

Why Are There Lawyers in Heaven?  
Rabbinic Court Procedure in Halakha and Aggada

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A lawyer dies and goes to Heaven, where he is brought before God. “A lawyer, eh?” says God. “We’ve never had a lawyer in Heaven before. Argue a point of the law for my edification.”

The lawyer goes into panic and says, “Oh, God, I cannot think of an argument worthy of Your notice. But I’ll tell you what, you argue a point of the law and I’ll refute You.”<sup>1</sup>

It has become a truism in the field of humor that there are no lawyers in heaven. The Rabbis, however, describe the heavenly court as being suffused with lawyers. M. Avot 4:11 famously states:

ר' אליעזר בן יעקב אוי העושה מצוה אחת קנה לו פרקליט אחד והעובר עבירה אחת קנה לו קטיגור אחד.<sup>2</sup>

R. Eliezer ben Yaakov says, One who performs one commandment acquires for himself one advocate (*paraklet*)<sup>3</sup> but one who transgresses one transgression acquires for himself one prosecutor (*kategor*).<sup>4</sup>

Later midrashim provide great detail about the role of lawyers in heaven.<sup>5</sup> Exodus Rabbah 18:5, for example, teaches:

א"ר יוסי למה מיכאל וסמאל דומין לסניגור וקטיגור עומדין בדין, זה מדבר וזה מדבר, גמר זה דבריו וזה דבריו ידע אותו הסניגור שנצח התחיל משבח את הדיין שיוציא איפופסין, בקש אותו קטיגור להוסיף דבר אמר לו הסניגור החרש ונשמע מן הדיין, כך מיכאל וסמאל עומדים לפני השכינה והשטן מקטרג ומיכאל מלמד זכותן של ישראל והשטן בא לדבר ומיכאל משתקן...

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<sup>1</sup> Slightly modified from Marc Galanter, *Lowering the Bar: Lawyer Jokes and Legal Culture* (Madison, WI: University of Wisconsin Press, 2005), 49.

<sup>2</sup> Ms. Kaufman. Unless otherwise noted, all translations of rabbinic texts are my own.

<sup>3</sup> Paraclete (παράκλητος) means a supporter or sponsor and, when used in legal contexts, refers to a defense advocate. The term is found in Greek documents from classical Athens through the first centuries CE. See Kenneth Grayston, “The Meaning of Parakletos,” *Journal for the Study of the New Testament* 13 (1981), 67-82.

<sup>4</sup> *Kategoros* (κατήγορος) refers to the prosecutor in the Athenian court and continued to be used in the Greek East. *Kategoros* is also used in the sense of a prosecutor in Josephus (*Antiquities*, 7.6) and in an inscription from Laconia dated to 42CE; see Kaja Harter-Uibopuu, “The Trust Fund of Phaenia Aromation (IG V.1 1208) and Imperial Gytheion,” *Studia Humaniora Tartuensia* 5 (2004), 1-17. See also Daniel Sperber, *A Dictionary of Greek and Latin Terms in Rabbinic Literature* (Ramat-Gan: Bar-Ilan University Press, 1984), 126-30.

<sup>5</sup> See also Y. Rosh Hashanah 1, 3 (57b) and the midrashim discussed below.

R. Yose said, To what are Michael and Samael similar? To a defense advocate (*sanegor*)<sup>6</sup> and a prosecutor standing in a judgment. This one speaks and that one speaks. Once this one finishes his oration and that one his, the defense advocate knows that he has won and begins to praise the judge that he should issue a verdict. The prosecutor tries to add something. The defense advocate says, “Be quiet that we may hear the judge.” So do Michael and Samael stand before the Shekhina. Satan prosecutes and Michael pleads innocence for Israel. Satan tries to speak but Michael shuts him up...

The theme of advocates in heaven, found often throughout rabbinic literature, raises a number of questions. We would expect that an omniscient and omnipotent God should be able to judge perfectly well on his own. In fact, M. Avot 4:22 presents God in precisely these terms as a sole Judge:

הוא היוצר והוא הבורא הוא המבין והוא הדיין הוא עד הוא בעל דין והוא עתיד לדון שאין לפניו לא עולה ולא שקה ולא משוא פנים ולא מקח שחד שקהל שלו ודע שקהל בקשוב.<sup>7</sup>  
He is God, He is the Maker, He is the Creator, He is Omniscient, He is the Judge, He is the Witness, He is the Plaintiff, and He will judge in the future for there is before Him no perversion, no forgetting, no showing favoritism, no taking of bribes, for all is His and know that all will be accounted for.<sup>8</sup>

Furthermore, if we compare these aggadot to the Rabbis' own halakha, we find that they did not allow lawyers into their own earthly courts. Thus, Mekhilta d'Rabbi Yishmael, Masechta d'Kaspa, Mishpatim, 20, states:

מדבר שקר תרחק...הרי זו אזהרה לדיין...שלא יעמיד אצלו סניגורין, שנ' עד האלהים יבא דבר שניהם.  
“Keep far from a false matter” (Exod 23:7)...This is a warning to the judge...that he should not place advocates (*sanegorin*) beside him, for the verse states, “the claims of both parties shall come unto God” (Exod 22:8).

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<sup>6</sup> *Synegoros* (συνήγορος), a term that dates back to Athenian courts where it referred to a friend or relative of the litigant who advocated in his defense in court. Lawyers were not permitted to be paid but relatives were allowed to offer free counsel. See Demosthenes 46.26. *Synegoros* continued to be the term used for advocates in the Roman East, when a professional class of paid lawyers arose. It is used interchangeable with *paraclete* in rabbinic literature. Both *synegoros* and *kategoros* are used regularly by writers such as Lucian and Plutarch. See also Meira Kensky, *Trying Man, Trying God: The Divine Courtroom in Early Jewish and Christian Literature* (Tübingen: Mohr Siebeck, 2010), 306.

<sup>7</sup> Ms. Kaufman.

<sup>8</sup> Cf. Y. Sanhedrin 6,10 (24a).

This Midrash forbids a judge to appoint defense advocates because this would cause a bias in his judgment.<sup>9</sup> He must be impartial and hear both sides. God in Exod 22:8 represents the judge and the claims are to reach him directly and not through partial intermediaries. This source does not explicitly prohibit the litigants from benefiting from the services of advocates but only that the judge should not use one. A parallel midrash in Mekhilta d'R. Shimon bar Yohai, Mishpatim, 23:1 makes a broader prohibition:

לא תשא שמע שוא שלא ידברו סניגורין לפניהן.  
 “Do not carry false rumors” (Exod 23:1): [This teaches] that advocates (סניגורין) should not speak before them [the judges].

This midrash seems to ban advocates from the courtroom altogether. Similarly, the first five chapters of Mishnah Sanhedrin discuss the various aspects of rabbinic court procedure but make no mention of advocates. In fact, M. Sanhedrin 3:6 explicitly assigns the role of examining the witnesses to the judges, a task that would normally be performed by an advocate if one was present. Significantly, the only mention of advocates in the entire Mishnah is in M. Avot 1:8 and is a negative one: Yehudah ben Ṭabai says, “Do not make yourself as advocates (כְּעֹרְכֵי דִיּוּנִים).”<sup>10</sup> While Yehudah ben Ṭabai statement is addressed only to judges, both the Yerushalmi and Bavli expand the prohibition to bar anyone from giving legal advice to one party.<sup>11</sup>

The Rabbis’ ban on court advocates is all the more significant considering their prominence in Roman court procedure. The formulary system, which was in effect during the

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<sup>9</sup> I disagree here with the commentary Zet Ra`anan cited approvingly by Yuval Sinai, *The Judge and the Judicial Process in Jewish Law* (Jerusalem: Hebrew University, 2010) (Hebrew), 475, who says that the object of this statement is the litigant. The context makes clear that the warning is to the judge. The parallel at B. Shevuot 30b also addresses the judge explicitly. In this sense, this midrash is similar to M. Avot 1:8.

<sup>10</sup> Lit. arrangers of the judges. Mss. London, Rome, and ten extant Geniza fragments read כְּעֹרְכֵי, כְּעֹרְכֵי, or כְּעֹרְכֵי with and `ayin. Ms. Parma and four Geniza fragments read אֲרָכֵי or כְּאֲרָכֵי with an `alef. Ms. Kaufman originally read אֲרָכֵי but was then changed to כְּעֹרְכֵי. For a full list of variants see Shimon Sharvit, *Masechet Avot le-doroteha: mahadura mada`it, mevo'ot ve-nispahim* (Jerusalem: Mosad Bialik, 2004), 70-2; and see analysis of Yechezkel Kutscher, *Milim ve-toldotehen* (Jerusalem: Kiryat Sefer, 1965), 89-91.

