A Common Set of Trial Terms

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The purpose of this article is to draw on the formulation of Neo-Babylonian trial records in order to identify a linguistically and conceptually parallel set of trial terms in Dtn 17:4, Jer 8:6 and Job 5:27. The Hebrew and Akkadian texts provide evidence for a common convention of trial description. According to this convention, trials begin with a spoken report, followed by "hearing", all of which result in "established" facts.

The individual words that make up the set all normally have non-legal meanings in Hebrew and Akkadian: speaking (Hebrew *d-b-r*, *n-g-d*; Akkadian *qabû*), hearing (Hebrew *š-m-ʿ*; Akkadian *šemû*), and establishing (Hebrew *k-w-n;* Akkadian *kânu*). Therefore, each individual word, on its own, need not refer to a legal procedure. Only contextual factors, including the very collocation of the terms, point to the words' legal nuances. Biblicists have, in fact, successfully identified the legal meanings of all of the verbal elements in the set,[2] and have even related the three Hebrew verses to each other in discussions of trial terminology.[3] Assyriologists, for

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1 The findings in this article were presented at the Yeshiva College Jewish Studies Faculty Colloquium, a session on Biblical Law at the 2010 annual meeting of the Society of Biblical Literature in Atlanta, and at a seminar at the University of Pennsylvania's Department of Near Eastern Languages and Civilizations. Thanks are due to the members of the audiences at all these venues for their stimulating reactions. Professors L. Fitzgerald, G. Rendsburg, J. Stackert, B. Wells and A. Holtz, the author's father, all read previous drafts and made helpful comments. The final version was greatly improved by F. R. Magdalene's thorough critique. Translations are the author's own, made in consultation with published ones.

2 In addition to dictionary entries for the terms and commentaries on the verses themselves, see the relevant references in the index to P. Bovati, Re-Establishing Justice: Legal Terms, Concepts and Procedures in the Hebrew Bible, trans. M. J. Smith, JSOT.S 105, Sheffield 1994, 465–478 and F. R. Magdalene, On the Scales of Righteousness: Neo-Babylonian Trial Law and the Book of Job, BJS 348, Providence, R. I. 2007, 116; 159; 194–195 (on *d-b-r* and *n-g-d*); 120–121; 166; 195 (on *š-m-ʿ*); 206 (on *k-w-n*). For additional observations on *š-m-ʿ*, in particular, see H. Cazelles, Institutions et terminologie en Deut. i 6–7, in: G.W. Anderson, et. al. (eds.), Volume du congrès: Genève 1965, VT.S 15, Leiden 1966, (97–112), 110; M. Weinfeld, Deuteronomy and the Deuteronomic School, Oxford 1972, 245–247; and M. Malul, Knowledge, Control and Sex: Studies in Biblical Thought, Culture and Worldview, Tel Aviv-Jaffa 2002, 196–197.

3 Bovati considers Jer 8:6 and Job 5:27 together with Dtn 17:4 as illustrations of how "the conclusion of the investigation brings out the concept of true and false" (Bovati, Re-Establishing Justice, [above n. 2], 252–253). Bovati does not, however, address the broader trial pattern in the biblical or extra-biblical material.

their part, have made similar observations regarding the specifically legal meanings of each of the terms in Akkadian.[4] This essay breaks new ground by showing the connections between the available data. Thus, it hopes to furnish a new, comparative argument that will solidify the conclusions of earlier scholarship.[5]

I. Methodological Overview: Context, Clustering and the Value of Comparison

In any language, an otherwise common word can acquire a specific, at times even technical, meaning by appearing in a legal context.[6] Thus, for example, the Hebrew verb *š-m-ʿ*, normally "to hear", refers, in a legal context like Dtn 1:16–17, to the process of conducting a hearing. In these verses Moses commands the judges to conduct fair legal hearings, rather than simply to listen, even though the judges will definitely hear what litigants say to them or before them.[7]

However, because the word that the legal context transforms has currency elsewhere in the language, one must always reckon with the basic, non-legal meaning, even in forensic settings. Returning to the example of *š-m-ʿ,* one might ask, when is hearing just an act of perception, and when does it refer to a formal procedure of "conducting a hearing"? Clearly, the root retains its sensory meaning even when it refers to the legal procedure; the judges will actually hear even as they conduct the hearing. But this leads directly to the problem: just because the verb can have a forensic nuance does not mean that it must. Without additional evidence, one risks misinterpreting texts by burdening them with technical legal meanings they may not actually have.

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4   In addition to the entries in AHw and CAD, see the relevant references in the indexes to E. Dombradi, Die Darstellung des Rechtsaustrags in den altbabylonischen Prozessurkunden, FAOS 20, Stuttgart 1996, Vol. 2, 363–366 and S. E. Holtz, Neo-Babylonian Court Procedure, Cuneiform Monographs 38, Leiden 2009, 334–335.

