

PLEASE SEEK AUTHOR'S PERMISSION BEFORE CITING.

The Psalms and the Courtroom

My goal today is to imagine the ancient Israelite courtroom through the lens of the Psalms. To achieve this, I shall draw on scholarship that has identified the courtroom as a central motif in Hebrew prayer. Modern literature on this motif goes back to brief observations by Hermann Gunkel¹ and to the more fully developed study of Hans Schmidt, published in 1928 and entitled *Das Gebet der Angeklagten im Alten Testament*.² As his book's title indicates, Schmidt interprets many of the Psalms called laments of the individual as the words spoken by defendants standing trial before temple tribunals.

Later scholars--including Gunkel, by the way-- criticize Schmidt, correctly, for an overly literal reading of the evidence.³ Schmidt did, indeed, overstate the case for a courtroom setting of the Psalms. Nevertheless, his sustained attention to links between litigation and prayer has proven to be a valid line of inquiry. Instead of imagining an actual trial, we should see the Psalms as reflections of what Berend Gemser famously called the "'*rîb* pattern' in Hebrew mentality."⁴ Psalmists adopt a forensic "frame of mind" when they address their problems to God. Speakers who utter prayers imagine themselves as petitioners making their case before God the judge. Framed as courtroom speeches, prayers evoke an entire legal system analogous to the one that operates in the human sphere.

This point of analogy allows us to even raise the possibility of mining the Psalms for legal-procedural information. In fact, some scholars are confident enough to draw on prayer as a source for describing Israelite court procedure. Here, I am thinking mainly of Pietro Bovati's work *Re-Establishing Justice*, but also of earlier writings such as those of Hans Jochen Boecker,

Isaac Leo Seeligmann and Zeev Falk.⁵ Today, I will build on their work to pursue a somewhat different direction of inquiry, which we might characterize as legal-literary. Instead of deriving trial law from the Hebrew Psalter, I wish to examine the Psalms as a nexus between the courtroom and prayer. My overarching question is, "Why do we characterize prayer as courtroom speech?" To elaborate: Which aspects of the trial, specifically, make their way into the Psalms? How do psalms make prayer out of procedure?

In answer to these questions, the Psalms provide two kinds of information. The more obvious kind comes from references to specific aspects of trials familiar from human courtrooms: witnesses, investigation, and the like. The second kind of information comes from the possibility that psalms pattern themselves after courtroom forms of speech. This is to say that they resemble language that would have been used in human courtrooms.

Considering both kinds of information requires careful pursuit of specific analogies to human courtrooms. For, even though some modern scholars might wish it otherwise, the Book of Psalms is not a treatise on the Israelite trial. Therefore, the case for the Psalms and the Courtroom has to be made, rather than assumed. Thus, my remarks today will consider the Psalms together with other, more overtly legal materials from the Hebrew Bible and extra-biblical legal records from Mesopotamia.

I will begin with the first category of information available in the Psalms: direct references to actions or other features that have a basic origin in human trials. Obvious examples are mentions of witnesses-- עדים-- as in item I.A. Since these references occur in individual laments, the witnesses are false-- עדי חמס or עדי שקר. Consideration of the false testimony laws in Deuteronomy 19 shows that the psalms incorporate not only the legal concept of false witness,

but also the technical legal vocabulary. The verb ק-ו-ם, followed by the prepositional ב in Psalm 27, describes how false witnesses "arise" קמו בי/ יקומו, just as the hypothetical עד חמס does in Deuteronomy 19-- כי-יקום עד-חמס באיש.

The use of the verb ק-ו-ם here informs the subject of the physical positioning-- the staging, if you will-- in the Israelite courtroom. The verb itself indicates that the false witnesses-- and one may assume true ones, as well⁶-- stand when they give their testimony. According to Psalm 109 (Item I.B) which imagines the legal downfall of the speaker's adversary-- בהשפטו יצא בהשפטו יצא-- additional parties stand on the right side of the litigant. The accuser/שטן who will confound the adversary's case assumes this stance. God does, too, later in the same Psalm, probably in the role of a supporting witness. For judgment, God sits on a throne, according to Psalm 9. Other verses-- here I have quoted the descriptions from Psalms 76 and 7-- show God standing in judgment. I agree with Bovati who suggests that God stands to pronounce judgment; in court, judge and witness alike stand when they speak.⁷