<sup>11</sup> Y. Baba Batra 9, 4 (17a) = Y. Ketubot 4, 11 (29a), B. Ketubot 52b and 85b. See analysis at Zvi Aryeh Steinfeld, “Asinu `asmenu ke-orche ha-dayanin,” *Te`udah* 7 (1991): 111-32; and Sinai, *Judge*, 31-71.

Tannaitic and early Amoraic periods, was highly adversarial.<sup>12</sup> Professional lawyers played a prominent role in court procedure not only in the west of the Empire, where evidence abounds, but even in the east. Dozens of papyri from Egypt preserve court documents that feature advocates showing that their presence was “ubiquitous.”<sup>13</sup>

The Talmud seems to hold the adversarial system suspect because it does not promote honesty or lead to justice. They view the Roman court system as corrupt and capricious to the point that they can say: “Anyone who goes up to the *gradus* (גרדום)<sup>14</sup> to be judged, if he has great advocates (פרקליטין) he is saved but if not he is not saved.”<sup>15</sup> Once the trial is put in the hands of hired lawyers, it becomes simply a debating contest and the most persuasive orator will win regardless of truth or justice. It is therefore understandable why the rabbis, counter to their surrounding culture, disallowed lawyers from their own courts. However, the prominence of advocates in the heavenly court of Rabbinic Aggadah requires explanation.

I propose that the answer is partly historical and partly philosophical. That is, the Rabbis continue a tradition already begun in the Bible and continued in Second Temple literature. However, they also expand on that tradition and that expansion reveals an important philosophical and theological stance about truth, law, and the nature of God. I will begin with an overview of heavenly advocates in pre-rabbinic literature, both prosecutors and defenders.

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<sup>12</sup> Andrew Riggsby, *Roman Law and the Legal World of the Romans* (Cambridge: Cambridge University Press, 2010), 115. Advocacy evolved from the patron-client system in the archaic period where the *patronus* would speak on behalf of his client of lower status in court. By the late republic, *patroni* would make their services available to anyone who asked, although in 204BCE, the *lex Cincia* prohibited advocates from taking fees for their services. This law, however, was later relaxed and advocacy took on a more professional character. See J. A. Crook, *Legal Advocacy in the Roman World* (Ithaca: Cornell University Press, 1995), 37-46; Jonathan Powell and Jeremy Paterson, *Cicero the Advocate*, vol. Oxford (Oxford University Press, 2004), 12-18; and Catherine Steel, *Roman Oratory* (Cambridge: Cambridge University Press, 2006), 29-30 and 55-56.

<sup>13</sup> Crook, *Legal Advocacy*, 123.

<sup>14</sup> This refers to a movable step on which the defendant sat in Roman trials. See Saul Lieberman, “Roman Legal Institutions in Early Rabbinics and in the Acta Martyrum,” *Jewish Quarterly Review* 35, no. 1 (1944): 13-15; and David Potter, “Performance, Power, and Justice in the High Empire,” in *Roman Theater and Society: E. Togo Salmon Conference Papers I*, ed. William Slater (Ann Arbor: University of Michigan Press, 1996), 147

<sup>15</sup> B. Shabbat 32a.

Already the Bible places a prosecuting advocate in the heavenly court.<sup>16</sup> Most famously, the Prosecutor (*satan*) who is a member of the Divine council accuses Job of superficial piety (Job 1:6-2:7). The Prosecutor also accuses Joshua the high priest but is in turn rebuked by God (Zechariah 3:1-2).<sup>17</sup> This character is developed in Second Temple literature. The role of Satan in Job is developed in the book of Jubilees as the angel named Mastema.<sup>18</sup> Mastema is the chief of fallen angels (Jubilees 10:8-9) and it he who incites the offspring of Noah to sin (11:5). Like Job, Mastema accuses Abraham of lacking faith and convinces God to test Abraham's faith by commanding him to sacrifice Isaac (17:16) and it is he who nearly kills Moses on his journey (48:2). Rabbinic Aggadah similarly has Satan threaten Moses<sup>19</sup> as well as accuse Abraham before God.<sup>20</sup>

Scholars have traced the origin of Satan back to Ancient Near Eastern mythology as well as the spy agency of the Persian Empire.<sup>21</sup> However, this theme also fulfills an important need to explain the existence of evil in a monotheistic belief system featuring an omnipotent and benevolent God. Hints to primordial forces of evil already make appearances in Genesis and some of the older Psalms.<sup>22</sup> Therefore, it is easy to see why belief in an opposing, even if

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<sup>16</sup> A heavenly court is mentioned in 1 Kings 22:19 and Daniel 7:26. Such a court is also hinted at in Gen 1:26, 3:22, and 11:7.

<sup>17</sup> *Satan* also appears without the definite article in 1 Chron 21:1 where it does not accuse but rather incites David to sin. Other instances of *satan* in the Bible as a noun and verb also do not relate to a heavenly court. See further at Victor Hamilton, "Satan," in *The Anchor Bible Dictionary*, ed. David Noel Freedman (1992), 985-89.

<sup>18</sup> See Esther Eshel, "Mastema's Attempt on Moses' Life in the 'Pseudo-Jubilees' Text from Masada," *Dead Sea Discoveries* 10, no. 3 (2003), 359-64; and Devorah Dimant, "Between Qumran Sectarian and Non-sectarian Texts: the Case of Belial and Mastema," in *The Dead Sea Scrolls and Contemporary Culture*, ed. Adolfo Roitman and Lawrence Schiffman (Leiden: Brill, 2011), 235-56.

<sup>19</sup> B. Nedarim 32a. Y. Nedarim 3, 9 does not say Satan but rather just angel and Exodus Rabbah 5, 8, identifies it as an angel of mercy.

<sup>20</sup> B. Sanhedrin 89b. In Genesis Rabbah 55, 4, instead of Satan it is God and the angels who accuse Abraham. Some mss. variants have the nations of the world accusing Abraham; see Hanokh Albeck and Judah Theodor, *Midrash Bereshit Rabbah: Critical Edition with Notes and Commentary* (Jerusalem: Shalem Books, 1996), p. 587. Cf. Genesis Rabbah 56, 7-8 where Samael tries to stop Abraham and Isaac from going through with the sacrifice.

<sup>21</sup> Marvin Pope, *Job*, The Anchor Bible (Garden City: Doubleday, 1965), 10-11; and Naphtali Tur-Sinai, H., *The Book of Job: A New Commentary* (Jerusalem: Kiryat Sefer, 1957), 38-45.

<sup>22</sup> Jon Levenson, *Creation and the Persistence of Evil: The Jewish Drama of Divine Omnipotence* (San Francisco: Harper and Row, 1988).

subordinate, power who seeks to prosecute humanity and bring chaos to the world, would have caught on.

The origins and development of defense advocates in the heavenly court, on the other hand, require further analysis and are the primary focus of this paper. An angelic defense council is difficult to find in the Bible. Job calls upon the earth and the heavens to speak out for him, to testify on his behalf and be his advocates (מליצי).<sup>23</sup> Elihu similarly says regarding someone disciplined by God and on the verge of death: “If he has a representative (מלאך), one advocate (מליץ)<sup>24</sup> against a thousand to declare the man’s uprightness, then He has mercy on him” (Job 33:23-24). However, no such representative ever materializes. Daniel mentions the angel Michael as being the prince of Israel, possibly representing and defending them in heaven; but, again, there is no mention of a trial involving him.<sup>25</sup> Besides the Jobian speeches, the Bible makes no mention any angelic defenders.

Rather it is humans—and specifically prophets—who arise to fulfill that role: Abraham (Gen 18:17-33), Moses (Exod 32-33; Num 14:13-19), Joshua (Josh 7:6-7), Amos (7:2, 5), Jeremiah (Jer 14:7-9, 13), and Ezekiel (Ez 11:13), among others. The prophet’s primary role is to bring God’s message, usually of rebuke, to the people. As the prophet submits before God’s majesty he becomes “the instrument of divine severity, the attribute of divine justice.”<sup>26</sup>

However, as Yochanan Muffs points out:

The prophet has another function: He is also an independent advocate to the heavenly court who attempts to rescind the evil decree by means of the only instruments at his disposal, prayer and intercession. He is first the messenger of

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<sup>23</sup> Job 16:18-20. V. 20 calls upon God to arbitrate (ויוכח) between Job and God Himself making God play a dual role of prosecutor and judge. In Job 9:33, Job laments: “There is no arbiter (מוכיח) between us,” which ascribes to God only the role of prosecutor since God is not acting as a fair judge. Job 19:25 has Job call for a vindicator (גאלי), perhaps God Himself, to either defend Job or decide as judge to find him innocent.