5   Comparative evidence has been brought to bear on the forensic interpretations of the individual components of the sequence. For example, regarding the verb *š-m-ʿ* in the Hebrew Bible, see Cazelles, Institutions et terminologie (above n.2), 109–111; Weinfeld, Deuteronomy (above n. 2), 245–247; and idem, Judge and Officer in Ancient Israel and in the Ancient Near East, Israel Oriental Studies 7, 1977, (65–88), 80. Cazelles includes Neo-Babylonian material in his list of Akkadian parallels, but does not engage it beyond this listing (Institutions et terminologie, [above n.2], 110, n. 1).

6   R. Westbrook suggests the analogy of "a new set of clothes". R. Westbrook, A Matter of Life and Death, in: B. Wells / F. R. Magdalene (eds.), Law from the Tigris to the Tiber: The Writings of Raymond Westbrook, Winona Lake, Ind. 2009, Vol. 2, (251–264), 255; repr. from JA-NESCU 25 (1997).

7   The absence of a direct quotation, a general term for speech (e.g., *dibrê*), or any other description of a perceivable sound confirm this interpretation. The rare use of *bên* in Dtn 1:16 (compare Jud 11:10) is another grammatical factor that contributes to the judicial interpretation, as noted by Cazelles, Institutions et terminologie (above n. 2), 110.

Matters become even more complicated when, unlike in Dtn 1:16–17, direct references to judges and legal claims are absent, all the more so when the purported legalisms pertain to the court in heaven, where litigation necessarily takes on a supernatural, or even metaphoric, character. Again, with *š-m-ʿ* as an example, should the juridical interpretation apply to descriptions of how God "hears the cries" of an oppressed Israel (e.g., Exod 2:23–25; Dtn 26:6–9) or prayers in which the speakers say that God "hears" (e.g., Ps 18:7)?[8] Along similar lines, when speakers address their audience, either human or divine, with a command to "hear", does this necessarily indicate that they are convening a court or demanding a ruling?[9]

Carol A. Newsom, in a discussion of legal terminology in the Book of Job, formulates the problem as follows:

> Though Job on occasion uses unmistakably technical legal expressions, much of the language in question is at home both in legal and more general discourse. Context or the clustering of terms may suggest a legal nuance, but the reader often must make an active judgment whether to hear legal overtones or not.[10]

Newsom's observations are useful not only for their clear statement of the challenge, but also for recognizing the value of "clustering of terms" as an interpretive guide. Recognizing that Dtn 17:4, Jer 8:6 and Job 5:27 all contain similar clusters of otherwise common words suggests that the legal nuances of these words apply in all three verses. All three verses use the set of terms – speech, hearing, establishing – to describe the adjudicatory process, rather than just actions in a series.

The Hebrew data this essay considers, even when viewed without comparative evidence, certainly point to the forensic interpretation of the cluster of terms. The argument based on clustering becomes even stronger, however, when one can identify a parallel cluster of terms in the Neo-Babylonian trial records. The Akkadian texts advance the argument in two ways. First, they eliminate the problem of establishing a clearly forensic context. Arguably, trial records furnish the most explicit legal context available; they allow one to observe the legal language "in action", in the descriptions of "real-life" trials.[11] The use of otherwise neutral terms to describe trial procedures confirms the forensic reading of similar terms in Hebrew. Second, against the background of the Akkadian terms, the similar clustering in Hebrew emerges in high relief. There are Akkadian counterparts not only for each individual term's forensic usage, but also for the whole set of terms.

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8 For example, Bovati suggests that these verses are evidence of a "literary scheme that interprets the progress of history in a juridical and judicial manner" (Bovati, Re-Establishing Justice, [above n. 2], 324).

9 For a thorough discussion, see Magdalene, Scales of Righteousness, (above n. 2), 120–121.

10 C. A. Newsom, The Book of Job: A Contest of Moral Imaginations, Oxford 2003, 150.

11 For similar observations on the general value of the Neo-Babylonian texts, see B. Wells, The Law of Testimony in the Pentateuchal Codes, BZAR 4, Wiesbaden 2004, 3–4 and Magdalene, Scales of Righteousness (above n. 2), 3–4.

The results of comparing the Hebrew and Akkadian trial terminology are signific-ant beyond their value for clarifying the interpretation of the biblical verses. In the comparable sets of trial terms, one finds evidence for a common convention of trial description. This convention follows the likely order of events during a trial: first a spoken report that is "heard", followed by investigation leading to "established" facts. Nevertheless, given the long recognized relationships between biblical and Mesopotamian law, it would be wrong to attribute the similar formulations to chance developments. The shared, comparably positioned terminology suggests that these similarities stem from factors other than the simple needs of transcribing the process. It seems more likely that the similar trial descriptions derive from ancient Near Eastern legal tradition, which influenced not only the substance of law, but also its language, as well.[12]

II. The Trial Pattern: The Verbs *qabû, šemû* and *kânu* in Neo-Babylonian Decision Records

A number of Neo-Babylonian trial records, mostly associated with the courts of the royal judges, follow a basic, readily recognizable outline.[13] This outline reads as follows:

    I. Plaintiff's Statement

        A. Opening Clause (*qabû*)
        PN *ana* [AUTHORITIES] *iqbi umma*
        "PN said thus to [AUTHORITIES]"

        B. Quotation of plaintiff's statement

        C. Imperative to judges

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12 The available data militate against seeing more direct influence of Neo-Babylonian legal formu-lations on the Hebrew Bible's trial descriptions. In this regard, too, the situation is analogous to matters of the law's substance. B. Wells, writing about testimony law, has correctly observed that the existence of Neo-Babylonian parallels to pentateuchal laws does not imply that the laws date to the Neo-Babylonian period. See Wells, Testimony (above n. 11), 158–167. The idea of a long-standing common legal tradition is most directly associated with the writings of R. Westbrook, which are conveniently summarized, with important references, in B. Wells, In-troduction: The Idea of a Shared Tradition, in Wells and Magdalene (eds.), Law from the Tigris to the Tiber (above n. 6), Vol. 1, xi–xx. Also see Magdalene, Scales of Righteousness (above n. 2), 31, with literature cited in n. 16.

