

# THE COVENANT LAWSUIT IN THE PROPHETS

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THE study of *Gattungsgeschichte* has proved of great value in the investigation of ancient literatures. The different literary genres exhibit a remarkable tenacity, so that the classification of *Gattungen* and recognition of the attendant *Sitz im Leben* have been of great help in OT studies. The progress resulting from this particular discipline is associated above all with the name of Hermann Gunkel. There has been much greater success, however, in delineating the literary types, which proceeds on the basis of formal criteria, than in clarifying the *Sitz im Leben*, which is dependent on a rather fragmentary knowledge of the course of Israelite history and culture. At the same time, as OT studies progress the *Sitz im Leben* of the literary types will become clearer. A case in point is the important prophetic type known as "*Gerichtsrede*," or "lawsuit."<sup>1</sup>

In regard to the literary characteristics of the "lawsuit" oracles, both Bentzen<sup>2</sup> and Cross<sup>3</sup> stress the distinctive introductory formula of the type, "Hear . . ., give ear . . .," an appeal to certain natural phenomena, in some capacity, to hear the controversy between Yahweh and his people. The most detailed description of the *Gattung* which I have seen is that of Gunkel-Begrich. Put into outline form, the analysis is:

- I. A description of the scene of judgment
- II. The speech of the plaintiff
  - A. Heaven and earth are appointed judges
  - B. Summons to the defendant (or judges)
  - C. Address in the second person to the defendant
    1. Accusation in question form to the defendant
    2. Refutation of the defendant's possible arguments
    3. Specific indictment

<sup>1</sup> Thus Hermann Gunkel and Joachim Begrich, *Einleitung in die Psalmen: Die Gattungen der religiösen Lyrik Israels* (Göttingen, 1933), p. 329; Aage Bentzen, *Introduction to the Old Testament* (2nd ed.; Copenhagen: 1952), I, 199-200; *et al.*

<sup>2</sup> Bentzen, pp. 199-200.

<sup>3</sup> Frank M. Cross, Jr., "The Council of Yahweh in Second Isaiah," *JNES*, XII (1953), 274, n. 3.

## One of the alternate forms is:

I. A description of the scene of judgment

II. The speech by the judge

A. Address to the defendant

1. Reproach (based on the accusation)

2. Statement (usually in the third person) that the accused has no defense

B. Pronouncement of guilt

C. Sentence (in second or third person)<sup>4</sup>

It is rather striking that in the speech of the judge, the judge is specifically Yahweh and the defendants are the foreign gods (Ps 82, Isa 41 21–29, 44 6 ff.), whereas in the speech of the plaintiff, Yahweh is the plaintiff, Israel is the defendant, and heaven and earth, according to Gunkel, are the judges (Ps 50, Isa 1 2–3, 3 13–15, Jer 2 4 ff., Mic 6 1–8).<sup>5</sup>

In the first “lawsuit” form, the most interesting feature is the appeal to the natural elements which is found in Isa 1 2, Mic 6 2, and, somewhat modified, in Jer 2 12.

Isa 1 2–3, which is perhaps part of a larger unit (1 2–20), is:

- (2) Hear, O heavens, and give ear, O earth,  
for Yahweh has spoken:  
“I have raised and brought up sons,  
but they have rebelled against me.
- (3) The bull knows his owner,  
and the ass his master’s crib,  
but Israel does not know,  
my people do not understand.”

The prophet, acting as lawyer for the plaintiff, Yahweh, appeals to the heavens and the earth to hear the case, in some particular capacity (2<sub>a</sub>). He then states the ground of Yahweh’s claim (2<sub>ba</sub>’), and follows with the charge (2<sub>bb</sub>’). The defendant is shown to have no plea, even on the basis of animal behavior (3<sub>a</sub>),<sup>6</sup> and the charge is repeated (3<sub>b</sub>).

The second example, roughly contemporary with the first, is Mic 6 1–8:

- (1) Hear (ye) what Yahweh is saying,  
“Arise, plead (thou) before (LXX) the mountains,  
and let the hills hear your voice.”

<sup>4</sup> Gunkel-Begrich, pp. 364–65; cf. also Gunkel, *Die Psalmen* (Göttingen, 1926), p. 215.