<sup>24</sup> LXX translates paraclete and the Targum translates the phrase: מלאכא חדא פרקליטא מן בני אלף קטיגוריא.

<sup>25</sup> See Daniel 10:13, 21 and 12:1.

<sup>26</sup> Yochanan Muffs, *Love and Joy: Law, Language and Religion in Ancient Israel* (New York: The Jewish Theological Seminary of America, 1992), 9.

the divine court to the defendant, but his mission boomerangs back to the sender. Now, he is no longer the messenger of the court; he becomes the agent of the defendant, attempting to mitigate the severity of the decree.<sup>27</sup>

Once the prophet attains an intimate relation with the Divine as a messenger, he is able to turn back and challenge the very messages he was sent to deliver. When God becomes angry at humanity's wickedness, he sends a prophet to warn them of an impending punishment. Hopefully, the sinners will repent and keep God's wrath at bay. Even in the absence of behavioral change, however, the right words from a righteous intercessor can pacify God's rage and convince Him to forego his threat and forgive the sin. In fact, God sometimes even invites these advocates to help Him relieve His temper before He does something He will regret. This can be the only reason why God informs Abraham of His plans for Sodom and why He commands Moses, "Leave Me alone."<sup>28</sup>

Suzanne Stone elaborates: "Prophetic intercession takes the form not simply of demanding prayer but of argument and the lodging of a legal complaint or appeal from a decree." In that sense, the prophet is "the ideal lawyer/advocate."<sup>29</sup> Also expanding on Muffs, Yair Lorberbaum encourages us to take the anthropomorphism, and especially the anthropopathism, of the Bible seriously, even literally.<sup>30</sup> God feels the full pallet of emotions found in a human personality: jealousy, anger, regret, shame, mercy, love and joy. If man is created in God's image, then God must be at least as emotionally complex as a human being. Precisely because God, unlike the mythological divinities of the Ancient Near East, is invested in human beings and loves them, he becomes jealous and enraged at their infidelity and wickedness. In order that

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<sup>27</sup> Ibid.

<sup>28</sup> Exod 32:10; Deut 9:14. See Moshe Shamah, *Recalling the Covenant: A Contemporary Commentary on the Five Books of the Torah* (Jersey City: Ktav, 2011), 82-84; and Muffs, *Love and Joy*, 28.

<sup>29</sup> Suzanne Last Stone, "Rabbinic Legal Magic: A New Look at Honi's Circle as the Construction of Legal Space," *Yale Journal of Law and the Humanities* 17 (2005), 109.

<sup>30</sup> Yair Lorberbaum, "The Rainbow in the Cloud: An Anger-Management Device," *The Journal of Religion* 89, no. 4 (2009), 498-540.

God not destroy the world in these moments of anger, He puts in place mechanisms of self-control, such as the rainbow, finding a scapegoat to receive the punishment vicariously, or allowing an advocate to talk Him out of His wrath.

This understanding of God and the role of the advocate is amplified in Second Temple and rabbinic literature. In the Book of Enoch, the fallen angels request Enoch to petition God for forgiveness on their behalf (1 Enoch 13:4). God tells Enoch to rebuke them: “Go, say to the Watchers of heaven, who have sent thee to intercede for them: ‘You should intercede for men, and not men for you’” (1 Enoch 15:2). Enoch thus acts here both as an intercessor and as a messenger. Furthermore, we see that God had in mind that the angels should act as intercessors on behalf of humans.<sup>31</sup>

Similarly, the Rule of the Community of the Dead Sea Sect includes a curse of those fated to Belial:

ולוא יהיה לכה שלום בפי כול אוהזי אבות  
You shall not have someone who speaks kindly on your behalf among all the  
intercessors.<sup>32</sup>

Muffs explains that the term אוהזי אבות (lit. “one who assumes a fatherly attitude on behalf of someone”) is borrowed from a similar term and concept in the Babylonian world. Reflected in these texts is a shift from the human advocates in the Bible to a belief in angelic intercessors as well.<sup>33</sup>

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<sup>31</sup> 1 Enoch 9:1 also identifies Michael, Uriel, Raphael, and Gabriel, as well as “the souls of those who have died” (9:10) as prosecutors before the gates of heaven.

<sup>32</sup> 1QS 2:9. Translation from Muffs, *Love and Joy*, 38.

<sup>33</sup> See also Joseph Baumgarten, “The Heavenly Tribunal and the Personification of Šedeq in Jewish Apocalyptic,” in *Aufstieg und Niedergang der römischen Welt, Vol 19.1* (Berlin: De Gruyter, 1979), 219-39, who discusses the role of Melchizedek and the hypostatized Šedek in the heavenly court.

This development is seen more clearly in Philo who lists various defense advocates on behalf of humans in the heavenly court.<sup>34</sup> He writes that those repentant Jews who return from exile can obtain reconciliation with God through three intercessions (*parakletois*): (1) God's mercy and compassion; (2) the prayers of the patriarchs; (3) improvement of the repentant.<sup>35</sup> Similarly, one who repents from injuring another and comes to the Temple with a sacrifice also brings "with him an irreproachable mediator (*parakleton*), namely, that conviction of the soul which has delivered him from incurable calamity, curing him of the disease which would cause death, and wholly changing and bringing him to good health."<sup>36</sup> So far, these references to paracletes can be read metaphorically: God's mercy and man's prayers and repentance help man just like advocates would.

However, Philo goes further in his explanation of the high priest's clothing as a symbol for the Logos.<sup>37</sup> "For it was indispensable that the man who was consecrated to the Father of the world, should have as a paraclete, his son, the being most perfect in all virtue, to procure forgiveness of sins, and a supply of unlimited blessings."<sup>38</sup> God's son here refers to the Logos<sup>39</sup> which acts as a paraclete to intercede and defend Israel's sins before God. Philo elaborates with striking beauty on the intercessory role of the Logos:

And the Father who created the universe has given to his archangelic and most ancient Word a pre-eminent fit, to stand on the confines of both, and separated

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<sup>34</sup> Grayston, "The Meaning of Parakletos," 73-74.

<sup>35</sup> Philo, *On Rewards and Punishments*, 9:165-167. See further at Harry A. Wolfson, *Philo* (Cambridge: Harvard University Press, 1948), II, 412-13.

<sup>36</sup> Philo, *Special Laws I*, 237. Translations from *The Works of Philo*, trans. C. D. Yonge (Hendrickson, 2008).

<sup>37</sup> Philo speaks specifically of the logeum as "an emblem of that reason which holds together and regulates the universe" (*On the Life of Moses II*, 133), a clear reference to the Logos (Wolfson, *Philo*, I, 339). He describes the high priest's other garments as symbols of the physical world. However, although Philo generally describes the Logos as the mind whose object of thought is the intelligible world, since, as with Aristotle, the mind is identical with its intelligible object, the Logos can refer also to the world itself. See idem, *Philo*, I, 246, citing *On the Creation*, 6, 24. In other places, Philo describes the high priest himself as an allegorical reference to the Logos; see Wolfson, *Philo*, I, 259-60, and Ronald Williamson, *Jews in the Hellenistic World: Philo* (Cambridge: Cambridge University Press, 1989), 136-43.

<sup>38</sup> Philo, *On the Life of Moses II*, 134.

<sup>39</sup> For the Logos as God's first-born son, see Philo, *On Husbandry*, 51. See also Wolfson, *Philo*, I, 234.

that which had been created from the Creator. And this same Word is continually a suppliant to the immortal God on behalf of the moral race, which is exposed to affliction and misery; and is also the ambassador, sent by the Ruler of all, to the subject race. And the Word rejoices in the gift, and, exulting in it, announces it and boasts of it, saying, “And I stood in the midst, between the Lord and you”<sup>40</sup> neither being uncreated as God, nor yet created as you, but being in the midst between these two extremities, like a hostage, as it were, to both parties: a hostage to the Creator, as a pledge and security that the whole race would never fly off and revolt entirely, choosing disorder rather than order; and to the creature, to lead it to entertain a confident hope that the merciful God would not overlook his own work.<sup>41</sup>

The dual role of the Logos here as messenger and advocate parallels the dual role of the prophet discussed above. This dual description continues in the Johannine writings. The Gospel of John (14:16, 26; 15:26; 16:7) refers to the Holy Spirit as a paraclete in the sense of a teacher or prophetic communication with humans, but not as an advocate on behalf of humans. 1 John, in turn uses the term paraclete to refer to the Logos (identified with Jesus in 1:14), which acts as an advocate for humanity: “If anyone does sin, we have an advocate (*parakleton*) with the Father, Jesus Christ the righteous; and he is the atoning sacrifice for our sins” (1 John 2:1-2, NSRV).