13 Holtz, Court Procedure (above n. 4), 27–46. For discussion of the compositional patterns of comparable Old Babylonian legal records, see Dombradi, Darstellung (above n. 4), 33–160. For a convenient anthology of cuneiform lawsuit records from all periods, see F. Joannès (ed.), Rendre la justice en Mésopotamie: Archives judiciaires du Proche-Orient ancient (IIIe–Ier millé-naires avant J.-C.), Saint-Denis 2000.

II. Judicial Actions

 A. Opening Clause (*šemû*)
 dayyānū dibbīšunu išmû
 "The judges heard their arguments."

 B. Judicial review of evidence

 C. Closing Clause (*mitluku*)
 imtalkū
 „They deliberated."

 D. Decision

III. Details of documentation – names of judges and scribe, place of composition, date.

In each of the first two sections of this outline, formulaic clauses, common to more than one case, frame the record of each particular case's details. The plaintiffs' speeches, in which they state their particular complaints, are introduced by the verb *qabû* ("to say") and conclude with a standard imperative to the judges. Similarly, the records of the judicial actions, which vary from case to case, regularly begin with the verb *šemû* ("to hear") and conclude with the verb *mitluku* ("to deliberate").

The following example (Strassmaier, Nabon. n. 13) illustrates the appearance of the fixed outline elements alongside the variable elements specific to the case:[14]

> (1–3) Bēlilitu, daughter of Bēl-ušēzib descendant of Ša-nāšīšu said thus to the judges of Nabonidus, king of Babylon (*a-na* ^{lu2}DI.KU$_5$.MEŠ *ša$_2$* ^{md}NA$_3$-*na-ʾ-id* LUGAL TIN.TIR^{ki} *taq-bi um-ma*):
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> (3–5) "In the month of Abu, in the first year of Neriglissar, king of Babylon, I sold my slave, Bazuzu, to Nabû-aḫḫē-iddin, son of Šulaya, descendant of Egibi for $^1/_2$ mina 5 šeqels of silver. He wrote a promissory note but did not pay the silver."
>
> (5–6) The king's judges heard (^{lu2}DI.KU$_5$.MEŠ *ša$_2$* LUGAL *iš-mu-ma*) and brought Nabû-aḫḫē-iddin and had him stand before them.
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> (7–8) Nabû-aḫḫē-iddin brought the contract which he contracted with Bēlilitu (indicating) that he had paid her the price of Bazuzu and showed (it) to the judges.
>
> (9–10) And Zērīya, Nabû-šumu-līšir and Etellu testified before the judges that their mother was paid the silver.

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14 For earlier literature on this text see C. Wunsch, Und die Richter berieten...: Streitfälle in Babylon aus der Zeit Neriglissars und Nabonids, AfO 44/45, 1997/1998, (59–100), 96. Also see B. Wells, Testimony (above n. 11), 180–182 and idem, What is Biblical Law?: A Look at Pentateuchal Rules and Near Eastern Practice, CBQ 70, 2008, (223–243), 240–241.

(10–11) The judges deliberated (^{lu2}DI.KU$_5$.ME *im-tal-ku-ma*). They decided that Bēlilītu must pay 1/2 mina 5 šeqels of silver, whatever she had claimed to be owed, and gave it to Nabû-aḫḫē-iddin.

The trial begins with the plaintiff, Bēlilitu, speaking (*qabû,* line 3), following which the authorities hear (*šemû,* line 5) and proceed to consider the evidence. Finally, they deliberate (*mitluku*, line 10) before reaching a decision. The variable procedures are embedded within the framework of the fixed elements. These include, in this case, the specifics of Bēlilitu's speech, the judges' "bringing" (*abālu*) of the defendant, Nabû-aḫḫē-iddin, his presentation of documentary evidence to the judges, and the plaintiffs' three sons' testifying (*kunnu*) against their mother's claim. Other texts include notices of interrogation *ša ʾ ālu*) or the administration of an oath.[15]

