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Abstract Review of *The Legal Cases in the Book of Mormon* (2008),
by John W. Welch.

A BOOK OF MORMON CASEBOOK

Kevin L. Barney

Review of John W. Welch. *The Legal Cases in the Book of Mormon*. Provo, UT: Maxwell Institute, 2008. 496 pp., with appendixes, bibliography, index. \$34.95.

After graduating from Brigham Young University in classics in 1982, I returned to my home state to go to law school at the University of Illinois College of Law in Champaign-Urbana from 1982 to 1985. Many of the casebooks¹ and hornbooks² I used as a law student had been authored by professors at the college, including some I took classes from, men like John Cribbet on property, Wayne LaFave on criminal law, Ron Rotunda and John Nowak on constitutional law, Richard Painter on securities regulation, and Harry Krause on family law. This was an important, new phase in my education, and I remember it as a heady time, filled with rigorous academic inquiry.

At some point after the regimented first year of study, I signed up for the legal history course taught by Professor Michael H. Hoeflich,³

1. A casebook is an organized presentation of cases in a given field of study used for classroom instruction.

2. A hornbook is a text that gives an overview of a particular field of law, often a single-volume summary of a multivolume treatise. The term derives from children's primers in England that were protected by a thin slice of transparent horn or mica.

3. I still have in my library some of the books we were required to read for that class, including Hans Julius Wolff, *Roman Law: An Historical Introduction* (Norman: University of Oklahoma Press, 1951); Alan Watson, *The Law of the Ancient Romans* (Dallas: Southern Methodist University Press, 1970); Alan Watson, *The Making of the Civil Law* (Cambridge, MA: Harvard University Press, 1981); Magnús Magnússon and

who is now at the University of Kansas law school. I could see immediately that legal history is by its very nature an interdisciplinary undertaking, one that requires the scholarly tools of both the lawyer and the historian; either alone would be an inadequate preparation.⁴ Hoeflich had an impressive background that had prepared him to be able to deal effectively with legal history. In addition to undergraduate and masters degrees from Haverford College and a JD from Yale University, he also had an MA (equivalent to a PhD in the American system) from Clare College, Cambridge. He had studied not only law but also history and languages, which was a necessary prerequisite for the type of legal history he was interested in pursuing.⁵ It occurred to me that dealing with ancient legal history would of necessity require this kind of substantial academic preparation.

Over the years I have followed with interest the Book of Mormon scholarship of John W. Welch, and I have long thought that, given his similarly diverse academic background, ancient legal history would be a natural field for him to pursue. I have from time to time seen references in articles suggesting that he has indeed been doing work in this field. His new book, *The Legal Cases in the Book of Mormon*, brings together in one volume material reflecting Welch's interests in

Hermann Pálsson, trans., *Njal's Saga* (New York: Penguin Books, 1960); and Katherine Fischer Drew, *The Lombard Laws* (Philadelphia: University of Pennsylvania Press, 1973).

4. Examples of scholars who have this kind of dual preparation for the study of Mormon legal history include Kathleen Flake, author of *The Politics of American Religious Identity: The Seating of Senator Reed Smoot, Mormon Apostle* (Chapel Hill: University of North Carolina Press, 2004), and Sarah Barringer Gordon, author of *The Mormon Question: Polygamy and Constitutional Conflict in Nineteenth Century America* (Chapel Hill: University of North Carolina Press, 2002). Flake has a law degree from the University of Chicago and practiced law for fifteen years before becoming a professor of American religious history at Vanderbilt University Divinity School, and Gordon has a joint appointment in both the law school and the history department at the University of Pennsylvania.

5. Hoeflich's publications include *Roman and Civil Law and the Development of Anglo-American Jurisprudence* (Athens: University of Georgia Press, 1997); *The Gladsome Light of Jurisprudence: Learning the Law in England and the United States in the 18th and 19th Centuries* (Westport, CT: Greenwood Press, 1988); "Roman Law and Forensic Oratory in Antebellum America," *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 120 (2003): 189; and "Translation and the Reception of Foreign Law in Antebellum America," *American Journal of Comparative Law* 50 (2003): 753.

law, biblical studies, and Book of Mormon studies. The book is structured as a kind of casebook, albeit with differences necessary to take account of the ancient scriptural context of this particular study.