The replacement of the role of the prophet with the heavenly Logos and angelic beings may result from the cessation of advocate-prophets in the late Second Temple period. Although there are some advocate-sages, such as Honi the Circle-drawer,<sup>42</sup> the need for heavenly mercy was greater than the intercession that these figures could supply and so the role of advocacy was transferred to the angelic realm.

The few hints of advocates in the Bible, meager as they are, grow in Second Temple literature, but sprout forth a full-fledged heavenly court bureaucracy in rabbinic midrashim. The

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<sup>40</sup> Yonge gives the citation as Num 16:48 LXX (17:13 MT), but Deut 5:5 is a better fit.

<sup>41</sup> Philo, *Who is the Heir of Divine Things*, 205-206.

<sup>42</sup> See M. Taanit 3:8, and analysis at Suzanne Last Stone, “On the Interplay of Rules, ‘Cases,’ and Concepts in Rabbinic Legal Literature : Another Look at the Aggadot on Honi the Circle-Drawer,” *Dine Israel* 24 (2007): 125-55; and below p. 20.

theme of having paracletes before God is paralleled in rabbinic literature.<sup>43</sup> As cited above, M. Avot 4:11 teaches that one acquires paracletes and prosecutors (קטיגור) by fulfilling commandments and sinning, respectively. T. Peah 4, 21 lists charity and kind deeds as being great advocates (פרקליט גדול) between Israel and their Father in heaven.<sup>44</sup> Similarly in T. Peah 1, 1 a sin-offering is likened to “an advocate that enters to plead” (לפרקליט שנכנס לרצות).<sup>45</sup> Y. Taanit 2, 4 (65b) has Abraham requesting of God to find a defense for the nation (מלמד עליהם סניגוריא) when calamity befalls them. Y. Taanit 1, 1 (63c) teaches that the four species, which grow on water, act as advocates (פרקליטין) on behalf of water.<sup>46</sup>

If Philo and John transferred the roles of messenger and advocate from the prophet to the Logos, the Rabbis transfer them again to Torah. Leviticus Rabbah 6 teaches:

אל תהי עד חינם (משלי כד:כח), אילו ישראל, ואתם עידי נאם י"י ואני אל (ישעיה מג:יב). ברעך (משלי כד:כח), זה הקדוש ברוך הוא, רעך ורע אביך אל תעזב (משלי כז:י). והפתית בשפתיך (משלי כד:כח), מאחר שפיתיתם אותי בסיני ואמרתם כל אשר דבר י"י נעשה ונשמע (שמות כד:ז), לסוף ארבעים יום אמרתם לעגל אלה אלהיך ישראל (שמות לב:ד).

אמר ר' אחא הדא רוח הקודש פי סניגוריא היא מלמדת זכות לכן ולכן. אומרת לישראל אל תהי עד חינם ברעך. ואומרת להקב"ה אל תאמר כאשר עשה לי כן אעשה לו (משלי כד:כט).

“Do not be a false witness” (Prov 24:28): this refers to Israel, “You are My witnesses, declares the Lord, and I am God” (Isaiah 43:28). “Against your fellow” (Prov 24:28): this refers to the Holy One, blessed be He, “Do not desert your Friend and your father’s Friend” (Prov 27:10). “And seduce with your speech” (Prov 24:28): as you seduced me at Sinai and said, “All that the Lord has spoken we will do and obey” (Exod 24:7), but after forty days you said to the calf, “These are your gods, O Israel” (Exod 32:4).

R. Aha said, this holy spirit is a mouth of defense (*sanegoria*). It argues merit for this side and for that side. It says to Israel, “Do not be a false witness against your Fellow.” And it says to the Holy One, blessed be He, “Do not say, ‘What he did to Me, I will do to him’” (Prov 24:28).<sup>47</sup>

<sup>43</sup> See Kaufman Kohler, "Paraclete," in *Jewish Encyclopedia* (1906).

<sup>44</sup> See parallel at B. Baba Batra 10a. B. Shabbat 32a similarly lists repentance and good deeds as a person’s paracletes.

<sup>45</sup> See parallel at Sifra, Mezora', 3, 3. Y. Berachot 4, 1 (7b) similarly refers to the two daily burnt offerings as paracletes.

<sup>46</sup> Similarly, Ecclesiastes Rabbah 7 speaks of the holiday of Shemini Aseret as a paraclete for rain.

<sup>47</sup> See parallel at Midrash haGadol to Deut 9:16 and Deut Rabbah 3:11.

The holy spirit here is the prophetic voice of the Scriptures which turns against its Author and becomes an independent intermediary. In this daring midrash, the Rabbis use a verse not only to rebuke Israel for its unfaithfulness but also to warn God not to take revenge and deny His covenant with Israel in return. Like Philo's Logos, the midrash's Scripture as holy spirit acts as a heavenly advocates for (and against) both Israel and God. While scholars have pointed out that the cosmological role of Philo's Logos finds a parallel in the Torah as architect in Genesis Rabbah 1:1,<sup>48</sup> Daniel Boyarin notes that "the difference in the role between the Logos and the Torah is of central importance: the Logos is an actual personified agent, while for the Rabbis, Wisdom has been captured in a Book, and there is only one agent."<sup>49</sup> While Boyarin's caution is appropriate for Genesis Rabbah, this midrash from Leviticus Rabbah surely does personify Scripture as an independent agent.<sup>50</sup>

The Torah also advocates in defense of Israel in Songs Rabbah 6:3:

[1] חכו ממתקים (שיר השירים ה:טו). ר' עזריה ורבי אחא בשם ר' יוחנן אמרו בשעה ששמעו ישראל בסיני אנכי פרחזה נשמתן הה"ד (דברים ה:כב) אם יוספים אנחנו לשמוע הה"ד נפשי יצאה בדברו (שיר השירים ה:כב). חזר הדיבור לפני הקדוש ברוך הוא ואמר רבוננו של עולם אתה חי וקיים ותורתך חיה וקיימת ושלחתני אצל מתים כולם מתים באותה שעה חזר הקדוש ברוך הוא והמתיק להם את הדבור הה"ד (תהלים כט:ד) קול ה' בכח קול ה' בהדר. אמר ר' חמא בר ר' חנינא קול ה' בכח לבחורים, קול ה' בהדר, לתשישין.

[2] תני ר' שמעון בן יוחאי תורה שנתן הקדוש ברוך הוא לישראל החזירה להם נפשותיהן הה"ד (תהלים יט:ח) תורת ה' תמימה משיבת נפש.

[3] ד"א חכו ממתקים, למלך שדיבר כנגד בנו, ונתירא ונשמטה נפשו ממנו, כיון שראה המלך כך שנשמטה נפשו, התחיל מגפף ומנשק אותו, ומפתהו ואומר לו מה לך לא בני יחידי אתה לא אני אביך, כך כשדיבר הקדוש ברוך הוא אנכי ה' אלהיך מיד פרחזה נשמתן, כיון שמתו התחילו המלאכים מגפפין ומנשקין אותם ואומרין להם מה לכם אל תיראו בנים אתם לה' אלהיכם, והקב"ה ממתיק בחכך הדיבור ואומר להם לא בני אתם אנכי ה' אלהיכם, עמי אתם, חביבין אתם לפני, והתחיל מפתה אותן עד שחזרה נשמתן והתחילו מבקשין מלפניו, הוי חכו ממתקים,

<sup>48</sup> Wolfson, *Philo*, I, 243; Ephraim Urbach, *The Sages: Their Concepts and Beliefs* (Cambridge: Harvard University Press, 1975), 198-200 and references there; David Winston, *Logos and Mystical Theology in Philo of Alexandria* (Cincinnati: Hebrew Union College Press, 1985), 25; and David Stern, *Midrash and Theory: Ancient Jewish Exegesis and Contemporary Literary Studies* (Evanston: Northwestern University Press, 1996), 27-28. Note, however, the differences between Philo and the Midrash discussed by Wolfson, Urbach and Stern.

<sup>49</sup> Daniel Boyarin, "The Gospel of the Memra: Jewish Binitarianism and the Prologue to John," *Harvard Theological Review* 94, no. 3 (2001): 261 n. 66.

<sup>50</sup> On the personified Scripture as Logos, see also Azzan Yadin, *Scripture as Logos: Rabbi Ishmael and the Origins of Midrash* (Philadelphia: University of Pennsylvania, 2004), 168-75.