<sup>5</sup> Gunkel-Begrich, pp. 364–65.

<sup>6</sup> A. Goetze (*Kizzuwatna and the Problem of Hittite Geography* (“YOR,” XXII [New Haven: 1940], p. 37, n. 148) has pointed to a parallel in the Šunaššura treaty, where the Hurrian king says of refugees who returned to their country, “The cattle have chosen their stable” (1.17–18, 30–31). Goetze remarks, “One could imagine that it is connected with the custom to let animals of disputed ownership decide themselves where they rightfully belong.”

- (2) Hear, O mountains, the controversy of Yahweh,  
and <give ear>, O foundations of the earth,  
for Yahweh has a controversy with his people,  
and he will contend with Israel.
- (3) "What have I done to you, O my people?  
and how have I wearied you?  
Testify against me!
- (4) For I brought you up from the land of Egypt,  
and I redeemed you from being slaves,  
And I sent Moses, Aaron, and Miriam to you.
- (5) Remember, O my people, what Balak king of Moab schemed,  
and how Balaam the son of Beor answered him,  
< . . . > from Shittim to Gilgal,  
that you might know (LXX) the righteous acts of Yahweh."
- (6) "With what shall I come before Yahweh,  
bow myself to the exalted God?  
Shall I come before him with burnt offerings,  
with calves one year old?
- (7) Will Yahweh be pleased with thousands of rams,  
with ten thousands of streams of oil?  
Shall I give my first-born for my transgression,  
the fruit of my womb for the sin of my soul?"
- (8) He has showed you, O man, what is good.  
And what does Yahweh seek from you,  
but to do justice and to love mercy  
and to walk humbly with your God.

The oracle opens with an appeal to the people to listen (1a), followed by an appeal to the prophet, acting as lawyer for the plaintiff, Yahweh, to plead the case before the mountains and the hills (1b; cf. Ezek 36). The lawyer then invokes the natural elements to hear (2), and, speaking for Yahweh in the first person, directs a question to the accused and invites a defense (3). But the prophet immediately continues, stating why Yahweh has a claim on Israel (4-5). What follows may be an indignant defense by the accused, or it may be a mocking defense put into the mouth of the defendant (6-7). The sentence (8) states that the people should live up to the covenant obligations, expressed in a way unique to Micah.

The third example of this particular type is Jer 2 4-13:

- (4) Hear the word of Yahweh, O house of Jacob,  
and all the families of the house of Israel.
- (5) Thus says Yahweh,  
"What wrong did your fathers find in me  
that they went far from me,  
and went after worthlessness,  
and became worthless?
- (6) They did not say, 'Where is Yahweh  
Who brought us up from the land of Egypt,  
Who led us in the wilderness,  
in a land of deserts and pits,  
in a land of drought and deep darkness,

- in a land that no man crosses through,  
 where no man dwells.'
- (7) And I brought you into a plentiful land  
 to eat its fruits and its good things.  
 But when you came in you defiled my land,  
 and made my inheritance an abomination.
- (8) The priests did not say, 'Where is Yahweh?'  
 Those who handle the law did not know me,  
 The leaders transgressed against me,  
 The prophets prophesied by Baal  
 and went after things that do not profit.
- (9) Therefore I will still contend with you — Oracle of Yahweh —  
 and with your children's children I will contend.
- (10) For cross to the coasts of Cyprus and see,  
 or send to Qedar and examine carefully,  
 see if there has been such a thing.
- (11) Has a nation changed its gods,  
 even though they are not gods?  
 But my people have changed their glory  
 for that which does not profit.
- (12) Be astonished, O heavens, at this,  
 be greatly appalled, <O mountains> (<O earth>?) —  
 Oracle of Yahweh —
- (13) For my people have committed two evils:  
 They have forsaken me,  
 the fountain of living water,  
 and hewn out cisterns for themselves,  
 broken cisterns which cannot hold (LXX) water."

In Jer 2 the "lawsuit" has its components in a somewhat different order. The oracle opens with the summons to the accused, Israel (4), and continues with an accusation in the second person and in question form (5). There can be no defense, for the plaintiff recites the mighty acts in spite of which Israel transgressed (6-8). Yahweh has grounds for a case not only against Israel, but also Israel's descendants (9), for even on the basis of international morality the accused is left without defense (10-11). Thus the plaintiff appeals to the natural world to be appalled (render a favorable verdict[?]) (12) and reiterates the accusation (13).