The book begins with a fourteen-page “Foreword and Personal Acknowledgments” (pp. xi–xxv). Although this would be lengthy for a traditional foreword, the point of this initial section is to describe in personal terms Welch’s scholarly preparations as a legal historian. This personal approach is both interesting and enlightening. There is no one single path to becoming a legal historian, and so a personal essay such as this documenting the path an author has taken is very useful for the reader. Welch recounts studying Latin in high school, taking a Book of Mormon class from Hugh Nibley at BYU, and discovering the phenomenon of chiasmus in the Book of Mormon as a missionary in Germany.⁶ After studying Greek philosophy for two years at Oxford University and getting his JD at Duke University, he practiced law for five years in Los Angeles. In 1979 Rex E. Lee invited Welch to join the faculty of the J. Reuben Clark Law School at BYU. Lee told him that if he would teach one business-related course, he could teach anything else he wanted to. Welch replied, almost in jest, “How about a course on Babylonian law and the Book of Mormon?” Lee responded enthusiastically that such a course would be perfect.

In Welch’s first year as a law professor at BYU, he taught a course called “Ancient Legal Systems and the Scriptures.” Welch and his students began assembling bibliographies and other materials in the law library, focusing in particular on biblical law and making the first tentative applications of that material to the Book of Mormon. Since that first year, when forty very enthusiastic students took the course, Welch has taught it every other year. Students in the course are required to complete a substantial research paper, and a significant archive of

6. For a recent personal account of this discovery, see John W. Welch, “The Discovery of Chiasmus in the Book of Mormon: Forty Years Later,” *Journal of Book of Mormon Studies* 16/2 (2007): 74–87. For a blog commentary on this article, see Kevin L. Barney, “The Discovery of Chiasmus in the BoM,” *By Common Consent* (17 May 2008) <http://bycommonconsent.com/2008/05/17/the-discovery-of-chiasmus-in-the-bom> (accessed 19 February 2009).

these papers has now been created in the Howard W. Hunter Law Library at the school.

The formation of the Foundation for Ancient Research and Mormon Studies in 1979 (now part of the Neal A. Maxwell Institute for Religious Scholarship at BYU), as well as the extensive involvement of non-Latter-day Saint scholars interested in biblical law with the Society for Biblical Literature, and later with the Jewish Law Association, brought necessary peer evaluation of some of this material as it was being developed. Welch's free and frequent interactions with other scholars have been critical in refining this material. One of the fruits of these associations was the publication of Welch's massive biblical law bibliography, which has become the standard resource for this subject.⁷

Legal Cases faces a formidable challenge right at the outset because ancient law reflects substantial differences from modern legal systems. Welch recognizes this and so begins the book with a chapter entitled "Entering the Ancient Legal World" (pp. 3–18), which orients the reader to this different legal context. The interdependence of law and society in ancient legal systems results in circularities such that it is incumbent on the student to understand not only the legal texts themselves but also the societies in which they were created. In approaching this material, one cannot think like a modern person but must set aside presentist notions.

Some instructive generalities about the ancient legal world include the following points. There were no enforcers of the law, no police, no district attorneys. There was no distinction between criminal and civil law; disputes usually took the form of private lawsuits. There were no paid, professional judges (this role being filled by town elders, priests, or other respected men in the community). Nor were there paid, professional advocates before the fourth century BC. There were few officially reported decisions, and so judgments were usually based on wisdom, custom, and common sense. Long-term imprisonment was rarely an option. There was, of course, no modern technol-

7. John W. Welch, comp., *Biblical Law Cumulative Bibliography* (Winona Lake, IN: Eisenbrauns; Provo, UT: BYU Press, 2005), listing over 5,500 entries.

ogy. Often reliance on the gods was the mechanism for guaranteeing treaties. Many institutions of the modern world simply did not exist; there were, for example, no banks, no employee benefits, no formal charities. Welch proposes that Nephite society was not materially different from other societies of the time and that the case method is the best way to reveal the inner workings of a real-life system (especially given that we have no detailed Nephite law code but do have reports of several actual Nephite cases).

