in Schreiber. Cf. Exodus 21:29-31, the penalty is the same whether the ox gores a man or woman, or a son or daughter. There is no punishment of the owner by the death of his son or daughter, as in the Babylonian law.
58. Z.W. Falk, "Addenda to 'Hebrew Law in Biblical Times'," 8 Dine' Israel 33, 38 (1977).
59. "Bloodguilt," Encyclopedia Judaica iv, p. 118, Jerusalem 1971.
60. 2 Samuel 12:13-14; 21:1-14; 1 Kings 21:21.
61. 2 Kings 9:7, 26.
62. Deuteronomy 21:1-9; see also Phillips, "Another Look," p. 124.
63. McKeating, p. 57.
64. McKeating, pp. 57 ff.
65. M. Greenberg, "Blood Guilt," Interpreter's Dictionary of the Bible, ed. G.A. Butrick, New York 1962 reprinted in Schreiber p. 159.

66. De Vaux, op. cit. pp. 10,11.
67. Good, 19 Stanford Law Review at 952.
68. Greenberg, "Postulates," p. 147.
69. De Vaux, op. cit. p. 11.
70. Phillips, "Another Look," p. 112.
71. De Vaux, op, cit. p. 11.
72. Phillips, "Another Look," p. 113.
73. Phillips, "Another Look," p. 112. This is recognized in M. Greenberg, "Avenger of Blood," Interpreter's Dictionary of the Bible, ed., G.A. Butrick, New York 1962, cited in Schreiber p. 158. No unambiguous cases are cited by McKeating in his examination of blood guilt and vengeance. Other sources --- Good, Child, Encyclopedia Judaica, J.E. Priest, Governmental and Judicial Ethics in the Bible & Rabbinic Literature, Malibu, California 1980, pp. 162 ff. --- follow the traditional approach without further support.
74. The Gibeonite affair offers an intriguing amalgamation of fertility rites involving human sacrifice, blood vengeance taken vicariously, political problems and motives, and concepts of composition, pollution of the land by bloodshed, and punishment of the whole people due to the unpurged blood guilt or uncompensated treaty breaking. Interestingly the God of Israel to whom the famine is attributed does not take exception to the punishment of the innocent descendants of Saul nor to its taking the form of an idolatrous fertility rite. Instead He is appeased by the action and sends the rain. This event would justify a separate study in light of the principles discussed here. It is examined at some length in McKeating, pp. 59 ff.; H. Cazelles, "David's Monarchy and the Gibeonite Claim," 87 Palestine Exploration Quarterly 165 (1955); and A. Malamat, "Doctrines of Causality in Hittite and Biblical Historiaography : A Parallel," 5 Vetus Testamentum 1 (1955). It is also discussed with considerable background in J. Blenkinsopp, Gibeon and Israel, Cambridge 1972.
75. De Vaux, op. cit. p. 11.
76. M. Greenberg, "Avenger of Blood" Interpreter's Dictionary of the Bible, ed. G.A. Butrick, New York 1962.
77. Phillips, "Another Look," p. 111.

78. Apparently on the strength of scholarly tradition, go'el haddam is translated next-of-kin in The New English Bible. Numbers 35.
79. De Vaux, op. cit. p. 11; Greenberg, "Avenger of Blood" in Schreiber p. 158; McKeating, p. 54.
80. Phillips, "Another Look," p. 113.
81. Phillips, AICL, p. 101.
82. Summarized in McKeating, p. 54. See Phillips, AICL, pp. 101-102 for a view consistent with his new understanding of the role of the cities.
83. 2 Nephi 9:35.
84. 2 Nephi 6:1.
85. 2 Nephi 26:32.
86. Mosiah 29:15.
87. See Phillips, "Another Look," p. 105 ("Every codification of Israel's law was undertaken in a theologised form.") Contra, Child, op. cit. p. 469 (referring to a "redactional effort to break down the sharp distinction within Israel between civil and religious law.")
88. Alma 1:13.
89. Alma 42:19,20.
90. Alma 34:12.
91. Helaman 2:10.
92. Mosiah 3:12.
93. Alma 39:5,6.
94. 3 Nephi 30:1,2.
95. Alma 24:9-13.
96. 3 Nephi 5:4,5.
97. B.R. McConkie, "Murderers," Mormon Doctrine, 2d ed. Salt Lake City 1966, p. 520.
98. Compare Abner's slaughter of Asahel in battle (2 Samuel 2:18-23) and Joab's act of revenge (2 Samuel 3:24-27) which was recognized

as illegitimate vengeance for blood shed in war (1 Kings 2:5,6) and thus deserved the death penalty.

The Nephites were taught "never to raise the sword except it were against an enemy, except it were to preserve their lives." Alma 48:14. If the first exception is not a mere loose statement of the second (self-defence), it likely refers to a war exception. The record of this teaching is in the context of preparation for war with the Lamanites.

99. 3 Nephi 1:27.
100. 3 Nephi 5:5.
101. Alma 36:14.
102. Mormon 8:8.
103. However, it may be that they were executed as unrepentant traitors rather than as murderers, and that the law of treason allowed a pardon to the repentant. The case against them individually as murderers would have been essentially unprovable.
104. Genesis 4:10.
105. Ether 8:21.
106. Ether 8:14.
107. Ether 8:20,26.
108. Alma 37:27-31.
109. 3 Nephi 9:5,7-9,11.
110. 3 Nephi 10:2.
111. 3 Nephi 8:24,25.
112. Alma 18:12.
113. Alma 62:40.
114. Mosiah 17:10.
115. Mosiah 17:18,19.
116. Alma 1:13.

117. Numbers 35:33,34.
118. Deuteronomy 21:7,8.
119. McKeatin, pp. 57 ff.
120. Ether 14:24.
121. Ether 14:10-16.
122. Alma 54:16.
123. Alma 51:33.
124. Mosiah 19:19; Alma 25:1; 27:2; Moroni 9:5,23; 3:9-10.
125. 3 Nephi 24.