

A Comparative Note on the Demand for Witnesses in Isaiah 43:9

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Recent studies have demonstrated the particular value of Neo-Babylonian litigation records for elucidating matters of law in the Hebrew Bible, both in actual legislative passages and in Job's metaphoric lawsuit.¹ The Akkadian records attest to the workings of actual courts of law, and thus furnish a crucial supplement to the relative dearth of Israelite sources on court procedure.² The purpose of this brief communication is to point to a parallel between the Neo-Babylonian litigation corpus and an apparent legalism in Second Isaiah. The existence of this parallel anchors Isaiah's well-known courtroom scenes in a contemporary legal reality. The imaginary legal situations are known from actual legal texts, and Isaiah's language could well have been language used in an ancient court.

Isaiah 43:9–13 forms a court scene that describes the case between God and

It is my privilege to dedicate this note to my teachers, Professors Barry Eichler and Jeffrey Tigay. Versions of this note were presented at a session in their honor at the 2008 annual meeting of the Association for Jewish Studies in Washington, D.C., as well as in a lecture at the University of Chicago Divinity School in February 2009. I am grateful to the audiences at both these forums for their comments, as well as to my father, Professor Avraham Holtz, who read earlier drafts. Abbreviations of references to Assyriological material follow *CAD*, P, vii–xxvii.

¹ On the legislative material, see Bruce Wells, *The Law of Testimony in the Pentateuchal Codes* (Beihefte zur Zeitschrift für Altorientalische und Biblische Rechtsgeschichte 4; Wiesbaden: Harrassowitz, 2004). The study of Job is F. Rachel Magdalene, *On the Scales of Righteousness: Neo-Babylonian Trial Law and the Book of Job* (BJS 348; Providence: Brown Judaic Studies, 2007).

² Wells, *Law of Testimony*, 3–4; and Magdalene, *Scales of Righteousness*, 3–4. In another context, Wells aptly notes that all (not only Neo-Babylonian) ancient Near Eastern legal documents of practice (rather than so-called law codes) allow for “a process of reasoning from the known to the unknown” (“What Is Biblical Law? A Look at Pentateuchal Law and Near Eastern Practice,” *CBQ* 70 [2008]: 231–32).

the foreign nations regarding the question of “proof of prediction.”³ In 43:9, the prophet, speaking on behalf of YHWH, challenges the nations as follows:

כל־הגוים נקבצו יחדו ויאספו לאמים מי בהם יגיד זאת וראשנות ישמענו
יתנו עדיהם ויצדקו וישמעו ויאמרו אמת

All the nations assemble, let peoples gather!
Who among them can proclaim this? Let them foretell us first things!
Let them produce their witnesses, so that they may be vindicated,
Let them hear, and declare, “It is true.”

The second half of the verse records a demand for the nations’ witnesses, phrased in the third person: יתנו עדיהם ויצדקו (“Let them produce their witnesses, so that they may be vindicated”). Although one might identify an ironic, dismissive tone in this phrase, Claus Westermann characterizes it as part of an actual, earnestly spoken “summons” (*Vorladung*); the nations are offered an opportunity to vindicate themselves by producing witnesses.⁴ In the end, the summons goes unanswered and the nations’ cause remains without support.⁵ YHWH, on the other hand, is able to support his position by presenting the Israelites, who serve as witnesses (43:10, 12).

For parallels to the demand for witnesses in Isa 43:9, one may point to several Neo-Babylonian texts that require the presentation of witnesses to establish a claim. These texts usually begin with the phrase U₄ X-kam₂ ša₂ ITI Y PN₁ mukinnēšu ibbakamma ana PN₂ ukân . . . (“On day X of month Y, PN₁ shall bring his witnesses and prove, against PN₂, that . . .”).⁶ This clause ends with a record of the charge that the summoned individual (PN₁) must prove against the opposing party (PN₂).⁷ At

³ Anton Schoors, *I Am God Your Saviour: A Form-Critical Study of the Main Genres in Is. XL–LV* (VTSup 24; Leiden: Brill, 1973), 224. For general discussion of this passage, see, in addition to serial commentaries, Joachim Begrich, *Studien zu Deuterocesaja* (1938; repr., TB 20; Munich: Kaiser, 1963), 46–48; Menahem Haran, *Between Riʿshonôt (Former Prophecies) and Ḥadashôt (New Prophecies): A Literary-Historical Study in the Group of Prophecies Isaiah XL–XLVIII* (in Hebrew; Jerusalem: Magnes, 1963), 46; Schoors, *I Am God*, 222–27; and John Goldingay, *The Message of Isaiah 40–55: A Literary-Theological Commentary* (London/New York: T&T Clark, 2005), 197–205. For examination of the relationship of Isa 43:8 to this pericope, see John Goldingay and David Payne, *A Critical and Exegetical Commentary on Isaiah 40–55* (ICC; London/New York: T&T Clark, 2006), 280, 283.

