

PRELIMINARY DRAFT:

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Why Confess in Prayer? Two Legal Proposals

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Biblical communal and individual laments feature confessions, in which the speakers admit their own wrongdoings. Examples occur in the communal lament "concerning the drought," (Jeremiah 14) and in Psalm 41, an individual prayer. In the communal prayer, the nation confesses in verse 7, "Though our iniquities testify against us, O Lord, act for the sake of Your name; ***Our rebellions are many; We have sinned against You.***" The individual speaker in Psalm 41:5 says, "My Lord, have mercy upon me! Heal me, ***for I have sinned against You.***"

My question today is to ask why prayers, like these and others, include confessions. From the speakers' perspectives, what is gained by confessing that they have committed wrong? What do confessions contribute to their plea? I will address this question by applying a legal lens to confessional prayers. On the basis of connections to the adjudicatory process, as this is attested in records from the ancient Near East and within the Hebrew Bible, I will offer two answers to the question. One possibility is that, in the speakers' minds, suffering results from God's adverse judgment, and confession is a way of mitigating the sentence. Alternatively, suffering might be perceived as an investigative, rather than punitive, procedure. By confessing, the speakers hope to end God's investigation and, with that, their suffering.

Intuitively, we view confession as an action related to the legal process, a regular feature of the prosecution of crime. When it comes to the Hebrew Bible and the ancient Near East, where our intuitions might not be at all relevant, we are, nevertheless, supported by recent biblical scholarship. David Lambert's work on repentance shows that instead of emotions or psychology, law, especially adjudication, provides a meaningful context for a proper understanding of confession.

Lambert identifies two ways in which law is relevant to confession. One way is exemplified by King David's confession after the Bathsheba incident. The King, in effect, issues a legal ruling against himself. As a result, the king's confession-as-ruling leads directly to the remission of his sin and the mitigation of his sentence.ⁱ

The other purpose of confession is exemplified by Pharaoh's confession, "I am guilty this time; YHWH is in the right, and I and my people are in the wrong" (Exod 9:27). It comes on the heels of affliction by God, and, once uttered, ends it, at least temporarily. Rather than constituting an act of self-judgment or self-condemnation, confession here, in Lambert's terms, comes "closer to an act of submission, surrender" to the authority of the law.ⁱⁱ

Lambert identifies these legal aspects of confession in biblical narratives. When it comes to confessions in prayers, however, he does not raise the possibility that law is relevant there, too. Instead, Lambert emphasizes confession's general, relational dimensions, without specific

reference to the law. In prayers of lament, confession "spells out the power structure" that allows God to relieve the petitioner's distress, and serves to identify the sin, "thus paving the way for its successful removal."ⁱⁱⁱ Conspicuously absent is any suggestion that these purposes of confession in prayer might stem from a connection between law and prayer.

Today, I wish to make the case that confession is an aspect of the legal conception of prayer. Prayers, in general, are conceived as pleas before the divine judge; the occasion of prayer is a courtroom-like encounter. Thus, legal interpretations of confessions in prayer make good sense.

We see this general connection between prayer and the courtroom elsewhere in confessional prayers themselves. For example, in Jeremiah's communal lament, the nation refers to its sins as "testifying against" them (14:7). The locution they employ is the same locution (Hebrew $(-n-y + b^e)$) that denotes the activities of witnesses or accusers in human courtrooms. The point of this verse is to undercut, if not discredit, damaging evidence that these sins-as-witnesses furnish.

For a legal connection to an individual, rather than communal, confession, I point to Psalm 51. There, immediately after confessing (verses 5 and 6), the speaker concludes by saying to God, You are justified in Your sentence (*tišdaq b^edobrekā*), right in Your judgment (*tizkē b^ešoptekā*). Here, with Lambert, we see confession as an act of submission.^{iv} Unlike Lambert, though, I wish to emphasize the judicial terminology that describes God here. The speaker submits specifically to God's authority as adjudicator.

Both of these legal images—the personification of the sins as witnesses in Jeremiah's lament and the description of God as judge—attest to the more general notion that prayer belongs in the conceptual world of the courtroom. It follows, then, that the nation's confession might also serve some legal purpose. Once prayer invokes the courtroom, then confession is something we might expect to find, too.