Several texts refer to investigative procedures. Some of these can be found in Item I.C. God is said to be the expert investigator, who can penetrate the heart (and, elsewhere, the kidneys) to uncover not only people's actions, but also their intentions. The verb ה-ק-ר provides the main connection to procedures carried out by human authorities-- compare Deut 13:15-- but, based on this verse in Deuteronomy and others, we should include ד-ר-ש. Here, it is worth noting that the main evidence is in the negative- the wicked think that God is not ד-ר-ש-- אָמַר בְּלִבּוֹ לֹא תִדְרֹשׁ. The psalmist prays that God break this wicked man's arms, so that, when God does, in fact, "investigate" (ד-ר-ש) the wicked person's evildoings, God will not be able to find them. Some suggest that the verb ב-ה-ג, which parallels the verb ה-ק-ר in the example from Psalm 139, indicates a similar investigative procedure.⁸ In this verse, at least, parallelism does

point in this direction. Occurrences elsewhere, however, suggest that the verb belongs more properly to the sphere of metallurgy, so the question of נ-ת-ב's legal valences must remain open.

Psalms also refer to God's written records; two citations are in item I.D. There is a "scroll of life," into which the righteous are inscribed, according to Psalm 69. Here, and in Psalm 109, too, the Psalmist demands that God erase (verbal root נ-ת-ב) the wicked opponents from this favorable record. Psalm 109 adds that the sins of the opponents' mother should not be erased, but should, instead, remain as a permanent record in God's memory. This record-keeping has a legal purpose: Daniel 9 shows that scrolls are open as God sits in judgment. The records are the basis upon which God judges. Shalom Paul has already exposed the heavenly analogues to these records in the pre- and post-biblical religious traditions of the ancient Near East.⁹ The earthly analogues are the various Mesopotamian court records, which include memoranda and other preliminary documentation, as well as written records of judgments. In fact, we can probably distinguish between Psalm 109's un-erased record of sin, which seems closer to an evidentiary record, and Psalm 69's "scroll of life" which seems to reflect a final judgment.¹⁰

The evidence we've considered so far shows clear connections to the courtroom. There are terminological or procedural overlaps between the Psalms and human trials described in the Hebrew Bible. I have already alluded to why these overlaps are significant for the interpretation of the Psalms, and will return to this subject at the end of my remarks today.

For now, let us consider the second kind of evidence—the possibility that psalms incorporate or imitate forms of speech familiar from human courtrooms. This possibility requires attention not only to legal content in a particular prayer, but also to the form that this legal material takes within the prayer. To what extent do the Psalms sound like what might have

been said in an Israelite courtroom? In other words, when a speaker demands that God investigate, is the demand itself an Israelite equivalent to a modern-day legal motion? When speakers say something like Psalm 27's "False witnesses arise against me," are they just telling God their (admittedly legal) problems or are they lodging formal complaints, possibly accusations, or even appeals, with the Divine Judge? In the same vein, when the speaker in Psalm 109 says "when he is judged, may he be declared guilty" should we see this as a rant or as a declaration of the legal remedy the speaker seeks?

In earlier work, I subjected demands for judgment in biblical prayers to this line of inquiry. Using inner-biblical and extra-biblical parallels from lawsuit records, I demonstrated how these demands for judgment make biblical prayers sound like what might have been heard in an Israelite courtroom. The same comparative methods can be applied to other forms of speech that we might think of as legal. Time prevents considering all of the trial procedures that the Psalms seem to incorporate. I will, instead, focus on just one: the accusation. Comparing accusations in prayers to accusations made in records of trials in human courts confirms, but at the same time complicates, the form-critical assessment of this form of speech in the Psalms.

Compared to demands for judgment, it is more difficult to situate accusations in the courtroom. The inclusion of a term for judgment-- usually the verb שפט-- in demands for judgment points directly to a forensic situation. In contrast, we identify accusations by their content, rather than their formulation: speakers say that someone else has done something wrong. Of course, an utterance like this contains nothing inherently forensic; it can occur both inside and outside a trial.