Although there are other examples of the "lawsuit" type in the prophetic writings, only the three above have the crucial appeal to the heavens, earth, mountains, hills, and foundations of the earth to hear the controversy. However, there are two other passages in the OT which contain this appeal to the natural phenomena and have a comparable literary form. The first of these passages is Deut 32 1:

Give ear, O heavens, and I will speak,  
 and let the earth hear the words of my mouth.

Following the address to heaven and earth, Deut 32 continues in a manner very close to that of the "lawsuit." There is an invocatory ad-

dress (to heaven and earth[?] <sup>2</sup>), then the speaker for the plaintiff, Yahweh, begins his plea by praising Yahweh (3-4). Next is the charge against the accused and condemnation of the accused for transgressing (5-6a). The plaintiff then establishes the grounds of the claim against the defendant, summarizing the mighty acts of Yahweh (6b-14). The indictment follows (15-18); and then the sentence is specified (19-25). What follows may be an appendix stating why Yahweh will remit the sentence (26-42). This analysis should at least show that Deut 32 has very close affinities in form and content with the examples of the "lawsuit" already quoted.<sup>7</sup> The only real difference is that it is not found in a prophetic book.

The last example of this appeal is in Ps 50 4:

He calls to the heavens above,  
and to the earth,  
to judge his people.  
(*or*: that he may judge his people.)<sup>8</sup>

The earth is also addressed in Ps 50 1, but the meaning is not clear; it probably refers to the inhabited earth, as is frequently the case elsewhere. The rest of the psalm, especially 7-15, shows many of the characteristics of the "lawsuit," but other affinities are indicated as well.<sup>9</sup> In terms of the "lawsuit," however, the following analysis is possible: the description of the judgment scene (1-3), followed by the appeal to heaven and earth (4) and the summons to the accused (5). The lawyer then praises the plaintiff (6) and, in the first person, begins the charge against the defendant (7-13), intertwined with a refutation of the defendant's reply. The sentence (14-15) requires Israel to deal with Yahweh in accordance with the covenant stipulations.

All the examples having been collected, the important questions of the literary background and *Sitz im Leben* reflected by this curious appeal still remain. But it can already be observed that this address to the natural elements is used only within the framework of passages that represent, imitate, or resemble the "lawsuit."

<sup>7</sup> Gunkel-Begrich (pp. 324 ff., 330) state that Deut 32 is of a "mixed" type. They consider it basically an example of *Weisheitsdichtung*, with the characteristic election (from Egypt to the Promised Land), but see below.

<sup>8</sup> KJV, followed by the RSV, translates the last phrase, "that he (Yahweh) may judge his people," but the subject of *ldyn 'mw* could just as easily be the heavens and the earth. The present text of vs. 6 no doubt influenced the translation, but that could be the result of misdivision from *ky 'lhy mšpt hw'* (cf. Kittel note; Isa 30 18), a text that yields better sense. In that case the misdivision would have to precede the development of medial letters, which begins in the late fifth century (Cross, "The Oldest Manuscripts from Qumran," *JBL*, LXXIV [1955], 150). Ps 50 is dated by H.-J. Kraus as probably from the time of Josiah (*Psalmen* ["BKAT," XV/5 (Moers, 1958)], p. 374).

<sup>9</sup> Gunkel-Begrich, pp. 364, 366; cf. Kraus, pp. 376 ff., who stresses the "*Gerichtsrede*."