Before considering the possible implications of the framework elements *qabû* and *šemû*, some attention to the verb *kunnu* is in order, since it will figure in subsequent discussion of its cognate in Hebrew. As in legal texts from earlier periods, in the Neo-Babylonian texts the verb typically denotes the presentation of oral testimony.[16] In one Neo-Babylonian text, the corresponding G-stem verb *kânu* indicates that, upon the examination of the relevant documents, a certain fact has indeed been "established" before the judges (*maḫaršunu ikūn*).[17]   Admittedly, this particular usage of the G-stem is apparently unique. Even so, it shows that the verb *kânu* denotes the result of the presentation of evidence to the authorities. This, in turn, explains the particularly legal usage of the more common verb *kunnu,* the D-stem derivative of *kânu*. When evidence has been presented, the case "is established" (*kânu*); the individual who testifies or otherwise presents evidence "establishes" the case (*kunnu*).[18]

The verb *kunnu*'s procedural connotation in the Neo-Babylonian decision records is thus quite obvious. In contrast, assigning procedural meanings to the framework verbs *qabû* and *šemû* might seem unnecessary. The verb *qabû* is a natural introduction for the quotation of the plaintiff's speech, and following that quotation with the verb *šemû* is just as natural: the parties "speak" and the judges "hear" what they say. Nevertheless, the occurrence of these two verbs in the context of the trial records suggests that they refer to more than just speech and hearing. Moreover, the notice of the judge's "hearing" is superfluous, since the introductory statement already records the addressees as the indirect object of the verb *qabû*. If the plaintiff speaks

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15 For discussion of these procedures, see Holtz, Court Procedure (above n. 4), 223–253.
16 CAD *kânu* A4a (K, 168–169).
17 S. Dalley, A Catalogue of the Akkadian Cuneiform Tablets in the Collections of the Royal Scottish Museum, Edinburgh, With Copies of Texts, Royal Scottish Museum Art and Archaeology 2, Edinburgh 1979, No. 69: 24–26.
18 See Holtz, Court Procedure (above n. 4), 241–242. For the contrast with modern systems, where judges, rather than witnesses, perform this role, see R. Westbrook, Review of Dombradi, Darstellung (above n. 4), Or. 68, 1999, (122–127), 123.

to the judges, then noting that the judges hear adds nothing of substance to the legal record.

In light of these considerations, it makes sense to interpret the verbs *qabû* and *šemû* as procedural terms. The verb *qabû* would then refer to the procedure of complaint before the judges. It marks the formal opening of the trial in court.[19] Similarly, the verb *šemû* would mark the end of the initial arguments before the judges, when they would consider the arguments before proceeding to gather evidence.[20]

If, indeed, the procedural interpretation of these framework elements is correct, then these terms indicate that "hearing" and "speaking" were specific processes that preceded the evaluation of evidence. When these terms occur, albeit in the context of the framework, they indicate that the litigants and the adjudicators carry out specific, perhaps even required, actions. But even if the fixed elements do not add any new procedural information about what transpires during the trials, they remain valuable, especially for comparative study. These formulaic components provide information about what the official version of a trial – the version recorded on clay – was supposed to look and sound like. By studying them, one gains insight into ancient conventions of legal rhetoric.

Considered together, the verbs *qabû, šemû* and *kânu* constitute an overall trial pattern, either rhetorical or procedural, that defines the case's progress towards resolution. The verb *qabû* marks the beginning of this pattern, when the plaintiff speaks and the case opens. The verb *šemû,* the next signpost, marks the point at which the judges take over and the evidentiary procedures begin. Several actions can take place at this juncture, such as the presentation of testimony or interrogation. The overall purpose, as implied by the use of the verb *kunnu*, is to "establish" the case. Once this is achieved, the judges render their decision.

III. The Forensic Reading of Dtn 17:4

Dtn 17:2–7 govern the case of apostasy, "if a man or woman is found ... who goes and worships other gods" (2–3). The law prescribes death by stoning (5), but imposes explicit procedural guidelines on the authority that is to apply this penalty. The authority must conduct a thorough inquiry, which Dtn 17:4 describes as follows:

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19 Although the "narrative" of the decision records often begins with the plaintiffs' speeches, several texts (as well as simple logic) indicate that there have been prior, informal confrontations between the litigants. See Holtz, Court Procedure (above n. 4), 38–40; 224–232 and F. R. Magdalene / B. Wells / C. Wunsch, Pre-Trial Negotiations: The Case of the Runaway Slave in Dar 53, Iraq 70, 2008, 205–213. The existence of these pre-trial confrontations underscores the interpretation of the *qabû*-procedure as the formal opening of the actual trial.

20 The texts suggest as much, since the *šemû*-clause refers to "their arguments" (*dibbīšunu*) even though only the plaintiffs are usually quoted. This grammatical point indicates that all the arguments, including the defendants', are heard (Holtz, Court Procedure [above n. 4], 244).

4 וְהֻגַּד־לְךָ וְשָׁמָעְתָּ וְדָרַשְׁתָּ הֵיטֵב וְהִנֵּה אֱמֶת נָכוֹן הַדָּבָר
נֶעֶשְׂתָה הַתּוֹעֵבָה הַזֹּאת בְּיִשְׂרָאֵל:

> Then[21] he[22] shall be reported to you, and you shall hear, and investigate thoroughly. And (if) the matter turns out to be true (and) established, this abomination has (indeed) been committed in Israel ...