According to some, grammar or style can shed light on this problem. Bovati follows Boecker in distinguishing, within this broadest category, between accusations spoken directly to the accused and those spoken in the third person.¹¹ Accusations in the second person are, in Boecker's terms "pre-legal" acts, characteristic of controversy, in general, rather than of anything formal. In the Bible, this type of "informal" or "pre-legal" accusation may simply be one person's statement to another. Or, as many have observed, accusers may pose a question to individuals they are accusing. One example is Moses's question-accusation to the Hebrew hitting his fellow Hebrew in Exodus 2 (item II.A).¹² Third-person accusations, on the other hand, are addressed to a party other than the accused. For example, in the proceedings surrounding the slandered bride in Deut 22, both the accuser and the father of the accused address the presiding elders. This passage even illustrates Boecker's posited distinction between third- and second-person accusations: the bride's father, in his own statement, quotes the accuser's "pre-legal," informal accusation, which was made in the second person. The formal accusations, however, are lodged in the third person. Per Near Eastern legal practice, these may be the plaintiff's accusations or the defendant's counter-accusations in response.¹³

In the Psalms, we find mostly third-person accusations. Now, were it only for the formulation as indirect speech, I would not identify these as necessarily legal. Content, as we have seen, sometimes does suggest a trial setting of some kind; if speakers mention false witnesses or other appurtenances of the courtroom, then it's easier to imagine that they see themselves engaged in litigation. Even without these legal elements, we might still pursue this direction of interpretation. Several readers suggest that the very act of praying by stating one's grievances is itself a legal action. According to this reading, prayers are the equivalent of "crying out" (ק-ל-צ) to the king, like the widow in 2 Kgs 8:3 who complains about her

expropriated land. In another vein, extra-biblical courtroom records show plaintiffs making accusations by narrating their stories to a judge, in the third person.

Second-person accusations, in the form of questions, are addressed to God (item II.B). The speakers ask God "why," and thus accuse God of neglect or abandonment (Psalm 22) and of ignoring the community's oppression (Psalm 42). On the grammatical grounds suggested by others, these questions are "pre-legal" or "informal," but do not lodge actual legal claims. By extension, the prayers in which these questions appear are expressions of controversy with God. They should not, however, be construed as part of a lawsuit, on the model of the Book of Job or the "confessions" of Jeremiah.

Or should they? Job and Jeremiah indicate that one could, in fact, address God directly even as part of what looks like a formal lawsuit. This makes sense, given the practicalities of trying to accuse God before another judge . . . From another, more general angle, how confidently can we distinguish between formal and informal forensic discourse in the Hebrew Bible? For example, in Psalm 44, the direct accusation to God-- supposedly the marker of informality-- occurs right after a demand for God to conduct an investigation. This demand uses overtly legal terminology, as we've already demonstrated, so it could easily evoke a formal, rather than an informal, setting. Thus, even within the texts themselves, there is room to question the suggested legal-literary implications of the grammatical distinction between second and third person accusations.

If we look beyond the Psalms, biblical and extra-biblical evidence (Item II.C) expose these distinctions to even further questions. Within the Hebrew Bible, we can look at the record of the women's statements in Solomon's judgment, in 1 Kings Chapter 3. The second woman's

speech shows that supposedly "informal," direct address between litigants does occur in a biblical record of a statement before a judge. Now, it is true that this is a response to the first woman's accusation addressed to Solomon. Therefore, we might wish to read this as an informal outburst that marks a downward turn in the degree of courtroom decorum. Nevertheless, it does look like a counter-accusation, and Solomon's summary statement quotes both women's direct speeches, with second person, rather than third person, pronouns.¹⁴

Moreover, Akkadian court records show direct address between litigants even during formal adjudication. I have brought just two examples; the history of trial records from Mesopotamia shows others, also. The first example is the record of a case tried before the governor and elders of Babylon during the reign of Nebuchadnezzar II. The plaintiff's opening statement is formulated in the third person; he tells the judges that his uncle has mishandled a jointly held inheritance. The uncle responds-- note that the verb *apālu* marks this second statement as a response-- in the second person: the purchases which **your father** (*a-bu-u₂-ka*) carried out . . . **your father** sealed a tablet." The formulation here offers a direct parallel to Solomon's judgment: the initial accusation formulated in third person and the defendant's response, like that of the second woman in the Book of Kings, in direct address.