According to Gunkel's analysis, Yahweh, the plaintiff, summons heaven and earth as judges in the controversy between him and Israel. He is followed in this respect by Bentzen.<sup>10</sup> Yet neither Gunkel nor Bentzen gives any hint as to the literary background or *Sitz im Leben* of this unusual judicial procedure. Other scholars offer differing interpretations. Thus S. R. Driver says of Deut 32 1, Isa 1 2, and Ps 50 4, "Heaven and earth are invoked . . . as forming an audience whose attention may be claimed on account of the solemnity and importance of the truths which the poet has to declare."<sup>11</sup> That is to say, the heavens and the earth are not addressed as judges or witnesses, but as worthy auditors of a solemn song. R. B. Y. Scott has another interpretation. He suggests that the opening is "derived from the manner of the adjudication of disputes and the hearing of complaints 'in the gate.' 'Hear ye, . . . give ear. . . ,' introducing a complaint, calls for the attention of witnesses."<sup>12</sup> The figure is that of the normal court of law, the heaven and earth being called upon to witness the judicial proceeding about to begin. Heaven and earth in this respect, according to Scott, are not elements of the natural world, but are called upon as population areas — the heavenly hosts and the people on earth respectively — in the same way that the prophet says, "Hear, O house of David."<sup>13</sup>

However, as populations, "the hosts of heaven and earth's inhabitants" represent two quite different types of auditors. Thus the heavens as the heavenly hosts implies a different interpretation of the earth. Accordingly, it has been suggested by G. E. Wright that the heavens and the earth of Isa 1 2 and the mountains and foundations of the earth of Mic 6 2 can best be interpreted "in the light of the Divine Assembly, the members of which constitute the host of heaven and of earth."<sup>14</sup> This suggested connection with the divine assembly has been taken up and expanded by Cross,<sup>15</sup> who has supplied additional evidence for the theory that heaven and earth in the "lawsuit" appeal function as members of the council of Yahweh. And, to be sure, the judicial function of the

<sup>10</sup> Bentzen, pp. 199–200.

<sup>11</sup> S. R. Driver, *Deuteronomy* ("ICC" [Edinburgh, 1902]), p. 349. Driver is followed in this interpretation of Deut 32 1 by G. E. Wright ("Deuteronomy," *IB*, II [New York, 1953], *loc. cit.*).

<sup>12</sup> R. B. Y. Scott, "The Literary Structure of Isaiah's Oracles," *Studies in OT Prophecy*, ed. H. H. Rowley (New York, 1950), p. 179. Cf. the *Zweizeugenruf* of the "lawsuit" pointed out by L. Köhler (*Deuterijosaja stilkritisch untersucht* ["BZAW," XXXVII (Giessen, 1923)], pp. 110–13).

<sup>13</sup> Scott, p. 179. Cf. Scott's commentary on Isa 1 2 (*IB*, V [New York, 1956], *loc. cit.*), "The hosts of heaven and earth's inhabitants are called on to bear witness to her (Israel's) base ingratitude and obdurate rebellion."

<sup>14</sup> Wright, *The OT Against Its Environment* (London, 1950), p. 36.

<sup>15</sup> Cross, "Council of Yahweh," pp. 274–77. Cf. also A. Weiser, *Das Buch des Propheten Jeremia*, I ("ATD," XX [Göttingen, 1956]), 24.

divine assembly, although secondary, is attested in both extra-biblical<sup>16</sup> and biblical sources.<sup>17</sup> However, the statement that the “lawsuit” oracle type “undoubtedly has its origins in the conceptions of the role of Yahweh’s heavenly assembly as a court,”<sup>18</sup> is not relevant when applied to the oracles containing the appeal to the natural world.

One basic problem with interpreting heaven and earth, the mountains and the hills, and the foundations of the earth as members of the divine assembly is that there is no direct evidence for it. In Mesopotamia, the divine assembly was a council of the gods, a pantheon.<sup>19</sup> The natural elements, as such, were not members of the divine assembly or pantheon, as is shown by the fact that in the many catalogues of deities preserved from ancient Mesopotamian or Anatolian sources there is — apart from one particular type of list — no mention of these natural phenomena *per se*.<sup>20</sup> And in Israel, in spite of the process of demythologizing the concepts of the ancient Near East, the passages which contain references to the council of Yahweh nowhere have reference to the earth, the mountains, the hills, or the foundations of the earth, although they do make mention of the heavenly hosts or beings.<sup>21</sup>

However, the Hittite international treaties preserved from the latter part of the second millennium, as well as an Aramean treaty from the 8th century, have as one of their sections a list of gods who are witnesses to the covenant.<sup>22</sup> In this list of witnesses, not only does one find the pantheon of both countries (whether suzerain and vassal or equals), but also the mountains, rivers, heaven, earth, sea, winds, and clouds.<sup>23</sup> These

<sup>16</sup> Cf. Thorkild Jacobsen, “Primitive Democracy in Ancient Mesopotamia,” *JNES*, II (1943), 159–72. The divine assembly considers cases of both men and gods.