I strengthen my case by adopting a literary observation made by others, including Lambert, on the occurrences of confession in prayers. Speakers' confessions occur closely linked to descriptions of their woes.^v We see this in Jeremiah's communal lament, where confession (14:7) follows descriptions of drought's effects on humans and animals (14:2–6). Similarly, in Psalm 41, the individual speaker links confession and suffering: the speaker's confession, "for I have sinned against you" (41:5b) is tied to the suffering in the following verses.^{vi}

We see the same co-occurrence of confession and suffering in a class of Mesopotamian prayers known as *eršahunga*-s. Confession is part of the speaker's strategy in a prayer called "An Eršahunga to Any God."^{vii} As in Psalm 41, the sense of the prayer is that the suffering—the sickness, the loneliness, the distress—has prompted the confession. This is not only a logical interpretation of the speaker's unstated reasoning, but also emerges from the speaker's explicit statements of uncertainty. The speaker has no clear idea of the wrongdoing committed nor even

of the deity that has been wronged. The speaker's suffering is the only certainty, and confession—to anything! -- is the response.^{viii}

In the context of prayers, the close connection between suffering and confession indicates that confession serves as a means towards ending the suffering. This is why speakers incorporate confessions into their prayers; they believe that by confessing they can achieve relief. For Lambert, confession in prayer re-affirms the power of the divine to absolve sin and relieve suffering. It is to that expressive, rather than specifically legal, end that prayers include confession.

However, Lambert's two observations on the legal function of confession in narratives apply to the situation of prayer, too. The two legal functions of confession can explain its connection to suffering in prayers. As in the David and Bathsheba incident, we might conceive of the speakers' confessions in prayers as self-condemnations. In this understanding, confession's legal purpose is to mitigate the sentence. Mentioning the suffering during prayer reminds the divine judge that punishment has, in fact, already begun. Prayers that include confessions are, in effect, a motion to end suffering on the grounds that earlier suffering constitutes "time served."

This legal understanding of confession's connection to suffering relies on a punitive understanding of suffering: suffering arises as divine punishment for some wrongdoing. Human adversity, in this view, results naturally from an adverse judgment; just as convicted criminals face penalties, so do humans convicted by the divine court experience suffering.^{ix} Confession ends suffering by mitigating the need for punishment.

Lambert's other legal understanding of confession, whereby confession constitutes "an act of submission," suggests a non- or pre-punitive purpose for suffering. More ordeal than punishment, suffering is meant to bring about this confession-as-submission. By confessing in prayer, speakers express their submission to divine authority. Their prayers demonstrate that suffering has achieved its end, and that, therefore, it should cease.

This second legal understanding of suffering's connection to confession aligns well with Rachel Magdalene's legal interpretation of Job's suffering. According to Magdalene, Job's suffering is directly connected to the legal process, just not to its punitive stages. Rather, it belongs to the investigative phase of the trial. Though Job's suffering was punishing, it is not, strictly speaking, punishment.^x

Magdalene identifies the earthly analogue to Job's "arduous, even torturous divine trial investigation" in records of investigative procedures in the Neo-Babylonian Eanna temple at Uruk. There, we find a set of records that bear the designation "interrogation" (*maš(altu)*) that usually yielded confession to some wrongdoing.^{xi} In addition, other records of confessions note that the suspects speak "without interrogation"^{xii} or that the suspect "testified against himself."^{xiii} In the aggregate, these Neo-Babylonian legal records point to the likely possibility that temple

authorities could resort to torture as part of their investigative procedures. The strongest evidence for this comes from a later, Seleucid period text that refers to the apprehension and conviction of thieves by means of a device called the "ladder of interrogation."^{xiv} This would explain the regular correlation between "interrogation" and confession. Fear of the rigors of torture would also explain why suspects might confess "without interrogation."