[4] התחילה התורה מבקשת רחמים על ישראל מן הקדוש ב"ה אמרה לפניו רבש"ע יש מלך משיא בתו והורג את בן ביתו, כל העולם כולו שמח בשבילי ובניך מתים, מיד חזרה נשמתן הה"ד תורת ה' תמימה משיבת נפש.

[1] His mouth is sweet (Songs 5:16). R. Azariah and R. Aha said in the name of R. Yoḥanan: At the moment when Israel at Sinai heard “I,” (Deut 5:6) their souls flew out, as is written: “If we continue hearing [the voice of the Lord our God any longer, we shall die]” (Deut 5:22), and as it is written, “My soul left upon His speaking” (Songs 5:6). The Word (*dibur*) returned (*hazar*) to the Holy One, blessed be He, and said: “Master of the Universe, You are alive and enduring and your Torah is alive and enduring but you have sent me dead people, they are all dead.” Thereupon, the Holy One, blessed be He, retracted (*hazar*) and sweetened the Word for them, as is written, “The voice of the Lord in strength, the voice of the Lord in splendor” (Psalms 29:4).

R. Ḥama bar R. Ḥanina said, “The voice of the Lord in strength,” for the young people; “the voice of the Lord in splendor,” for the old people.

[2] R. Shimon bar Yoḥai taught: The Torah that the Holy One, blessed He, gave to Israel returned their souls to them, as it is written, “The Torah of the Lord is perfect, restoring souls” (Psalms 19:8).

[3] Another interpretation: “His mouth is sweet.” This is like [a parable of] a king who spoke against his son and he [the son] became frightened and his soul left him. Once the king saw that his soul left him, he began to hug and kiss him and to persuade him and say to him, “What is with you? Are you not my only son? Am I not your father?” So too, when the Holy One, blessed be He said, “I am the Lord your God,” their souls immediately flew away. Once they died, the angels began hugging and kissing them and saying to them, “What is with you? Do not fear, you are children of the Lord your God.” And the Holy One, blessed be He, sweetened the Word in their mouths and said to them, “Are you not My sons? I am the Lord your God. You are My nation. You are beloved unto Me.” And He began to persuade them until their souls returned and they began to entreat Him. This is, “His mouth is sweet.”

[4] The Torah began requesting mercy for Israel from the Holy One, blessed be He. It said before Him, “Master of the universe! Is there a king who marries off his daughter but kills the members of his household? All of the world is happy for me but your sons are dead.” Immediately, their souls returned, as it is written, “The Torah of the Lord is perfect, restoring souls.”

As in the previous midrash, God’s prophetic word hypostatizes and takes upon itself the role of an advocate before God on behalf of Israel. Here, however, the terminology used is not holy spirit but *dibbur*, Word, Logos. In the continuation of the midrash ([2] and [4]), *dibbur* is substituted with Torah and it is the Torah that acts as Israel’s advocate to request mercy before

God.<sup>51</sup> The parable in section [3] explains how God sweetens the Word such that, like the biblical prophets, the Word does double duty, both persuading God to help Israel and assuaging Israel's mortal fear of God.<sup>52</sup>

The above should already suffice to show that the Rabbis not only inherit and transmit but also expand upon the rich heritage of Second Temple interpretations that conceived of advocates in the heavenly court. Some of these midrashim include curious and sometimes radical innovations. One way in which the Rabbis expand on the prior traditions is by introducing the terms *sanegor* and *kategor*, as well as importing other aspects of Roman courts such as the *clepsydra* (see below).<sup>53</sup> As Meira Kensky notes, the Rabbis not only use technical terms from their surrounding Greco-Roman legal culture; the aggadic divine court also features the sense of trial as *agon* where advocates unscrupulously battle to produce any winning argument they can, regardless of truth or falsehood.<sup>54</sup> This modeling of the divine court with the Hellenistic-Roman court system is comparable to the tendency of the Rabbis to model God as a Roman Emperor in their king *meshalim*.<sup>55</sup> However, this only underscores the question: if the Rabbis rejected the adversarial nature of the Roman legal system and the presence of lawyers in their own earthly courts, why would they not only transmit these nearly heretical themes of Second Temple literature but also expand upon them and freely include parallels to Roman courts?

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<sup>51</sup> A hypostatized Torah is also found in Lamentations Rabbah, *petihta* 24, where God calls upon the Torah and each letter of the alphabet to testify against Israel, but Abraham convinces each of them to withhold their testimonies.

<sup>52</sup> See further at Winston, *Logos*, 16.

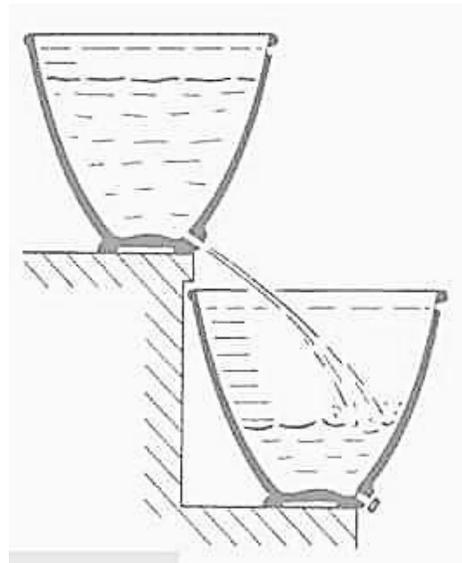
<sup>53</sup> Lieberman, "Roman Legal Institutions," 27.

<sup>54</sup> Kensky, *Trying Man, Trying God*, 313-14. Kensky analyzes a wonderful passage from Ecclesiastes Rabbah 4:1 in which Elijah helps the children of the condemned vindicate their fathers. Like an Athenian logographer, Elijah composes for them a defense (*sanegoria*) that they should present in the divine court. Kensky insightfully comments: "When Elijah shows up, he does not instruct the children to pray, to appeal to God's compassion, or to concede anything. He teaches them to *win*, to mount an argument" (ibid., 314).

<sup>55</sup> David Stern, *Parables in Midrash: Narrative and Exegesis in Rabbinic Literature* (Cambridge: Harvard University Press, 1991), 93-97.

I would like to propose that the Rabbis pictured the heavenly court in terms of Roman courts not despite the corruption of the latter but precisely because of it. They feared that a heavenly court that followed strict justice and judged human actions according to the truth would issue impossibly harsh, even if justifiable, verdicts. Consider the following text where Abraham acts as defense lawyer on behalf of Sodom:

אולי יחסרון חמשים הצדיקים חמשה אמר ר' חייא  
בר אבא ביקש אברהם לירד לו מחמשים לחמשה,  
אמר לו הקדוש ברוך הוא חזור בכך למפרע.  
אמר ר' לוי חלף סידרה מלאה מים, כל זמן שהיא  
מלאה מים הסניגור מלמד, פעמים שהדיין מבקש  
שילמד הסניגור והוא אומר הוסיפו בתוכה מים.  
“What if the fifty innocent should lack  
five?” (Genesis 18:28). R. Hiyya bar Aba  
said: Abraham wished to descend from  
fifty to five. The Holy One, blessed be He,  
said to him, “Turn backwards.”  
R. Levi said: A clepsydra full of water, as  
long as it is full the advocate (*sanegor*)  
defends. Sometimes the judge wishes for  
the advocate to defend [further] and he  
says, “Add more water to it.”<sup>56</sup>



In ancient Athenian courts and again in Roman courts after Pompey, the speeches by each advocate were timed using a clepsydra (literally, a water-thief). The clepsydra consisted of an open bowl with a hole near the bottom which emptied into a similar bowl below it. The presiding magistrate determined at the outset the amount of water, and time, allotted to each side.<sup>57</sup> The speaker would be able to tell that his time was running low when the stream weakened and its arc shortened. While the clepsydra was intended to ensure fairness, apparently some advocates attempted to cheat the system, perhaps by overfilling the top bowl. One clepsydra found at Athens has an additional hole near the top rim that would ensure the bowl was filled to the same

<sup>56</sup> Genesis Rabbah 49, 12.

<sup>57</sup> William Forsyth, *The History of Lawyers* (Boston: Estes and Lauriat, 1875), 105.

level every time.<sup>58</sup> In Athens, an official was elected by lot each morning to oversee the clepsydra “in order that no mischief be done.”<sup>59</sup>

As noted above, God informs Abraham of His plans for Sodom not simply to keep him in the loop but rather seems to be prodding Abraham to argue with Him. A previous midrash provides a parable: “Like a king who had an advisor (סִנְקֵהָרִין) and he would not do anything without his opinion. One time the king tried to do something without his opinion. The king said, ‘Did I not make him an advisor so that I would not do anything without his opinion?’ R. Yudan said, so too the Holy One, blessed be He, said, ‘Did I not call him my advisor so that I would not do anything without his opinion?’”<sup>60</sup> God does not want to act alone but seeks Abraham’s opinion. If a king tries to do something without his advisor’s permission, we can assume that the reason is that the king suspects the advisor will disagree. Here too, God knows that Abraham will not approve of God’s destructive plan and wants anyway for Abraham to argue his case.