<sup>17</sup> Cf. Ps 82, Zech 3 1 ff.; cf. Cross, p. 274, n. 3.

<sup>18</sup> Cross, p. 274, n. 3.

<sup>19</sup> Cf. Jacobsen, in H. Frankfort, *et al.*, *The Intellectual Adventure of Ancient Man* (Chicago, 1946), p. 153; cf. the Creation Story, tablets VI–VII, in *Ancient Near Eastern Texts*, ed. J. B. Pritchard (Princeton, 1950), pp. 68–72.

<sup>20</sup> Cf. Bruno Meissner, *Babylonien und Assyrien*, II (Heidelberg, 1925), 1–51; A. Goetze, *Kleinasiens*<sup>2</sup> (“HBAW,” III.1.3.3.1. [München, 1957]), pp. 130–31, 145.

<sup>21</sup> The mention of the “foundations of the earth” in Ps 82 5 and of the “earth” in Ps 82 8 proves nothing at all concerning membership in the council of Yahweh. More relevant are the few prophetic passages (e. g., Isa 44 23, 49 13, Jer 51 48) where heaven and earth are said to sing or rejoice. Heaven and earth as praising Yahweh (I Chron 16 31 and Psalms, *passim*) is secondary to their created nature, although the “heavens” mentioned alone could refer to the heavenly beings, as in Ps 89 6.

<sup>22</sup> Cf. George E. Mendenhall, *Law and Covenant in Israel and the Ancient Near East* (Pittsburgh, 1955), p. 34 (reprinted from *BA*, XVII [1954], 26–46, 49–76).

<sup>23</sup> Some of the preserved treaties have been translated in *ANET*, pp. 199–206. For reference to other Hittite treaties with this feature, cf. Viktor Korošec, *Hethitische Staatsverträge* (“Leipziger rechtswissenschaftliche Studien,” LX [Leipzig, 1931]), p. 96. Other than the Hittite treaties, such natural phenomena as witnesses are known also from an Aramean treaty of the second half of the 8th century between the king of

natural elements, which were not members of the divine assembly or of the official pantheon were nevertheless invoked as witnesses (and deified), presumably because the curses and blessings — part of the covenant — involved these natural phenomena.<sup>24</sup> Accordingly, due to the close parallel between covenant forms in Israel and the international treaties, it is quite safe to suggest, as Mendenhall has, that the list of witnesses (not deified in Israel) is preserved in the OT in “the appeal to the heavens and earth, mountains and hills, either as witnesses or as judges in the controversy between Yahweh and Israel when Israel is indicted for breach of covenant.”<sup>25</sup> Such an observation is confirmed by the fact that this kind of appeal is found, other than in connection with a “lawsuit,” only in three prose passages in Deuteronomy. The three passages (4 26, 30 19, 31 28) are all in connection with covenant ceremonies. In 4 26 the heavens and the earth are called upon to witness Moses’ affirmation that if the Israelites violate the covenant Yahweh will invoke the curses of the covenant (4 23–28). In 30 19 the heavens and the earth are clearly mentioned as witnesses to the covenant (30 15–20). And in 31 28 they serve as witnesses to Moses’ speech about the covenant (31 24–29).

The natural elements appealed to in the “lawsuit” oracles discussed above are addressed because they are witnesses to the (prior) covenant. It is not because they are members of the council of Yahweh, nor is it because of the solemn nature of the proceedings. Neither are they summoned in order to witness the current “trial.” The literary framework is dependent on the tradition of the inanimate (in Israel) elements of the natural world being witnesses to the covenant. But the precise function of these witnesses is still not clear. The formal analogy with court procedure would strongly suggest that heaven and earth serve as judges,