Magdalene's interpretation of Job's suffering draws the theological connections between the likelihood of torture as part of the Eanna's investigative procedures and the religious world of the ancient Near East.^{xv} Job, according to Magdalene, sees himself in a position equivalent to that of the suspects under interrogation by the Eanna. We might draw on Job's speeches to imagine the personal experience of the suspects under investigation.^{xvi}

We can extend Magdalene's legal analogy to include not just the investigation itself, but also the typical outcome of the investigation: the confession. If, indeed, in the ancient worldview, suffering is analogous to physically painful investigative procedures, then it is natural to find confessions of guilt alongside descriptions of suffering. Job, famously, resists the typical course of proceedings and refuses to confess.^{xvii} In prayers, however, we do find the expected correlation between suffering and confession. The speakers in prayers, like Job, understand their suffering as God's equivalent to the Eanna's "ladder of interrogation." They, unlike Job, do not, or cannot, maintain their innocence in the face of the ardors to which they are subject. Instead, they confess. By doing so, they engage in the act that should end the investigation to the satisfaction of the divine court. Thus, they expect the investigation's painful procedures to end, too.

The implications of this second interpretation of confessions in prayers are worth dwelling on. If, indeed, confession is a way of ending a painful investigation, this raises the question of the speakers' sincerity when they confess. This question is ultimately unanswerable without access to any individual speaker's mind. Still, the unanswerable problem of sincerity exposes the deeper, more troubling question of why a confession makes effective prayer. Given the process that leads to it, why should confession find a receptive ear in the divine courtroom? From God's perspective, as it were, the answer stems from the speakers' submissiveness. When speakers state to God that they are wrong, they place God in the right, just as Pharaoh does in Exodus 9. Thus, per Lambert, confession re-affirms God's authoritative position as the judge.

From the speakers' perspective, submissive confessions, by justifying God's authority, offer a way to understand, and perhaps also reconcile with, their own situations. Nowhere is this more apparent than in the group of post-exilic texts commonly labeled "penitential prayers." Confession figures prominently in these prayers, and, as Lambert notes, "is used to ground the very conditions that make prayer possible in a world after exile."^{xviii} Without confession, the nation's troubled reality would be difficult to explain. Confession, which attributes suffering to sin, paves the way forward with God.

At the same time, however, even when the speakers confess, they are hardly reticent about the suffering that brings about their confession. This is true in the laments of the individual and the community, as we have seen. Even the "penitential prayers," for all their

emphasis on submission and justification of God's ways, still recall the national suffering that, however justified, has led to the nation's collective confession. By way of example, we point to the section of Nehemiah's "penitential prayer" (Neh 9:32–36).^{xix} The nation's confession expressly puts God "in the right," and thus justifies "all that has come upon" them (33). At the same time, though, this prayer retains confession's connection to suffering. It mentions the nation's "great distress" at its enslavement to foreign powers (36–37). Confession, in other words, can explain and even justify the suffering, but it cannot remove the pain completely. The nation's hardships, their very reasons for prayer, cast a shadow over the "pathway" to reconciliation with God. Even as it accepts responsibility for its misdeeds, the nation can hardly ignore that God is the ultimate agent of the suffering, too.

We can explain the nation's stance here by invoking our suggestion that the link between suffering and confession derives from an understanding of suffering as God's equivalent to a torturous investigation. Confessions in prayer, coupled as they are with descriptions of suffering, also remind God of the duress that has brought them about. The speakers confess, but do not give up their positions as sufferers. In a sense, then, confessions as we find them in prayer are not just a means of justifying God, but are also a form of muted protest.^{xx} By confessing, the speakers hope to end God's investigation and, with that, their suffering. At the same time, the conventions of prayer allow the speakers to leave a record of their pain, even as they admit wrongdoing. Thus, they give voice to their anger, or at least ambivalence, about the legal process that has led them to confess.

To conclude, I return to the question I raised in the beginning: why confess in prayer? My presentation today has answered this question by reading confessional prayers through the lens of the adjudicatory process. Biblical and ancient Near Eastern sources show how confession could mitigate a sentence or end torturous investigations. Confessions in prayer, then, belong to the broader conception of prayer as a plea before the divine court. In prayers, confessions do much more, or perhaps less, than re-establish a relationship between speakers and gods. Instead, they are nothing less, or perhaps nothing more, than a legally effective maneuver calculated to ensure the petitioners' successful day in court.