The midrash of the *klepsydra* thus extends this theme of God’s prompting Abraham to defend Sodom. When Abraham jumps from fifty to five, God senses that Abraham is not being sufficiently persistent in his pleas and rushing through his defense when, with more time, he may be able to save the city. God therefore steps out of His role as an unbiased judge and, violating court protocol and against strict justice, allows the defense to take extra time to further argue for acquittal.<sup>61</sup> Rather than rely on His own omniscience and His role as “Judge of all the earth” (Gen 18:22) to act alone as an impartial judge capable of achieving absolute Justice and Truth,

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<sup>58</sup> Suzanne Young, “An Athenian Clepsydra,” *Hesperia: The Journal for the American Scholl of Classical Studies at Athens* 8, no. 3 (1939), 274-84.

<sup>59</sup> Aristotle, *The Athenian Constitution*, 62, 2.

<sup>60</sup> Genesis Rabbah 49, 2.

<sup>61</sup> Pliny the Younger, *Letters*, 2.11.14, relates that in his role as prosecutor against Marius Priscus, a corrupt governor of Africa, “I spoke for nearly five hours, for, in addition to the twelve water-clocks -- the largest I could get -- which had been assigned to me, I obtained four others.” This testimony reveals that an orator could receive additional time during a trial (though it is not clear whether this was done so legally or through manipulation) and that it was considered a great benefit towards winning one’s case.

God instead invites a defense lawyer into His court and even gives him extra time on the water-clock. God would prefer to be persuaded towards mercy by a good lawyer, even at the expense of justice.

If in the previous midrash God gives short-shrift to justice, in the following midrash, God deceives Justice outright. Genesis Rabbah 8:4 to Gen. 1:26, “And God said, ‘Let *us* make man,’” explains that when God conferred with his heavenly council about creating man, “He revealed to the angels that the righteous would issue from Adam, but He did not reveal to them that the wicked would issue forth as well. For if He had revealed to them that the wicked would issue forth from him, the Attribute of Justice (*middat hadin*) would not have allowed him to be created.” God here acts to withhold information from the prosecuting Attribute of Justice and instead “joined with the Attribute of Mercy and created man.”<sup>62</sup> A fair assessment of man’s fate would not have allowed for the creation of human beings. God needed to hide the truth in order to allow human life to begin. We thus see in this midrash two important points. One is the hypostatization of Justice and Mercy, otherwise only aspects of God’s personality, but now a separate being.<sup>63</sup> Second, is the art of trickery, often imputed to the sophists, is here used by God to rig the ballot.

The next scene in the midrash pits the angels against each other like prosecutors and defense lawyers in a court room: “Kindness says, [God] should create [man] for he does acts of kindness. Truth says, He should not create [man] for he is all lies. Righteousness says, He should create [man] for he does acts of righteousness. Peace says, He should not create [man] for he is all quarrel. What did the Holy One, blessed be He, do? He took Truth and threw it to the

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<sup>62</sup> Genesis Rabbah 8:3. Translation from Stern, *Midrash and Theory*, 88. Stern finds in this midrash another example of Logos theology.

<sup>63</sup> There are actually two versions of this aggadah cited in Genesis Rabbah 8:3. The first, by R. Berechiah has God hide the ways of the wicked from before Himself and join with his own Attribute of Mercy. Only in the second, by R. Hanina, do we see hypostatization wherein the Attribute of Justice is a separate angel.

ground.”<sup>64</sup> Humans can only exist if God subjugates Truth and discounts its vote in the heavenly council in favor of Kindness and Righteousness. The council of angels reacts with indignity: “Master of the Universe, how can you so disgrace Your Truth (אלטיכסייה, ἀλήθεια)?”<sup>65</sup> God must admit and give preference to defense lawyers in His heavenly court precisely in order to vitiate the threat of Truth. Here God does not even bother to trick Truth but simply tramples over it. To paraphrase the Quaker slogan, “God speaks power to Truth.”

Lamentations Rabbah 1:13 similarly describes a clash between God and *middat hadin* where God is forced to give in. God commands an angel to take two coals and throw them onto the earth to burn the Temple. The angel Gabriel is given the two coals but keeps them in his hand for three years in the hope that Israel will repent. Finally, when they still do not repent, Gabriel is about to hurl one down in fury when God stops him saying, “Gabriel! Gabriel! Easy, easy! Some of them perform acts of charity for each other.” The midrash then cites a praise of God for extending His anger “in the face of the Principle of Justice.”<sup>66</sup> Thereupon, the principle of Justice convinces God that it is better that He destroy the Temple rather than allow His enemies to do so and so God sends down the fire. God is overruled by His own previous command to destroy and the Principle of Justice. We see here God’s anguish in punishing, how He Himself argues in Israel’s defense and attempts to overturn His own prior directive to punish.

While God in the midrash just discussed is eager to forgive and must be forced back by the Principle of Justice, another section from Lamentations Rabbah (*petihta* 24) depicts God being stubbornly unforgiving. This midrash poignantly reveals the need for lawyers to pull God out of his anger. It opens with Abraham walking in the ruins of the Temple while crying, tearing out his hair in mourning, and complaining about the disgrace that has befallen his progeny. The

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<sup>64</sup> Ibid., 8:5.

<sup>65</sup> Ibid.

<sup>66</sup> Translations from Stern, *Parables*, 238-40.

angels join in Abraham's complaints and press God to respond. God replies, "Your children sinned and transgressed the whole Torah and upon all twenty-two letters that are in it." God summons the Torah and all the letters to testify against Israel but Abraham convinces the Torah and each letter, one by one, to withhold their testimonies. Abraham, Isaac, Jacob, and Moses then proceed to recount the devotion they had and sacrifices they suffered for God so that God will have mercy on Israel on their account. But God remains unmoved. Finally, Rachel recalls to God how she was not jealous of her sister but rather helped her to trick Jacob on their wedding night to believe that Leah was Rachel in order not to cause Leah embarrassment; yet God is jealous of worthless idols and destroys His nation because of them. The midrash ends, "Immediately, the mercy of the Holy One, blessed be He, welled up and he said, "For you, Rachel, I will return Israel to their place."

God feels genuinely and justifiably angry at Israel for their disloyalty and even the Patriarchs fail to pacify Him. Abraham succeeds in obstructing justice and diverting prosecuting witnesses and thereby preventing God from laying further guilt on Israel; but that by no means allays His anger. Rachel's plea, however, is fundamentally different from those of the Patriarchs. While the Patriarchs list all of the sacrifices they made for God, Rachel mentions a single sacrifice that she made for her sister.<sup>67</sup> That, combined with the shame she imputes to God for His jealousy of hollow idols, succeeds in pulling on God's heart strings. Her feminine compassion melts away God's masculine stubborn jealousy and God learns from Rachel how to be merciful.<sup>68</sup>

Note that all of these orators exclusively utilize *pathos*; there are no reasoned legal arguments here or calls to authority. All of the advocates attempt to shame God into acquiescing.

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<sup>67</sup> Haim Ovadia, "Four Men and a Woman: On Character and Attitude in Eikha Rabba," unpublished paper.

<sup>68</sup> See analysis of this midrash at Stern, *Midrash and Theory*, 85. Note that רחמים (mercy) derives from רחם (womb).

Rachel, however, proves to be the most successful lawyer. The summoning of all of the Patriarchs and Rachel here to advocate on Israel's behalf is reminiscent of the practice in Roman courts for a defendant to show up with not one but a whole entourage of advocates and well-wishers to more effectively convince the court.<sup>69</sup>

One of the most forceful and controversial advocates in rabbinic literature is Honi the Circle-drawer, mentioned above.<sup>70</sup> He prayed for rain by first drawing a circle around himself and swearing in God's name that he would not budge from that spot until God brought had mercy on his children. This device is also used by the Roman general Popilius when he forces Antiochus IV to abandon his campaign against Egypt. As Polybius reports: Popilius "drew a circle around Antiochus and told him he must remain inside the circle until he gave his decision." Other midrashim have Moses and Habakkuk use the same technique.<sup>71</sup> Suzanne Stone explains that the circle creates a legal space wherein God becomes not only the judge but also the defendant and is compelled to respond to his petition.<sup>72</sup> Once again, the Rabbis apply a bold legal method of making an appeal to a sovereign, one known from a Roman source to be particularly impudent, to the Divine court.