⁴ Claus Westermann, “Sprache und Struktur der Prophetie Deuterocesajas,” in *Forschung am Alten Testament: Gesammelte Studien* (2 vols.; TB 24, 55; Munich: Kaiser, 1964, 1974), 1:136–37.

⁵ Goldingay, *Message*, 199.

⁶ For general discussion of this type of text, see Shalom E. Holtz, *Neo-Babylonian Court Procedure* (Cuneiform Monographs 38; Leiden: Brill, 2009), 133–43. Examples include Nbk 361, 363, 365, 366, 419; OIP 122, 34; YOS 7, 192.

⁷ The use of the term “summoned individual” assumes that these texts functioned as a type of summons. According to Wells, they are actually “conditional verdicts” that require a defendant

the level of formulation, one should note the following three parallels between the Hebrew and the Akkadian: (1) the expression of the demand is in the third person (rather than in the imperative); (2) the term for witnesses is followed by a possessive suffix that refers to the named individual (Heb. יהו -, Akk.- šu); and (3) both employ verbs (יתנו , *ibbakamma*)⁸ that, together with the possessive suffixes just noted, suggest that the summoned individual must arrange for the witnesses to appear before the court. These similarities, however, are not strong enough to point to any inherent connection between the texts. Since courts in all places and at all times rely on witnesses to prove cases, it is entirely possible that Isaiah's heavenly court and its Neo-Babylonian counterparts on earth would have arrived, independently, at similar expressions of the same requirement.

If, however, one looks beyond the similarly worded demands, one finds that the Neo-Babylonian records do furnish a situational parallel to Isa 43:9. The Akkadian documents regularly include penalty clauses that govern both success and failure in proving the case. In some texts, failure to prove the case results in a penalty imposed on the summoned individuals themselves. This implies that the summoned individuals have raised the claim against the opposing party in order to clear themselves. If they do not prove their case, they are responsible for the penalty. If they do succeed, the opposing party must make the payment and the summoned individuals are clear.

This situation may be illustrated by examining Nbk 366. The text, pared down to its basic elements, reads as follows:⁹

*a-di U₄ 1-kam₂ ša₂ ITI GAN^{mPN₁} lu²mu-kin-ne-e-šu₂ a-na^{uru}u₂-pi-ia
 ib-ba-kam₂-ma
 a-na^{mPN₂} u₂-kan-ni ša₂. . .
 ki-i uk-tin-nu-uš za-ki
 ki-i la uk-tin-nu-uš a-ki-i u₂-il₃-tim
 ŠE.BAR u HAR.RA-šu₂ a-na^{mPN₂} it-ta-din*

By 1 Kislimu, PN₁ shall bring his witnesses to Opis and prove, against PN₂, that . . . If he [PN₁] proves (the case) against him [PN₂], then he [PN₁] is clear. If he [PN₁] does not prove (the case) against him [PN₂], then he [PN₁] shall pay PN₂ barley and its interest in accordance with the debt note.

(PN₁, the "summoned individual") to present a corroborating witness in order to avoid a penalty (*Law of Testimony*, 108–26, esp. 123–24). For additional discussion, see Holtz, *Court Procedure*, 162–65. The specific function of the text does not affect the suggested parallel to the biblical formulation.

⁸ The verb *paqādu* is used in a similar manner in Nbk 183:4.

⁹ For discussion of the particulars of this text, see J. Kohler and F. E. Peiser, *Aus dem babylonischen Rechtsleben* (Leipzig: E. Pfeiffer, 1890–98), 1:12–13; Paul Koschaker, *Babylonisch-assyrisches Bürgschaftsrecht: Ein Beitrag zur Lehre von Schuld und Haftung* (Leipzig: Teubner, 1911), 46–48; and Wells, *Law of Testimony*, 176–78.