The verse addresses the authority with three verbs: *wěhuggad-lěkā wěšāmāʿtā wědāraštā hêṭeb*. The instructions require a three-staged process, with a separate verb for each. First, the apostate is accused before the authority: *wěhuggad lěkā*. The passive construction of the Hebrew does not identify the accusers, but one imagines that those by whom the suspect is "found" (v. 2) are the ones who address the authority. Then, the authority must "hear" (*wěšāmāʿtā*) or, if one admits the forensic interpretation, "conduct a hearing". Then, the authority must "investigate thoroughly" (*wědāraštā hêṭeb*). At this stage, the court might find the allegations to be either true or false. The law is concerned only with the former situation: the result of the hearing and the investigation is that the matter is "true" (*ʾĕmet*) and "established" (*nākôn*).[23] It is when the investigation has this outcome that the punishment is applied. If the matter turns out to be false, then the case is presumably dismissed.

When one reads Dtn 17:4 with the Neo-Babylonian texts in mind, one immediately recognizes that the biblical description of the apostasy trial follows the verbal pattern known from the Akkadian texts. Most striking, of course, are the occurrences of the verb *wěšāmāʿtā* and the adjective *nākôn*, which are etymologically cognate to Akkadian *šemû* and *kânu*. More significant than this linguistic relationship, however, are the positions of the two Hebrew words in the verse's account of the procedure. The verb *wěšāmāʿtā* follows the verb of speech *wěhuggad*, and denotes the "hearing" of the report just as, in the framework of the Neo-Babylonian decision records, the verb *šemû* follows the quoted statement introduced by the verb of speech *qabû,* and describes how the judges "hear" the initial arguments. Similarly, the adjective *nākôn* marks the result of the investigative procedures, much like the verb *kânu* does in the Akkadian texts. In short, the description of the apostasy trial in Dtn 17:4 comes very close to being a Hebrew equivalent of the Neo-Babylonian trials.

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21 For the identification of the law's apodosis at this point, see the discussion below.

22 Most English translations use the word "it", referring to the entire affair, as the subject of the verb. However, the subject of all the previous verbs in the law (vv. 2 and 3) is the "man" of v. 2. Furthermore, in Jer 20:10 an active form of the verb *n-g-d* takes a direct object. Dtn 17:4 is, according to the translation above, simply the passive equivalent: the object of the active construction is the subject of the passive form.

23 See Bovati, Re-Establishing Justice (above n. 2), 248–253 for discussion of these terms and others that refer to the result of the inquiry.

Detecting the trial pattern in Dtn 17:4 confirms recent scholarship's understanding of the purpose of the apostasy legislation in Dtn 17:2–7. According to this understanding, the law is not simply a prohibition against deviant cultic practices. Rather, its main purpose is to establish clear procedural directives for the prosecution of apostasy cases.[24] Comparison with the language of the Neo-Babylonian trial records shows that this procedural purpose is matched by the incorporation of procedural language.[25]

Apart from confirming the forensic reading of Dtn 17:4, comparison with the formulation of the Neo-Babylonian decision records also suggests a new solution to the problem of where the law's protasis, which would contain the circumstances of the case, ends, and where its apodosis, which would contain the instructions for action, begins.[26] The trials in the decision records begin with the plaintiff's statement, introduced by the verb *qabû*. Based on the parallels, the trial in Deuteronomy also begins with a verb of speech, albeit in the passive voice, *wĕhuggad-lĕkā*. If the purpose of the law is indeed to provide instructions for how to conduct an apostasy trial, then the apodosis of the law should naturally begin with these words.[27] This

24 Wells, Testimony (above n. 11), 102–103 and idem, The Cultic Versus the Forensic: Judahite and Mesopotamian Judicial Procedures in the First Millennium B.C.E., JAOS 128, 2005, (205–232), 222–223. Also see B. M. Levinson, Deuteronomy and the Hermeneutics of Legal Innovation, New York 1997, 118; E. Otto, Aspects of Legal Reformulations in Ancient Cuneiform and Israelite Law, in: B. M. Levinson (ed.), Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development, JSOT.S 181, Sheffield 1994, (160–198), 193–194 and idem, Das Deuteronomium: Politische Theologie und Rechtsreform in Juda und Assyrien, BZAW 284, Berlin 1999, 88–89; 248–249.

25 B. Wells relies on the Neo-Babylonian legal corpus as the basis for a comparative legal argument that confirms and clarifies the significance of the Dtn 17:2–7 as procedural legislation, especially regarding the preferred means of evidence. See Wells, Testimony (above n. 11), 86–103 and Wells, Cultic Versus Forensic (above n. 24). Wells, however, does not introduce the comparative evidence in his interpretation of the verse's wording.

26 For description of the problem, in general, see Wells, Testimony (above n. 11), 91–92 and R. D. Kunjummen, The Syntax of Conditionals in Deuteronomy and Translation of *wqatal* (Consecutive Perfects) (paper presented at the annual meeting of the Society of Biblical Literature, Boston, 25 November, 2008), n.p. [cited 14 October, 2010], http://www.biblicallaw.net /2008/kunjummen.pdf. A survey of the placement of the conjunction "then" in English translations of Dtn 17:3–5 sufficiently illustrates the difficulty: JPS and NJPS place it at the beginning of 17:4b, which describes the inquiry; KJV and NRSV place it at the beginning of 17:5, which describes the execution (also see Kunjummen, Syntax); Wells places it before the verb "you shall hear" (Wells, Testimony [above n. 11], 86; Wells, Cultic Versus Forensic [above n. 24], 222). He writes that "with [the word *wĕšāmāʿtā*] the apodosis begins, and the first instruction is given: reports of apostasy are to be heard as formal court testimony" (Wells, Testimony [above n. 11], 93).