In his second chapter, “Queries and Prospects” (pp. 19–55), Welch establishes the basic parameters for the study. He correctly observes that even modern lawyers find it difficult to determine what the law is in their system (a sentiment to which I can relate!), and this challenge only gets harder when we start to talk about ancient law. A certain degree of indeterminacy is simply inherent in the nature of the law and legal institutions. Biblical law texts have been studied in a variety of ways, including from literary, historical, and economic perspectives. What is the relevance to biblical law of further-afield ancient Near Eastern law collections, such as the laws of Hammurabi? What is the relevance of later Jewish law? What was the Mosaic code like in Lehi’s day? What challenges to studying biblical law texts are posed by the Documentary Hypothesis?⁸ How should we understand Josiah’s reforms? How would Lehi and his posterity have kept the law? How has the *lex talionis*⁹ been widely misunderstood by modern readers? Did the Nephites change or adapt the law of Moses to fit their own circumstances? What analytic problems arise from the layers of authorship, abridgement, and translation in the Book of Mormon? These are some of the issues that Welch outlines in this chapter. He then explores the biblical ideal of “righteous judgment” by analyzing the twenty-five commandments of the Covenant Code in Exodus 21–22.

In his fourth chapter, entitled “Judicial Procedures in Biblical Times” (pp. 77–103), Welch seeks to distill and summarize various

8. The source-critical theory that the Pentateuch derives from the post-Mosaic editorial merging of four originally distinct yet parallel narratives.

9. That is, talionic law (“an eye for an eye”), as set forth in Exodus 21:23–25.

biblical law precepts from some of the more than a dozen legal proceedings described in the Old Testament, which include the following (p. 78):

Legal Proceedings in Biblical Times	
Laban against Jacob	Genesis 31:25–55
Trial of the Blasphemer	Leviticus 24:10–23
Trial of the Sabbath Breaker	Numbers 15:32–36
Inheritance of the Daughters of Zelophehad	Numbers 27:1–11
Marriages of the Daughters of Zelophehad	Numbers 36:1–13
Trial of Achan	Joshua 7:1–26
Boaz at the town gate	Ruth 4:1–12
Trial of Ahimelech	1 Samuel 22:6–23
Petition of the Woman of Tekoa	2 Samuel 14:4–11
Petition of the Two Harlots	1 Kings 3:16–28
Trial of Naboth	1 Kings 21:1–16
Trial of Micah the Morasthite	Jeremiah 26:18–19; Micah 3:12
Trial of Urijah ben Shemaiah	Jeremiah 26:20–23
Trial of Jeremiah	Jeremiah 26:1–24
Trial of Susanna	Daniel 13:1–64 (LXX)

Welch presents these cases in their full scriptural form in appendix 1.

With this extensive and substantial preparation, Welch turns his attention in the bulk of the book to seven key legal proceedings recounted in the Book of Mormon. (These seven cases are discussed in their own chapters and, for convenient reference, are presented in full scriptural form in appendix 2.) Welch’s very detailed, close readings of these cases bring them to life as real-world disputes. Most students read these passages superficially and see only cartoonishly one-sided

“good guys versus bad guys” scenarios. But the reality is much more textured and nuanced. A good attorney has to be able to see both sides of a case, and Welch is able to see and communicate the perspectives and motivations of those whom the text does not intend us to root for. For example, as an attorney I felt not a little sympathy for the conservative legal position taken by Sherem, holding to the established Mosaic code and resisting religious innovation. Being able to see the genuine interests of the litigants in these disputes brings the cases to life and makes them much more believable as actual history.

At the end of the book, in a section entitled “Closing Statement” (pp. 383–89), Welch summarizes these cases in a series of “headnotes.”¹⁰ Rather than attempt a lengthy synopsis of each substantive chapter, I will simply quote his summary headnotes for these cases.

Headnotes to Legal Proceedings in the Book of Mormon

The case of Sherem (Jacob 7:1–23). “The case of Sherem stands as a classic case of an overconfident critic who seriously misjudges the situation and makes unsustainable accusations of blasphemy, apostasy, and false prophecy. This episode should give pause to any would be plaintiff or political opponent. Pride and hubris blur righteous judgment. It is unclear what Sherem had to gain by accusing the aged Jacob of these capital offenses, but what he tried to impose on Jacob eventually came back upon himself.”

The trial of Abinadi (Mosiah 11–17). “The trial of Abinadi is an archetypal case of abuse of power that resulted when King Noah took umbrage at Abinadi’s remonstrations. The case swirls around a king’s unwillingness to be corrected and his priests’ obsequious interest in currying favor. Yielding more than a case about a gadfly who got swatted, the death of the prophet Abinadi will haunt King Noah, whose execution by his priests shows that those who play with fire themselves get burned.”