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Katka and the king of Arpad (cf. P. S. Ronzevalle, S.J., “Fragments d’inscriptions araméennes des environs d’Alep,” *MUSJ*, XV [1930–31], 237–60; Hans Bauer, “Ein aramäischer Staatsvertrag aus dem 8. Jahrhundert v. Chr., Die Inschrift der Stele von Sudschin,” *AfO*, VIII [1932], 1–16; A. Dupont-Sommer, *Les Araméens* [Paris, 1949], pp. 111–12), where, following the reconstruction of Dupont-Sommer, the witnesses include “the heaven[s] and the earth, the springs, day and night.” A comparable list of witnesses to a treaty between Hannibal (Carthage) and an envoy of King Philip (Macedonia) may be directly related (Polybius VII.9); note the parallel construction, *qdm . . . w . . .* (Sudjin), and *enantion . . . kai . . .*

<sup>24</sup> The treaty between Suppiluliumas and Mattiwaza (*ANET*, pp. 205–6) illustrates this with the curses: “May the earth be coldness so that you fall down slipping. May the soil of your country be a hardened quagmire, so that you break in, but never get across.” The curses and blessings invoked in the OT also frequently involve the natural world. From Deut 27–28 (cf. Mendenhall, pp. 34, 42) note 28 12, 23–24. Cf. Isa 24 1–13 (5 explicitly states that this is because of breach of covenant), 5 5–6, Jer 23 10, Hag 1 10–11, Gen 3 17–19, 27 28, Lev 26 19–20, Deut 11 17, II Chron 6 26, 7 13, Ps 67 6; and note the descriptions of the day of the Lord (e. g. Isa 13 9–16).

<sup>25</sup> Mendenhall, p. 40.

for Yahweh is the plaintiff and Israel the accused. Heaven and earth as judges may be a literary fiction, but it would be more appropriate if the judge could serve as the executor of the sentence in actual court practice (as is suggested by Deut 25 1-3), since the natural world served to carry out the curses and blessings.<sup>26</sup>

The appeal may have been made because it is the witnesses to the prior covenant whose testimony and presence is essential, for without witnesses or written contract there could be no case. But in the texts it is Yahweh who brings a complaint against Israel, not heaven and earth.

Perhaps the witnesses to the covenant are summoned in accordance with the practice of having witnesses to the decree of a judge so that the judge cannot alter the decision at a later time.<sup>27</sup> That is, the witnesses serve as an indication or guarantee that an unfulfilled obligation exists, which justifies Yahweh in actually invoking the curses of the covenant.

Although Yahweh himself is ultimately the judge, in so far as the term is relevant, it is quite possible as a literary device for Yahweh to ask a third party to judge between him and Israel (or a poetic substitute), as can be seen from Isa 5 3. Yet in this case also, just as Yahweh swears by himself, so he is ultimately his own judge.

The source of the literary appeal to the natural elements is no doubt actual court procedure, either an appeal to the judges to hear the case or to witnesses to attend the trial.<sup>28</sup> Mixed by the prophets with the covenant form, in which the natural phenomena are invoked as witnesses, the two different settings have been merged into a literary type used as a means of religious communication by the prophets in order to express indictment and trial of Israel because of unfulfilled covenant obligations. When more is learned of court procedures in the ancient Near East, the path of transfer and merger will perhaps be more clear.

<sup>26</sup> Cf. n. 24 above. That the natural phenomena may have had a judicial function under special circumstances in the ancient Near East is suggested by the practice of trial by ordeal (cf. G. R. Driver and J. C. Miles, *The Assyrian Laws* [Oxford, 1935], pp. 86-106: there is evidence for ordeal by the river or by oath), which was also known in Israel (cf. Num 5 5-31). Note also Judge River in the Ugaritic texts, on which see W. F. Albright, "Zabûl Yam and Thâpiṭ Nahar in the Combat between Baal and the Sea," *JPOS*, XVI (1936), 19-20.

<sup>27</sup> Cf. Edouard Cuq, *Etudes sur le droit babylonien* (Paris, 1929), p. 385; Arnold Walther (*Das Altbabylonische Gerichtswesen* ["LSS," VI/4-6 (Leipzig, 1917)], p. 11) discusses what is known of the judge's role. Cf. the Hammurabi code, #5, on which see Driver and Miles, *The Babylonian Laws*, I (Oxford, 1952), 68 ff.