The second example comes from a case tried before Sin-iddinam, a governor of Old Babylonian Larsa during the reign of Hammurabi. The text records the defendant's (PN₅) speech first, and then the plaintiff's (PN₄). Both parties address each other directly, despite the presence of a presiding authority.

All of this evidence shows that the participants in formal litigation can hurl accusations at each other, even in the presence of a judge. Second-person accusations are not limited to "pre-

legal" or informal situations. At least in the case of accusations, formal legal speech and informal argument resemble each other more than one might have imagined. The style of the accusations may guide our intuitions away from the courtroom, but actual evidence from courtroom records allows us, even leads us, right back in. When speakers address God with a second-person accusatory question, they could well be taking formal legal action.

Including second-person accusations within formal legal speech raises intriguing possibilities for interpreting the specific prayers in which they appear. I will leave these ramifications for discussion at another time. Instead, my conclusion will return to a question I asked earlier on, "How do Psalms make prayer out of courtroom procedure?" In doing so, I hope to distill some guidelines for the forensic interpretation of Psalms, and of prayer, in general.

The courtroom enters prayer most obviously in references to specific elements of trials. While these elements are often readily identifiable, there is still value to attending to the parallels between these elements as they appear in prayers and elsewhere in more explicitly legal contexts. Doing so can expand the network of legalisms incorporated into the prayer.

Somewhat paradoxically, these explicit mentions of witnesses and the like lead us directly into the courtroom, even though we can't always be sure how the prayer would have functioned there. Even so, these explicit elements are a crucial bit of evidence when it comes to the second, less obvious way that prayers echo the courtroom. Identifying courtroom forms of speech can be challenging, and explicit trial language provides an important link between the legal content of a prayer and the prayer's legal form. Another way to meet this challenge is to consider an allegedly legal form of speech in a prayer in light of actual courtroom speeches: the poetic or religious product against its human pattern, as it were. Thus, as accusations show,

inner-biblical and extra-biblical trial documentation can cement links between prayer and procedure, and even expose new ones.

The Psalms and the Courtroom

I. ASPECTS OF THE TRIAL

I. A. Witnesses

- . . . כי קמו-בי עדי-שקר ויפח חמס (Ps 27:12)
- קומונו עדי חמס אשר לא-ידעתי ושאלוני (Ps 35: 11)
- לא-יקום עד אחד באיש לכל-עון ולכל-חטאת בכל-חטא אשר יחטא על-פי שני עדים או על-פי שלשה-עדים יקום דבר. כי-יקום עד-חמס באיש לענות בו סרה. ועמדו שני-האנשים אשר-להם הריב לפני ה' לפני הכהנים והשפטים אשר יהיו בימים ההם. ודרשו השפטים היטב והנה עד-שקר העד שקר ענה באחייו. (Deut 19:15-18)

I. B. Physical positioning

- הפקד עליו רשע ושטן ועמד על-ימינו. בהשפטו יצא רשע. . . . (Ps 109:6-7)
- אודה ה' מאד בפי ובתוך רבים אהללנו. כי-יעמד לימני אביון להושיע משפטי נפשו. (Ps 109:30-31)
- כי-עשית משפטי ודיני ישבת לכסא שופט צדק. (Ps 9:5)
- בקום-למשפט א-להים להושיע כל-עגוי-אך סלה (Ps 76:10)
- קומה ה' באפך הנשא בעברות צורכי ועורה אלי משפט צוית. ועדת לאמים, תסובבך; ועליה, למרום שובה. ה' ידיו עמים שפטיני ה' כצדקי וכתמי עלי. (Ps 7:7-9)