10. Headnotes in legal literature are brief summaries of cases (or aspects of cases) presented as preliminary supplemental material to reported decisions in published case reports.

The trial of Nehor (Alma 1:1–15). “The trial of Nehor is a classic case of an angry member of a minority religious and political party who lost his temper, feeling oppressed, frustrated, or insulted by the controlling government. Probably assuming that his popular power base was strong enough, Nehor figured he could use force with impunity. In his way stood only the novice judge Alma, who had to make a politically difficult decision in order to reinforce and stand up for important legal values and against the use of violence and physical force.”

The trial of Alma and Amulek (Alma 14). “The accusation and imprisonment of Alma and Amulek is a shocking case of local pride on the part of a schismatic group that got carried away in its rejection of its previous leaders. Their tactics included perversion of the legal system, bribery, self-justification, torture, humiliation, censorship, and killing innocent women and children. This horrific miscarriage of justice soon ended in the complete demise of the perpetrators.”

The trial of Korihor (Alma 30:6–60). “The trial of Korihor presents a remarkable case of a radically independent thinker. Ultimately, his case asks, at what point does the individual’s right to speak jeopardize the welfare of the community as a whole? Is speech more like thought (which is necessarily protected) or like action (which is therefore publicly punishable)? Each society must determine the limits of free speech and when it will hold people responsible not only for what they do but also, in some cases, for what they say.”

The case of Paanchi (Helaman 1:1–10). “The case of Paanchi is a lamentable case of a raw thirst for power among three brothers, all of whom end up dead.”

The trial of Seantum (Helaman 7–9). “The matter of Seantum is an all-too-familiar case of corruption, cowardice, and trying to get others to do the dirty work under the cloak of secrecy. In this case, all was eventually revealed, for God sees and knows all things, and this ultimately leaves nowhere to hide.”

Amid the series of chapters devoted to detailing these cases, Welch inserts an interlude chapter entitled “Comparing Sherem, Nehor, and Korihor” (pp. 301–9). This chapter was necessitated by the common argument, first made by B. H. Roberts in 1922, that these three cases

form a sort of “triplet” and are simply stereotyped versions of the same story, perhaps suggesting that they are not historical. Welch acknowledges that there are indeed similarities among these three cases, but he suggests there are ways to account for the similarities, such as by pointing to the common formularity among ancient legal accounts. Welch then points out the differences among the accounts, featuring a lengthy table over two pages highlighting such differences. This approach to the issue is reminiscent of Welch’s “An Unparallel,”¹¹ a previous treatment of Roberts’s studies on the Book of Mormon.

The final substantive chapter of the book is “Judicial Punishments—Types and Rationales” (pp. 335–81). In this chapter Welch examines various punishments available to judges beyond capital punishment—including talionic punishments, stoning, hanging on a tree, burning, slaying by the sword, flogging, banishment, shaming, and imprisonment—and the various juridical rationales for such differing penalties. Then follows the concluding “Closing Statement” (pp. 383–89). Following appendixes with the full texts of the biblical and Book of Mormon cases discussed in the book is a lengthy bibliography and excellent citation and subject indexes.

Welch set out seven main goals for the book (pp. 17–18, 383–84): (1) to examine the literary and historical backgrounds of the legal narratives in the Book of Mormon; (2) to compare the laws in the Nephite world with those in the Hebrew Bible and the ancient world in general; (3) to understand in detail the relevant facts and specific legal issues raised by each legal case in the Book of Mormon; (4) to utilize all available tools of textual analysis, word studies, archaeology, and scripture study in illuminating these legal passages; (5) to appreciate the judicial procedures and outcomes involved in these cases; (6) to highlight the roles of logic, persuasion, testimony, and divine intervention in the determination of those legal results; (7) to extract legal and ethical value from each of these precedents by determining what these cases meant to the Nephites as their own political and religious history unfolded and why these cases were eternally important enough for

11. John W. Welch, “An Unparallel” (Provo, UT: FARMS, 1985).

Mormon to include them in his abridgment of what he considered the sacred records of his people.

In my judgment, Welch has succeeded ably in achieving these goals in this volume. This is a seminal work that establishes an essential foundation for the study of the Book of Mormon from a legal perspective. In his closing statement, Welch makes it clear that he views this book as only the beginning of many studies he hopes will follow from interested students, and I do not doubt that such further scholarship will be forthcoming. I recommend the book, and I extend my heartiest congratulations to Welch and his students for the achievement in creating this study.