A dispute between two men, PN₁ and PN₂, about a debt of barley lies in the background of this text. PN₁ is the guarantor of a debt owed to PN₂ by a third individual. PN₂ has apparently attempted to collect the debt from this third individual but has not met with success. Thus, PN₂ has turned to PN₁, the guarantor, in order to collect. In the wake of PN₂'s demand for payment, PN₁ has claimed that the debt has been properly paid,¹⁰ in order to avoid payment. This text is issued as a response to PN₁'s claim. The text requires PN₁ to present witnesses in the city of Opis by a particular date. It goes on to state that if PN₁ is successful, he will be "clear" (*zaki*). If, however, PN₁ is not successful, then he must fulfill his duty as guarantor of the debt and repay PN₂.

The situation of the nations in Isa 43:9 is similar to that of PN₁ in Nbk 366.¹¹ By producing their witnesses, they may be vindicated. In terms of the texts themselves, the Hebrew phrase יתנו עדיהם corresponds to the Akkadian *mukinnēšu ibbakamma*, while the word ויצדקו corresponds to the word *zaki*. These correspondences are too general to demonstrate that the Hebrew and the Akkadian are directly linked in any way. Nevertheless, the existence of analogues to the verse's metaphoric situation from actual legal texts suggests that the verse is modeled on just this kind of legal action. If so, then it is only a small step to confirming that Isa 43:9 incorporates the terminology that would have been used by an actual court of law.

Apart from clarifying the general legal situation imagined by the metaphor in Isa 43:9, the identification of the parallel provides insight into the reading of the verse. Specifically, the verb וַיִּצְדָּקוּ (*wəyisḏāqū*) has been called into question. Although there is good Hebrew evidence in favor of the Masoretic pointing, Joachim Begrich and others have proposed that instead of the MT's G-stem form, the text should be repointed to וַיִּצְדִּיקוּ (*wəyisḏīqū*), a C-stem form.¹² This emendation changes the subject of the verb from the nations to their witnesses. In the Neo-Babylonian texts, however, the witnesses are not described as "clearing" the summoned individual, even if that is the ultimate result of their testimony. Rather, it is the summoned individual who is described as "clear" (*zaki*). In light of the Akkadian evidence, the Masoretic reading, with the summoned nations as the subject of the verb, is entirely plausible.

¹⁰ The lacunae in the text hamper the determination of PN₂'s specific proofs of proper repayment. See Koschaker, *Bürgschaftsrecht*, 47–48; and Wells, *Law of Testimony*, 177–78.

¹¹ Nbk 227, Nbk 266, and YOS 6, 153 also include a clause that states that the summoned individuals are "clear" (*zaki*) if they successfully prove their case. These texts, however, do not begin with an explicit demand for witnesses, as Nbk 366 does.

¹² Begrich, *Studien*, 1:47 n. 155; Karl Elliger, *Deuterocesaja* (BKAT; Neukirchen-Vluyn: Neukirchener Verlag, 1978), 307; Joseph Blenkinsopp, *Isaiah 40–55: A New Translation with Introduction and Commentary* (AB 19A; New York: Doubleday, 2002), 223. For a defense of the MT, see Goldingay and Payne, *Isaiah*, 285.

In addition to this textual matter, the analogy to the Neo-Babylonian documents also sheds light on YHWH's role in the verse. It is well known that in prophetic adaptations of courtroom imagery, YHWH is depicted as both plaintiff and judge.¹³ The use of the first person plural *ישמיענו* (*yašmî'ūnū*) supports understanding YHWH depicted in this verse as judge in the heavenly council.¹⁴ Comparison with the Neo-Babylonian texts confirms this interpretation. The Neo-Babylonian texts were formulated by the adjudicating authorities, or at least with their involvement, as a record of their demand for witnesses.¹⁵ The analogous language in Isa 43:9 indicates that YHWH is speaking not as a plaintiff but as a judge issuing the order for the litigants to present their witnesses.

¹³ For literature, see Michael De Roche, "Yahweh's *Rib* against Israel: A Reassessment of the So-Called 'Prophetic Lawsuit' in the Preexilic Prophets," *JBL* 102 (1983): 563 n. 3.

¹⁴ See Frank Moore Cross, Jr., "The Council of Yahweh in Second Isaiah," *JNES* 12 (1953): 275 n. 4. For the suggestion that YHWH plays the role of plaintiff in Isa 43:9, see Goldingay, *Message*, 198.

¹⁵ See the discussion of some of these texts in G. van Driel, "The Rise of the House of Egibi: Nabû-ahhē-iddina," *JEOL* 29 (1985–86): 55.