Sifre Deuteronomy 343 explicitly makes reference to Roman rhetors as the model for the composition of orations before God:

וַיֹּאמֶר ה' מְסִינִי בֵּא וּזְרַח מִשְׁעִיר, מְגִיד הַכְּתוּב שֶׁכִּשְׁפַתְּחָ מֹשֶׁה לֹא פָתַח בְּצִרְכָּם שֶׁל יִשְׂרָאֵל תַּחֲלִילָה עַד שֶׁפָּתַח בְּשִׁבְחֹו שֶׁל מְקוֹם. מִשָּׁל לְלוּטִייר שֶׁהִיָּה עוֹמֵד עַל הַבִּמָּה וְנִשְׁכַּר לְאַחַד לְדַבֵּר עַל יָדָיו וְלֹא פָתַח בְּצִרְכֵי אוֹתוֹ הָאִישׁ תַּחֲלִילָה עַד שֶׁפָּתַח בְּשִׁבְחֹו שֶׁל מֶלֶךְ אֲשֶׁרֵי עוֹלָם מִמְּלֹכוֹ אֲשֶׁרֵי עוֹלָם מִדֵּינֵינוּ עֲלֵינוּ זְרַחָה חֲמָה עֲלֵינוּ זְרַחָה לְבִנָּה וְהָיוּ אַחֲרָיִם מְקַלְסִים עִמּוֹ וְאַחַר כֵּן פָּתַח בְּצִרְכֹו שֶׁל אוֹתוֹ הָאִישׁ וְחֹזֵר וְחָתַם בְּשִׁבְחֹו שֶׁל מֶלֶךְ.

<sup>69</sup> Crook, *Legal Advocacy*, 73-74. Crook notes that sometimes there were also multiple prosecutors. This is reflected in B. Shabbat 32a, "Even if one has 999 prosecutors and one defender."

<sup>70</sup> P. 10 and n. 42.

<sup>71</sup> Polybius, *The Histories*, trans. W. R. Paton, Loeb Classical Library (Cambridge: Harvard University Press, 1975), 29.27.4-7. See also Judah Goldin, "On Honi the Circle Drawer: A Demanding Prayer," in *Studies in Midrash and Related Literature*, ed. Barry Eichler and Jeffrey Tigay (Philadelphia: Jewish Publication Society, 1988):331-35.

<sup>72</sup> Stone, "Rabbinic Legal Magic," 114-19.

He said: The Lord came from Sinai, He shone upon them from Seir” (Deut 33:2). Scripture teaches that when Moses opened [his oration], he did not open with the needs of Israel first until he opened with praise of God. A parable to a rhetor who was standing on the platform (βήμα)<sup>73</sup> and was hired by one side to speak on his behalf. He did not open with the need of his client until he opened with the praise of the king: “Fortunate is the world for its king, fortunate is the world for its judge. The sun shines upon us, the moon shines upon us. Others would also praise together with him. Only then did he open with the needs of his client and then again closes with praise of the king.

The midrash continues with examples of orations following this rhetorical format from Moses, David, Solomon, and from the prayer of the Eighteen Blessings.<sup>74</sup> The Rabbis apparently saw the extensive flattery they witnessed of Roman judges by professional rhetors<sup>75</sup> as an appropriate and effective way of advocating before God as well.

Exodus Rabbah 43, expounding on Moses’ entreaty at Exod 32:11, presents an extended analysis of Moses as an advocate. The midrash opens:

ויחל משה, כך פתח ר' תנחומא בר אבא (תהלים קו:כב) ויאמר להשמידם לולי משה בחירו עמד בפרץ לפניו, א"ר חמא בר חנינא הסניגור הטוב מסביר פנים בדין.  
משה אחד משני סניגורין שעמדו ללמוד סניגוריא על ישראל והעמידו פנים כביכול כנגד הקדוש ברוך הוא, משה ודניאל, משה מנין שנאמר לולי משה בחירו וגו', דניאל מנין שנא' (דניאל ט:ג) ואתנה את פני אל ה' האלהים לבקש וגו', אלו שני בני אדם שנתנו פניהם לנגד מדת הדין לבקש רחמים על ישראל

“Moses implored” (Exod 32:11). This is how R. Tanḥuma bar Abba opened [his discourse]: “He would have destroyed them had not Moses His chosen one stood (*amad*) before (*lefanav*) Him in the breach [to avert His destructive wrath]” (Ps 106:23). R. Hama bar Hanina said: The good advocate (*sanegor*) gives the law a bright countenance (*masbir panim*).

Moses is one of two advocates who stood up (*amdu*) to argue in defense of Israel and they, as it were, stood brazen-faced (*he'emidu panim*) before the Holy One, blessed be He: Moses and Daniel. What is the source for Moses? As it is stated: “Had not Moses His chosen...” What is the source for Daniel? “I tuned my face (*panai*) to the Lord God, devoting myself to prayer...” (Dan 9:3). These are two people who presented brazen faces (*natnu penehem*) before the Attribute of Justice in order to request mercy upon Israel.

<sup>73</sup> See references cited above, n. 14.

<sup>74</sup> On the resemblance between petitionary prayer and legal forms, see Joseph Heinemann, *Prayer in the Talmud: Forms and Patterns* (Berlin: de Gruyter, 1977), 193-217; and Stone, “Rabbinic Legal Magic,” , 109-10.

<sup>75</sup> The oration of Tertullus before Felix in Acts 24:1-9, which begins with extensive praise of the judge, fits into this pattern.

Making reference to the usual activity of defense advocates in court, R. Ḥama says that normally a *sanegor* presents the law in a positive light that the judge will find pleasing and favorable to the defendant.<sup>76</sup> Rather than appease the judge, however, Moses and Daniel, speak brazenly by attacking, blaming, and antagonizing the Judge and showing anger towards His attribute of Justice.<sup>77</sup>

The midrash continues with various parables describing the various antics performed by Moses in order to save Israel from a guilty verdict. Moses is likened to an advocate who sees the prosecutor winning and so pushes him out of the way and stands in his place. He is then likened to a king's associate (סנקתדרוס, στανκτάθροσ) who snatches the pen away from the Judge just as he is about to write the guilty verdict. These two parables involve a king judging his son, implying that Moses acted with the implicit will of God in preventing Him from punishing His nation.

The same midrash at 43:3 adds:

ר' נחמיה אומר מהו ויחל משה שהכניס לאלהים כמין דורון ואין הלשון הזה אלא לשון דורון, כמה דאת אמר (תהלים מה) ובת צור במנחה פניך יחלו וגו', וכן (מלאכי א) ועתה חלו נא פני אל וגו'  
R. Nehemiah says: What does “Moshe implored” mean? That he brought to God a kind of present for this language is none other than the language of a present, as you say, “O Tyrian lass, the wealthiest people will court your favor (*yehalu*) with gifts” (Ps 45:13). And similarly, “And now implore (*halu-na*) the favor of God” (Malachai 1:9).

Moses here gives something like a gift to God.<sup>78</sup> Saul Lieberman points to Roman texts where defendants offered a sacrifice before their cases were heard in order to improve their chances of acquittal and Exodus Rabbah 15:12 shows that the Rabbis considered this to be a common

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<sup>76</sup> סבר פנים always refer to a positive countenance. M. Avot 1:15 adds a modifier, “סבר פנים יפות.” However, it has the same meaning even without the modifier, as in Y. Yoma 6:1 (43b); Genesis Rabbah 49:14, 73:12; B. Ber 63b, B. Taanit 8a; and B. Sota 40a.

<sup>77</sup> העמיד פנים means to show resistance to, as in Genesis Rabbah 44:15. גותן פנים means to show anger towards, as in Mekhilta d'R. Shimon bar Yoḥai 17:3.

<sup>78</sup> Lieberman, “Roman Legal Institutions,” 31-32.

practice in Roman courts. Still, it would be surprising if such bribery could work before God; the author of M. Avot 4:22 would be particularly offended. Yet, the midrash praises Moses for saving Israel, no matter what method he uses. The Rabbis continue to explain that Moses sweetened what was bitter and overturned God's harsh decrees through argumentation. This is reminiscent of the way Protagoras could "make the worse case seem the better."<sup>79</sup> A good example of how Moses made the worse argument the better is provided in Exodus Rabbah 43:5:

אמר ריב"ל בשם רשב"י פתח של תשובה פתח לו הקדוש ברוך הוא (שמות כ) אנכי ה' אלהיך בסיני למשה, בשעה שעשו ישראל העגל היה משה מפיס את האלהים ולא היה שומע לו, אמר לו אפשר שלא נעשה בהם מדת הדין על שבטלו את הדיבור, אמר משה רבון העולם כך אמרת בסיני אנכי ה' אלהיך אלהיכם לא נאמר לא לי אמרת שמא להם אמרת ואני בטלתי את הדבור אתמהא לי, הוי ויחל משה וגו'.