<sup>28</sup> B. Gemser ("The RĪB- or Controversy-Pattern in Hebrew Mentality," *Wisdom in Israel and in the Ancient Near East*, ed. Noth and Thomas ["VT Suppl.," III (Leiden, 1955)], p. 124), citing some of these passages, says, "As there is no sharp distinction between judges and witnesses, it is often not clear in which capacity the members of the tribunal are summoned to act." Cf. also L. Köhler, *Hebrew Man*, trans. P. Ackroyd

Another indication of the covenant background of this type is the basis given for the indictment. The oracles include a recitation of the mighty acts of Yahweh, that is, the historical prologue of the covenant.<sup>29</sup> "I have raised and brought up sons" in Isa 1 2 represents the historical prologue in terms of family history,<sup>30</sup> a manner of speaking that provides a sharp contrast with the indictment on the analogy of animal behavior. Mic 6 4-5 and Jer 2 6-7, as well as Deut 32 6b-14 somewhat more figuratively, present the more usual type of historical prologue, in each case referring to the exodus, the wilderness wandering, and the entrance into the promised land.<sup>31</sup> Given as the basis of Israel's obligations, the recitations also serve as a source of shame for unfaithful Israel. There is no trace of the historical prologue in Ps 50, however.

Among the examples of the "lawsuit" usually cited, many can definitely be excluded from this "covenant lawsuit" type. For although none of the other prophetic oracles have the appeal to the natural phenomena, neither do they have the historical prologue. A case in point is Ps 82, which is connected with the council of Yahweh and has foreign gods as the defendants, and which has nothing at all to do with a breach of covenant and consequent trial of Israel.<sup>32</sup> The setting of Ps 82 also prevails in the "lawsuits" of Second Isaiah, which involve judicial proceedings between Yahweh and the various foreign nations and gods.<sup>33</sup> Coming from different Near Eastern backgrounds, the divine council "lawsuits" contrast sharply with the covenant "lawsuits" in content.<sup>34</sup>

However, there yet remains one "lawsuit" which, although it lacks the appeal to the covenant witnesses and omits the historical prologue, shows clear signs of being related to a breach of covenant, viz. Hos 4 1-3. In this oracle, the indictment is more or less a catalogue of violations of the decalogue (1b-2), that is, violations of the stipulations of the covenant at Mt. Sinai. The curses of the covenant, involving the natural world, are already implemented (3). There are still other oracles involving an

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(London: 1956), pp. 156-57 ("judges and witnesses are therefore not differentiated"). The appeal to two of the elements in each case is clearly related to the *Zweizeugenruf* (cf. n. 12 above), but Isa 5 3 shows that the call can be to two judges as well. The pair of natural phenomena, especially heaven and earth (three times), may come under the semantic rubric *merismus*, and thereby indicate an appeal to all of the witnesses (this follows a suggestion of the Editor).

<sup>29</sup> Cf. Mendenhall, pp. 32-33, 44.

<sup>30</sup> Cf. Hos 11 1-4.

<sup>31</sup> Note Gilgal in Mic 6 5; cf. Driver, pp. 354-60.

<sup>32</sup> Cf. Wright, *The OT against its Environment*, pp. 30-41.

<sup>33</sup> Cf. Cross, pp. 274-77; James Muilenburg, "Isaiah 40-66," *IB*, V (New York, 1956), commentary on 41 1-42 4, 43 8-13, 45 20-24.

<sup>34</sup> Isa 6, however, shows that the council of Yahweh could be concerned with the condemnation of Israel (but without reference to legal proceedings).

indictment of Israel, but these "lawsuit" oracles, such as Isa 1 18–20, 3 13–15, and Mic 1 2–7, do not contain any clear indications of an indictment for breach of covenant, although they are related to that type.

In summary, there are two fairly distinct types of "lawsuits," having a different Near Eastern background and a different content. One type is connected with the divine council. The other, especially if it has an appeal to the natural elements, the covenant witnesses, and a historical prologue, is an indictment of Israel for breach of covenant. It is ultimately dependent upon the covenant concluded between Yahweh and Israel at Mt. Sinai.<sup>35</sup>

<sup>35</sup> I am greatly indebted to Professor Mendenhall for his kindness in reading this paper, and for many helpful suggestions, though responsibility for the conclusions reached rests with the author.