27 This interpretation emerges directly from the Masoretic verse division: 17:2–3 contain the protasis and 17:4 contains the beginning of the apodosis. Furthermore, since the verbal phrase *wĕhuggad-lĕkā* contains the 2ms dative *lĕkā*, the switch back to second person, usually a marker of the apodosis, occurs here (see Wells, Testimony [above n. 11], 92–93, with literature cited there. Note that Wells does not take this 2ms dative into consideration). In making his argument for placing the apodosis at the word *wĕšāmāʿtā*, Wells also cites the evidence of

part of the verse is not simply a description of what happens before the judges step in to conduct their "hearing". Rather, like the verb *qabû* in the Neo-Babylonian texts, the verbal phrase *wĕhuggad-lĕkā* marks the beginning of the procedure with the formal report to the authorities.[28]   Only once a formal accusation has been lodged can the court proceed against the suspect.

To be sure, even without the comparative evidence, the legal-procedural interpretation of this verse has much to commend it and can be supported by references to other biblical texts. Nevertheless, the verse's use of terms that also have non-forensic meanings leaves room for debate regarding its forensic interpretation and, in turn, the entire passage's general import. This can be seen, for example, in differing interpretations of the verb *š-m-ʿ* in the verse. The procedural interpretation understands the verb to connote "the hearing of testimony by the presiding judges".[29] Others, however, have written that it "refers to public knowledge of the crime", rather than to a legal procedure.[30] Comparing the verse with the wording of the Neo-Babylonian records shows that this verb (and the other terms in the verse) cannot be viewed independently. Rather, all the terms are part of a set that describes the progress of trials. Clustering, together with comparison, are thus crucial in substantiating the procedural reading against a more general interpretation. The obvious similarities between the biblical law and the Neo-Babylonian records tip the balance in favor of a procedural interpretation.

Dtn 13:13–19, a similar law in which "the apodosis begins with the commencement of judicial proceedings and investigation", i.e., in Dtn 13:15 (Wells, Testimony [above n. 11], 93). The suggestion offered above does not contradict this possibility; it simply suggests that the description of the procedure begins with the report, rather than with the hearing. Note, however, that the sequence of verbs denoting investigation in Dtn 13:15 does not include the verb *š-m-ʾ*. In fact, the verb (in conjunction with the word *lē ʾmōr*) occurs only at the beginning of Dtn 13:13, and without a verb of speech that marks a formal report comparable to *wĕhuggad-lĕkā* in Dtn 17:4. The implications of this difference and, especially, the mandated report in Dtn 17:4, require further study. For now, it is sufficient to note that the "hearing" in Dtn 13:13 seems to be less formal than the "hearing" in 17:4. For detailed analysis of other differences between the laws, see Levinson, Deuteronomy and Hermeneutics (above n. 24), 98–137. Kunjummen, for his part, implies that the apodosis begins at 17:5, apparently based on the presence of the *wĕhinnê* clause, which "function[s] to report or present observations" as in Dtn 9:13, 16 and Dtn 22:17 (Kunjummen, Syntax [above n. 26]). This may indeed be the function of the *wĕhinnê* clause, but this does not explain why it must be part of the protasis rather than the apodosis. Note that in Dtn 9:13 and 9:16 the *wĕhinnê* clause follows the verb *r-ʾ-y*, comparable to the verbs for investigation in the laws.

28 See B. S. Jackson, Reflections on Biblical Criminal Law, JJS 24 (1973), (8–38), 33.
29 Wells, Cultic Versus Forensic (above n. 24), 223.
30 U. Rüterswörden, TDOT 8, 271. See also J. H. Tigay, Deuteronomy, The JPS Torah Commentary, Philadelphia 1996, 134; 368 n. 41; D. L. Christensen, Deuteronomy 1:1–21:9, Revised, Word Biblical Commentary, Nashville 2001, 369; M. E. Biddle, Deuteronomy, Macon, Ga. 2003, 283–284.

IV. Beyond Legislation: The Trial Pattern in the Divine Courtroom

The trial pattern is most clearly noticeable in the contexts of lawsuits conducted in human courts with human judges, such as the would-be trial for apostasy in Deuteronomy 17:4 or the actual trials recorded in the Neo-Babylonian texts. Thus, these contexts are the most natural starting points for a comparative study. However, as has long been noted, in ancient Near Eastern literature, including the Hebrew Bible, forensic discourse characterizes communication between humans and the divine realm.[31] Therefore, any study of Hebrew legal vocabulary must also examine the language of biblical lawsuits between God and humans. This section will consider Jer 8:6 and Job 5:27, in order to illustrate how identifying the trial pattern underscores the forensic interpretation of these verses.