I. C. Investigation- (ב-ח-נ?)

- אם-שכחנו שם אלהינו ונפרש כפינו לאל זר.
- הלא אלהים יחקר-זאת כי-הוא ידע תעלמות לב. (Ps 44:21-22)
- תקרני אל ודע לבבי בחנני ודע שרעפי. וראה אם-דרך-עצב בי ונחני בדרך עולם. (Ps 139:23-24)
- על-מה, נאץ רשע אלהים אמר בלבו לא תדרש. ראתה, כי-אתה עמל וכעס תביט לתת בדרך: עליון יעזב חלכה יתום אתה היית עוזר.
- שבר זרוע רשע ורע תדרוש-רשעו בל-תמצא. (Ps 10:13-15)
- ודרשת וחקרת ושאלת, היטב, והנה אמת נכון הדבר, נעשיתה התועבה הזאת בקרבך. (Deut 13:15)

I. D. Writing/Record-keeping

- ימחו מספר חיים ועם צדיקים אל-נכתבו. (Ps 69:29)
- יהי-אחריתו להכרית בדור אחר ימח שמם. יזכר עון אבתיו אל-ה' וחטאת אמו אל-תמח. (Ps 109:13-14)
- חזה הוית, עד די כרסנו רמיו ועתיק יומין יתב. . . דינא יתב וספרנו פתיחנו (Dan 7:9-10)

II. FORMS OF SPEECH--Accusations

II.A. Analogues

- . . . ויאמר לרשע למה תכה רעך. (Exod 2:13)
- כי-יקח איש אשה ובא אליה ושנאה. ושם לה עלילת דברים והוצא עליה שם רע ואמר את-האשה הזאת לקחתי ואקרב אליה ולא-מצאתי לה בתולים. ולקח אבי הנער ואמה והוציאו את-בתולי הנער אל-זקני העיר השערה. ואמר אבי הנער אל-הזקנים את-בתי נתתי לאיש הזה לאשה וישנאה. והנה-הוא שם עלילת דברים לאמר לא-מצאתי לבתך בתולים ואלה בתולי בתי. . . (Deut 22:14-16)
- ויהי מקצה שבע שנים ותשב האשה מארץ פלשתים ותצא לצעק אל-המלך אל-ביתה ואל-שדה. (2 Kgs 8:3)

II.B. Question-Accusations in Psalms

- א-לי א-לי למה עזבתני כחוק מישועתי דברי שאגתי.
- א-להי--אקרא יומם ולא תענה ולילה ולא-דמיה לי.

...

כל-ראי ילעגו לי נפטירו בשפה נגיעו ראש. (Ps 22:2-3, 8)

- אם-שכחנו שם אלהינו ונפרש כפינו לאל זר. הלא א-להים יחקר-זאת כי-הוא ידע תעלמות לב. כי-עליך הרגנו כל-היום נחשבנו כצאן טבחה. עורה למה תישן א-דני הקיצה אל-תזנח לנצח. למה-פניך תסתיר תשכח ענינו ולחצנו. (Ps 44:21-25)

II.C. Further Analogues

- אז תבאנה שתים נשים זנות אל-המלך ותעמדנה לפניו. ותאמר האשה האחת בי אדני אני והאשה הזאת ישבת בבית אחד נאלד עמה בבית. ויהי ביום השלישי ללדתי ותלד גם-האשה הזאת ואנחנו יחדו אין-זר אתנו בבית זולתי שתים-אנחנו בבית. וימת בן-האשה הזאת לילה אשר שכבה עליו. ותקם בתוך הלילה ותקח את-בני מאצלי ואמתך ישנה ותשכיבהו בחיקה ואת-בנה המת השכיבה בחיקי. ואקם בבקר להניק את-בני והנה-מת ואתבונן אליו בבקר והנה לא-היה בני אשר ילדתי. ותאמר האשה האחרת לא כי בני החי ובנד המת, וזאת אמרת לא כי, בנד המת ובני החי; ותדברנה, לפני המלך. ויאמר המלך--זאת אמרת, זה-בני החי ובנד המת; וזאת אמרת לא כי, בנד המת ובני החי. (1 Kgs 3:16-23)