ⁱ David A. Lambert, *How Repentance Became Biblical: Judaism, Christianity, and the Interpretation of Scripture* (Oxford: Oxford University Press, 2016), 64. Compare F. Rachel Magdalene, *On the Scales of Righteousness: Neo-Babylonian Trial Law and the Book of Job* (BJS 348; Providence: Brown University, 2007), 132–133 n. 18.

ⁱⁱ Lambert, *Repentance*, 56.

ⁱⁱⁱ Lambert, *Repentance*, 62.

^{iv} Lambert, *Repentance*, 65.

^v Lambert, *Repentance*, 62.

^{vi} Lambert, *Repentance*, 62.

^{vii} For an edition, with complete bibliography and discussion, see Charles Halton, "An Eršahunga to Any God," in *Reading Akkadian Prayers and Hymns: An Introduction* (ed. Alan Lenzi; Ancient Near Eastern Monographs 3; Atlanta: Society of Biblical Literature, 2011), 447–464.

viii Compare the similar, much longer catalogue of confessed misdeeds in Reiner, Šurpu, II.5–103.

ix See Magdalene, *Scales of Righteousness*, 13–25.

x Magdalene, *Scales of Righteousness*, 130.

xi Mariano San Nicolò, "Parerga Babylonica XI: Die *maš'altu*-Urkunden im neubabylonische Strafverfahren," *ArOr* 5 (1933):287–302. Additional literature on this subject can be found in Magdalene, *Scales of Righteousness*, 76–77 n. 95.

xii E.g., AnOr 8, 27:4–5; YOS 7, 10:1–5.

xiii Examples are collected in CAD, *ramanu* f3' (R, 125).

xiv Sachs-Hunger, *Diaries*, 168:A15'–A20'.

xv Magdalene, *Scales of Righteousness*, 129–136.

xvi A key difference, of course, between the situations is that, rather than confess, Job seeks to defend himself. See Magdalene, *Scales of Righteousness*, 136–198.

xvii Job's case is unique not only for this reason. The circumstances of Job's investigation also make its purpose different, because the goal is an act of blasphemy, rather than a confession of guilt (Magdalene, *Scales of Righteousness*, 132 n. 18).

xviii Lambert, *Repentance*, 67.

xix For other direct and implicit references to the nation's suffering in similar prayers in the Hebrew Bible, compare Psalm 106:47; Daniel 9:16; Ezra 9:7.

xx See Robert Williamson, Jr., "Lament and the Arts of Resistance: Public and Hidden Transcripts in Lamentations 5," in *Lamentations in Ancient and Contemporary Cultural Contexts* (ed. Nancy C. Lee and Carleen Mandolfo; Atlanta: Society of Biblical Literature, 2008), 76; Walter J. Harrelson, "'Why, O Lord, Do You Harden Our Heart?' A Plea for Help from a Hiding God," in *Shall Not the Judge of All the Earth Do What Is Right?: Studies on the Nature of God in Tribute to James L. Crenshaw* (ed. David Penchansky and Paul L. Redditt; Winona Lake, IN: Eisenbrauns, 2000), 171–172; Richard J. Bautch, "Lament Regained in Trio-Isaiah's Penitential Prayer," in *Seeking the Favor of God: Volume 1, The Origins of Penitential Prayer in Second Temple Judaism* (ed. Mark J. Boda, Daniel K. Falk, and Rodney A. Werline; SBLEJL 21; Atlanta: Society of Biblical Literature, 2006), 93–95. On the particularly muted nature of the protest in Neh 9, as compared to communal laments, see Dalit Rom-Shiloni, "Socio-Ideological Setting or Settings for Penitential Prayers?" in *Seeking the Favor of God: Volume 1, The Origins of Penitential Prayer in Second Temple Judaism* (ed. Mark J. Boda, Daniel K. Falk, and Rodney A. Werline; SBLEJL 21; Atlanta: Society of Biblical Literature, 2006), 66–67.