R. Yehoshua ben Levi said in the name of R. Shimon bar Yoḥai: The Holy One, blessed be He, provided him [Moses] with an opening of a response. [God said] to Moses at Sinai: "I am the Lord thy God" (Exod 20:2). When Israel made the calf, Moses appeased God but He did not pay attention to him. He [God] said, "Can it be that we will not apply to them the attribute of justice for forsaking the commandment?" Moses said: Master of the universe, at Sinai you said "I am the Lord thy God (singular, *elohecha*). You did not say "your God" (plural, *elohechem*). Did you not tell this to me? Did you say it to them [Israel]? Did I forsake your command?" This is "Moses implored."

The midrash continues to affirm that from this point on, the Torah always states, "I am the Lord your God," using the plural so that this loophole could not be used again. Certainly not the intention of the original formulation, Moses takes advantage of a technicality to argue for Israel's acquittal. Moses here applied a typical method abused by lawyers ancient and modern. Cicero explains that an orator derives the ability to argue for either side of a case using the same source, "by showing that it contains some ambiguity; then on the basis of that ambiguity he may defend the passage which helps his case."<sup>80</sup> Here too, Moses uses a grammatical ambiguity to turn the very source of God's accusation into a reason for acquittal. The midrash continues to note that

<sup>79</sup> Aristotle, *Rhetoric*, 2.24.9.

<sup>80</sup> Cicero, *On Invention*, trans. H. M. Hubbell, Loeb Classical Library (Cambridge: Harvard University Press, 1949), II.142

from that point on, God stopped using the singular and always used the plural instead, as in Lev 19:2.

A good example of Moses presenting a brazen fact towards God follows in the next paragraph of the midrash, 43:6:

ורבי נחמיה אמר בשעה שעשו ישראל אותו מעשה עמד לו משה מפייס את האלהים אמר רבון העולם עשו לך סיוע ואתה כועס עליהם, העגל הזה שעשו יהיה מסייעך אתה מזריח את החמה והוא הלבנה, אתה הכוכבים והוא המזלות, אתה מוריד את הטל והוא משיב רוחות, אתה מוריד גשמים והוא מגדל צמחים, אמר הקדוש ברוך הוא משה אף אתה טועה כמותם והלא אין בו ממש, אמר לו א"כ למה אתה כועס על בניך הוי למה ה' יחרה אפך בעמך.

R. Nehemiah said: When Israel did that deed [worshipped the golden calf], Moses stood up and appeased God. He said, "Master of the universe, they have made for you a helper and you are angry at them? Let this calf that they made help you. You light up the sun and it will [light up] the moon. You [light up] the stars and it will [light up] the constellations. You bring down the dew and it will make the winds blow. You will bring down the rain and it will cause the plants to grow." The Holy One, blessed be He, said, "Moses, you are as mistaken as them [Israel] for it has no substance." He replied, "If so, why are You angry at Your children?" This is, "Why, O Lord, do you let Your anger blaze forth against Your people?" (Exod 32:11).

Again, like a talented lawyer, Moses backs God into a corner by making Him admit that the object of His jealousy is not worthy of attention and therefore God has no reason to be angry. Rather than defend Israel's actions as the previous paragraph does, Moses here makes a brazen attack on God's jealousy, just as Rachel does in Eicha Rabbah cited above.

The Rabbis not only continue the themes of advocacy found in the Bible and Second Temple literature, they expand them and provide their heavenly advocates with more tools to sway God's judgment. They transform the heavenly advocates into Roman lawyers and allow them to use all the sophistic tricks of the trade that one would find in a typical Roman court. The Patriarchs, Moses, Rachel, and even God Himself will do almost anything to obstruct the Attribute of Justice: flatter and bribe the judge, conceal evidence, take extra time, convince witnesses to withhold testimony, use grammatical loopholes to twist the law, and more. In their

own earthly courts, the Rabbis recognize the corruption of the Roman adversarial system and the dishonesty promoted by the rhetoricians. They therefore made a concerted effort to exclude lawyers from their own courts as the best way to ensure truth and justice. When it comes to God's court, on the other hand, truth and justice become enemies for sinful humans who cannot survive their high standards. The injustices of the adversarial system are therefore introduced into the heavenly court, usually with God's implicit consent, so that Mercy may triumph.

It is instructive to compare the rabbinic view to that of Plato. Plato also criticizes the Athenian adversarial system and the Sophists who uphold it. In the *Laws*, his Athenian stranger envisions a utopian city called Magnesia where the court system is inquisitorial<sup>81</sup> and where lawyers are to receive the death penalty.<sup>82</sup> In the *Gorgias*, Plato's Socrates similarly envisions a heavenly court where rhetoric has no place and where the judges can see things as they really are. Plato describes this post-mortem court in his myth of the naked souls. The myth relates that under the reign of Cronus, the final judgment of people occurred just before their deaths and was conducted by living judges. However, because the people were wearing clothes, they could impress the judges by their external appearances—even if they were wicked underneath. The judges too, because they were living and wearing clothes, were too impressionable and unable to see the truth. As a result, the verdicts were often wrong. Zeus then instituted a reform that the dead should judge the dead so that the disembodied soul of the judge could clearly perceive the soul of the judged and justice would be based on the naked truth, free from the trappings of rhetoric.<sup>83</sup>

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<sup>81</sup> *Laws* 766d, 855d-856a, and see Trevor Saunders, "Plato's Later Political Thought," in *The Cambridge Companion to Plato*, ed. R. Kraut (Cambridge: Cambridge University Press, 1992), 336.

<sup>82</sup> *Laws* 937e-938c. See Glenn Morrow, *Plato's Cretan City: A Historical Interpretation of the Laws* (Princeton: Princeton University Press, 1960), 280-83; and Trevor Saunders, *Plato's Penal Code: Tradition, Controversy, and Reform in Greek Penology* (Oxford: Clarendon Press, 1991), 332-33.

<sup>83</sup> *Gorgias*, 523a-e. See analysis of this myth at Ernest Weinreb, "Law as Myth: Reflections on Plato's *Gorgias*," *Iowa Law Review* 74 (1989):787-806; and Kensky, *Trying Man, Trying God*, 91-96.

Earlier in the *Gorgias*, Plato divides argumentation between rhetoric, which is just a knack for persuading audiences or jurors to agree with any given position—whether right or wrong, and philosophy, which uses logic to analyze reality and find the truth. “Philosophy is always true,” declares Socrates. Callicles, the sophist, charges that if Socrates were accused of a crime in an Athenian court he would be incapable of defending himself without recourse to rhetoric, thus leaving his “head spinning and mouth gaping” (486b). Socrates in turn charges that Callicles will have no ability to defend himself in his heavenly post-mortem trial where rhetoric has no force and he tells Callicles, “your head will spin and your mouth will gape there in that world as much as mine would here” (527a).

The Rabbis likely never read Plato,<sup>84</sup> but if they did, they would have been terrified at his proposed heavenly court. In fact, M. Avot 4:22, which describes a lawyer-free court resembling that of Plato, is meant precisely to instill a sense of trepidation in its audience and deter them from sin. The vast majority of rabbinic literature, however, describes a heavenly court teeming with advocates of all kinds: Patriarchs and Matriarchs, angels, the Logos, the Torah, the Holy Spirit, the Attribute of Mercy, and even God Himself. Many of these sources even model the heavenly court on Roman courts, with all their deceit, flattery, bribery, and corruption. The Rabbis agreed with Plato’s assessment of lawyers and the rhetoric they use as a deterrent from achieving Truth. They also agree with Plato that there is no place in earthly courts for hired lawyers. However, taking inspiration from the great prophetic advocates in the Bible, they appreciate that God, in His mercy, allows and even requests advocates in His court who can

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<sup>84</sup> Interestingly, the rabbis did place into the mouth of Antoninus the view that the soul will be judged separately from the body. In B. Sanhedrin 91a, Antoninus challenges Rabbi on the fairness of this system if, after all, the soul could not have sinned without the body, and vice versa. Rabbi responds by rejecting the assumption that the soul could be judged alone; rather, God will combine the body and soul together for the final judgment at the time of resurrection. Thus, although Rabbi did not likely intend to reject Plato or make a statement about rhetoric, he does coincidentally assume a system more similar to that of Cronus.

persuade Him out of His rage. Indeed, Callicles would do well to have himself sent to the rabbinic heavenly court.