- BM 35508 + (C. Wunsch, *Urkunden zum Ehe- Vermögens- und Erbrecht* [2003], No. 42) PN₁, PN₂, and PN₃ and PN₄, their father's brother, came to blows against each other concerning the division of shares; they had a legal case. They arrived before the governor of Babylon, and [before?] the governor of Babylon and the elders of the citizens of Babylon they recounted their matters. PN₁ said thus, "(Regarding) the purchases which PN₄ carried out in the Gate of Bēl: the silver with which the purchases were carried out belongs in the common property of the patrimony! There is no more than one-sixth share (that he owns) with my father (belonging to him)!" PN₄ responded to him (*i-pu-ul-šū*) thus: "I used my own silver in the purchases . . . (Regarding) the purchases which **your father (a-bu-u₂-ka)** carried out in the Gate of Bēl . . . there was not more than 10 shekels of silver from the common property of our patrimony (involved)! . . . **Your father (a-bu-u₂-ka)** sealed a tablet in his name."
- Boyer, *Contribution*, No. 143 Concerning PN₁, whom PN₂ took from PN₃, her wetnurse, at the doorway of the city gate of Larsa. PN₄ kept looking for her and found her in the house of PN₂. Then PN₄ approached Sin-iddinam (governor of Larsa), and conducted PN₅, his (PN₂'s) wife, there. PN₅ spoke thus: "PN₁ is **not your (PN₄) daughter (ma-ra-at-ka)**; she is the daughter of a female slave of my mother's household!" PN₄ spoke thus: "PN₁, my daughter, is not a slave! I gave her to PN₃, a female slave of **your mother's (e-mi-ki)** household, for nursing."

¹ Hermann Gunkel and Joachim Begrich, *Introduction to Psalms: The Genres of the Religious Lyric of Israel* (trans. J. D. Nogalski; Macon, Ga.: Mercer University Press, 1998), 139. See also Sigmund Mowinckel, *The Psalms in Israel's Worship* (trans. D.R. Ap-Thomas; Grand Rapids, Mich.: Eerdmans, 2004), 228.

² Hans Schmidt, *Das Gebet der Angeklagten im Alten Testament* (BZAW 49; Giessen: Alfred Töpelmann, 1928).

³ Gunkel, *Introduction*, 188-189; See also Mowinckel, *Psalms*, 228 n. 5 for additional early critiques.

⁴ B. Gemser, "The *rîb*- or Controversy-Pattern in Hebrew Mentality," in *Wisdom in Israel and in the Ancient Near East* (ed. M. Noth and D. W. Thomas; 2nd edition; VTSup 3; Leiden: Brill, 1969), 120-137.

⁵ Pietro Bovati, *Re-Establishing Justice: Legal Terms, Concepts and Procedures in the Hebrew Bible* (trans. M. J. Smith; JSOTSup 105; Sheffield: Sheffield Academic Press, 1994); Hans Jochen Boecker, *Redeformen des Rechtslebens im Alten Testament* (WMANT 14; Neukirchen-Vluyn: Neukirchener Verlag, 1964); I. L. Seeligman, "Zur Terminologie für das Gerichtsverfahren in Wortschatz des biblischen Hebräisch," in *Hebräische Wortforschung: Festschrift zum 80. Geburtstag von Walter Baumgartner* (ed. G.W. Anderson, et. al.; VTSup 16; Leiden: Brill, 1967), 251-278; Zeev W. Falk, *Hebrew Law in Biblical Times* (Jerusalem: Wahrman Books, 1964).

⁶ Deut 19:15 supports this assumption: the locution describes the action of the single witness/accuser in a law that has nothing to do with the truth of what this witness says.

⁷ Bovati, *Re-Establishing Justice*, 232-233.

⁸ Bovati, *Re-Establishing Justice*, 244-245; F. Rachel Magdalene, *On the Scales of Righteousness: Neo-Babylonian Trial Law and the Book of Job* (BJS 348; Providence, R.I.: Brown University Press, 2007), 108.

⁹ Shalom M. Paul, "Heavenly Tablets and the Book of Life," *JANES* 5 (1973):345-353.

¹⁰ See Paul, "Heavenly Tablets," 346.

¹¹ Bovati, *Re-Establishing Justice*, 305.

¹² Bovati, *Re-Establishing Justice*, 75-80.

¹³ See Magdalene, *Scales*, 136-145, with earlier literature cited there.

¹⁴ See also Jer 26:7-15, where an initial, extra-judicial, accusation is addressed directly to the accused (Jeremiah), followed by a formal accusation to the officers, and the accused individual's response addressed directly to the accusers, rather than to the authorities.