In Jer 8:6, as part of a longer accusatory speech against Israel, God declares:[32]

הִקְשַׁבְתִּי וָאֶשְׁמָע לוֹא־כֵן יְדַבֵּרוּ

אֵין אִישׁ נִחָם עַל־רָעָתוֹ לֵאמֹר מֶה עָשִׂיתִי

> I have listened, and heard, they speak untruth,
> No one regrets his wickedness and says, "What have I done?"

The legal interpretation of this verse emerges quite clearly against the background of the trial description in Dtn 17:4 and the cognate pattern in the Neo-Babylonian texts. The verse's organization, with two verbs for hearing (*q-š-b,* C-stem and *š-m-ʿ,* G-stem) followed by the substantive *lôʾ-kēn,* certainly resembles the order of the elements in Dtn 17:4, where *š-m-ʿ* refers to the judicial hearing whose end result is *ʾĕmet nākôn haddābār.*[33] In Deuteronomy, hearing and investigation result in establishing a report as true, while in Jeremiah hearing determines that speech is false. Moreover, the verb *yĕdabbērû,* which complements the two earlier hearing

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31 In biblical studies, the most famous study is probably B. Gemser, The *Rîb-* or Controversy-Pattern in Hebrew Mentality, in: M. Noth / D. W. Thomas (eds.), Wisdom in Israel and in the Ancient Near East, VT.S 3, Leiden 1969, 120–137. For more recent overviews of this subject and important earlier literature on the Hebrew Bible as well as on Mesopotamian literature, see Magdalene, Scales of Righteousness (above n. 2), 13–25 and J. Y. Jindo, Biblical Metaphor Reconsidered: A Cognitive Approach to Poetic Prophecy in Jeremiah 1–24, HSM 64, Winona Lake, Ind. 2010, 75–133.

32 For discussion of the problems of identifying the speaker here and in the entire passage, see W. L. Holladay, Jeremiah 1: A Commentary on the Book of the Prophet Jeremiah Chapters 1–25, Hermeneia, Philadelphia 1986, 276–277; P. Craigie / P. H. Kelley / J. F. Drinkard, Jr., Jeremiah 1–25, Word Biblical Commentary 26, Dallas 1991, 132; and G. Fischer, Jeremia 1–25, Herders Theologischer Kommentar zum Alten Testament, Freiburg 2005, 333. For the identification of God as speaker, see Holladay, Jeremiah, 277–279 and Craigie, Kelley and Drinkard, Jeremiah, 132 (with references to earlier literature in both commentaries), as well as D. H. Bak, Klagender Gott – klagende Menschen: Studien zur Klage im Jeremiabuch, BZAW 193, Berlin, 1990, 169.

33 For discussion and rejection of the possibility that *ken* means "thus", rather than "truth", see Holladay, Jeremiah (above n. 32), 279.

verbs, can be compared to other verbs of speech that begin the trial pattern. In Jer 8:6, Israel's speaking precedes God's hearing, at least logically, even though the speech verb in the verse appears after the hearing verbs.[34]

In Jer 8:6, then, one finds a prophetic adaptation of the conventional trial description. In "hearing", God has acted as judge, who, during the proceedings, concludes that Israel "speaks untruth". The impending destruction, described in the rest of the chapter, is the trial's outcome. With due process served, and Israel found guilty – and unrepentant, to boot – punishment is inevitable.[35]

Job 5:27, the other verse in which the trial pattern may be detected, closes Eliphaz's first speech to Job. It reads:

הִנֵּה־זֹאת חֲקַרְנוּהָ כֶּן־הִיא שְׁמָעֶנָּה וְאַתָּה דַע־לָךְ:

> This, then, is what we have investigated; it is true!
> Hear it, and know for yourself!

The forensic interpretation emerges when one considers the verb *ḥ-q-r* together with the adjective *ken*. As a result, the verse exhibits part of the trial pattern: the investigation, like the one in Dtn 17:4, yields an established, true fact.[36] Eliphaz uses the pattern to indicate that he has participated in this legal procedure against Job. Eliphaz ends his first speech by disclosing that he has based his condemnation of Job on the hard evidence that he, as an investigator, has gathered.[37] Eliphaz will rely on this evidence to impeach Job's own arguments against God.[38]

Identifying the phrase *ḥaqarnûhā ken-hī ʾ* as trial language allows one to include the verse's use of *š-m-ʿ* in the trial pattern, as well. In doing so, it should be noted that while MT has a G-stem imperative form addressed to Job ("Hear it!"), LXX seems to have a first-person plural G-stem perfect form ("We have heard it"; *šĕmaʿănuhā*).[39] In LXX, the verb *š-m-ʿ* refers to an action that Eliphaz and his

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34 Note that in Jer 8:6 the phrase *lôʾ-kēn yĕdabbērû* is the only reference to an audible utterance. The remainder of the verse describes what should have been said, but, to God's disappointment, was not.

35 One consequence of this interpretation is that Jer 8–9 follow what Jindo identifies as the "general script of the destruction model", which has, "three main stages or scenes: (1) JUDICIAL DECISION/ LAWSUIT; (2) DESTRUCTION/ WARFARE; (3) LAMENTATION/ AFTERMATH" (Jindo, Biblical Metaphor [above n. 31], 78). Jindo identifies this model as part of the "global metaphor" that is a key to understanding the coherence of Jer 1–24 (Jindo, Biblical Metaphor [above n. 31], 71–147). Further research should explore how individual prophecies might function as microcosms of the global metaphor.

36 The use of *ḥ-q-r* brings Job 5:27 even closer, in terms of phrasing, to Dtn 13:15, which describes an investigative process very similar to the one in Dtn 17:4. See A. Ḥakham, Sēper ʾIyyob, Jerusalem 1970, 45 (Hebrew).

37 Magdalene, Scales of Righteousness (above n. 2), 206.

38 See Magdalene, Scales of Righteousness (above n. 2), 199; 212. For the overall interpretation of the dialogue between Job and his friends as reflections of preliminaries to the trial itself, see Magdalene, Scales of Righteousness (above n. 2), 190–246.

39 For discussion, see E. Dhorme, A Commentary on the Book of Job, trans. H. Knight, London

companions have performed prior to reaching the conclusion that "it is true". According to this version, then, Job's interlocutors follow procedures similar to those detailed in Dtn 17:4; in addition to investigating and establishing the facts, they also "hear". In MT, on the other hand, Job, rather than Eliphaz and company, is the subject of the verb *š-m-ʿ*. Since the verbs *ḥ-q-r* and *š-m-ʿ* do not share a subject, *š-m-ʿ* appears to have no connection to *ḥ-q-r* or to any sequence of forensic actions. Nonetheless, the verb *š-m-ʿ*'s very presence in the verse recalls its significance in the trial pattern and raises the possibility of reading MT's version with the pattern in mind. Accordingly, even as the verb marks the change of subject from Eliphaz to Job, it also seems to imply that the interlocutors themselves have already "heard". Eliphaz orders Job to begin the same process that Eliphaz himself has already completed. The start of this process is "hearing", and the end, Eliphaz hopes, will be that Job reaches the same conclusions as he has.

It is important to emphasize that, in both Jer 8:6 and Job 5:27, it is the constellation of words, rather than any particular word, that points the way to the forensic reading. Because the component terms, on their own, have non-legal meanings, reading the verses as descriptions of a divine trial is not immediately obvious. In Jer 8:6, God's statement that he has "listened and heard" need not mean that God, as divine Judge, has "conducted a hearing", and God's conclusion that the Israelites "do not speak truth", does not immediately imply that they have committed perjury. Likewise, in Job 5:27, the verb *ḥ-q-r*, on its own, does not necessarily require a legal interpretation;[40] it is the presence of *ken-hī* that leads in the forensic direction. The inner-biblical and extra-biblical evidence indicate that the otherwise neutral terms belong together as part of a trial pattern. This pattern, in turn, compels the forensic reading of both verses.

V. Conclusions

By examining Dtn 17:4, Jer 8:6 and Job 5:27 in light of the composition of Neo-Babylonian trial records, this article has identified a shared set of trial terms in the

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1967, 73–74.

40 According to N. Habel, the verb is indeed a technical term but belongs to the vocabulary of wisdom, rather than the lawcourt (N. Habel, The Book of Job: A Commentary, OTL, Philadelphia 1985, 137. Habel's interpretation is especially noteworthy, given his tendency elsewhere to "maximize the legal connotations of the Hebrew text" [Newsom, Book of Job (above n. 10), 150]). For studies of the semantic range of the verb, see J. K. Aitken, Lexical Semantics and the Cultural Context of Knowledge in Job 28, Illustrated by the Meaning of *ḥāqar*, in: E. Van Wolde (ed.), Job 28: Cognition in Context, Leiden 2003, 119–137 and P. J. P. Van Hecke, Searching for and Exploring Wisdom: A Cognitive-Semantic Approach to the Hebrew Verb *ḥāqar* in Job 28, in the same volume, 139–162. Aitken assigns the meaning "to examine an idea for its worth" to the usage of the verb in Job 5:27, which is separate from "to examine a charge to determine it validity" (Aitken, Lexical Semantics, 130). Professor A. Koller's assistance with the reference to this volume is gratefully acknowledged.

Hebrew Bible. In both Akkadian and Hebrew, trial descriptions include verbs of speech and hearing, which result in "established" facts. While individual terms in the set have well-attested non-legal meanings, the clustering of these common terms establishes their forensic nuances.

Each of the three verses studied closely here, Dtn 17:4, Jer 8:6 and Job 5:27, contains more than one element of the cluster. Thus, the legal interpretation of any particular Hebrew term in the cluster is supported by three strands of evidence: its occurrence alongside other Hebrew terms, the legal usage of a cognate or semantically related term in Akkadian, and the existence of the parallel cluster in Akkadian, overall. In these three verses, at least, the otherwise neutral terms should be assigned forensic meanings.

The value of the comparative argument, however, extends beyond these particular verses. One can invoke it to support forensic readings of the terms in the cluster, even when they occur without other elements. In these cases, the comparative material from Akkadian and the available parallel examples in Hebrew confirm an interpreter's intuition in detecting legal nuances.