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2022

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UNIVERSITY OF CALIFORNIA

Los Angeles

In Defense of Israel:

The Soteriological Function of the Advocate in Early Judaism and Rabbinic Literature

A dissertation submitted in partial satisfaction of the  
requirements for the degree Doctor of Philosophy  
in Near Eastern Languages and Cultures

by

Aaron D. Samuels

2022

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# ABSTRACT OF THE DISSERTATION

In Defense of Israel:

The Soteriological Function of the Advocate in Early Judaism and Rabbinic Literature

by

Aaron D. Samuels

Doctor of Philosophy in Near Eastern Languages and Cultures

University of California, Los Angeles, 2022

Professor Carol Ann Bakhos, Chair

How the text traditions of early Judaism and rabbinic literature integrated Greek and Roman representations of advocacy with longstanding Jewish traditions of intercessory speakers constitutes the overarching focus of the present study. The limited scholarly discussion of advocates in early Judaism likely derives from similar research shortages in the closely related sphere of intercessory speech. In early Jewish texts, the act of speaking on behalf of an individual or group often involved a legally oriented form of intercessory appeal. It follows, therefore, that this specialized form of intervention would receive even less scholarly attention than the broader subject of intercession itself. Turning to rabbinic literature, scholars have focused largely on the rabbis' opposition to supporting speakers for hire, generally as an important means of distinguishing between Jewish inquisitorial and Roman adversarial courtroom procedure. There has been minimal distinction, however, between the terms, *synēgoros* (συνήγορος/ר/סניגור), *paraklētos* (παράκλητος/פרקליט), *patron* (פטרון/*pātrōnus*) and 'ōrēk

*dān* (עורך דין) in discussions of the meaning and function of a supporting speaker in rabbinic writings. Nor has a satisfactory treatment of rabbinic advocates appeared in relation to late ancient Jewish soteriology, specifically concerning theological principles of election, expiation, covenant preservation, redemption from exile, and eschatology. Finally, an abundant amount of scholarship has addressed the intercessory attributes of the law court prayer pattern, a formula of human appeal to the divine spanning from biblical through rabbinic literature. This begs the question of why such an important liturgical performance has not been considered more closely in relation to late ancient Jewish representations of supporting speech.

These considerations form the basis for the current thesis, which argues that late ancient Jewish constructions of advocacy, reflecting a tension between ancient biblical and later Greek and Roman traditions, performed a soteriological function, both in the post-temple theatre of expiatory performance as well as in the religiously constructed divine courtroom. Furthermore, when advocates appear as intercessors through formal speech in late Second Temple and rabbinic texts, they frequently act to preserve Israel's election in both the present and in the world to come, a move deemed requisite in light of Israel's limited ability to be vindicated through her own merit. The collapsing of time common to several cases of rabbinic supporting speech indicates the strong eschatological component characteristic of intercessory advocacy. Whether the eschatological orientation is realized, inaugurated, or imminently urgent, the advocate speaks on behalf of an Israel whose salvation in the world to come cannot fully materialize through the accumulation of divine merits. The looming presence of crisis reveals a broken relationship between Israel and her God where unilateral divine intervention, at times orchestrated by a supporting speaker, remains the surest path to corporate deliverance.

Adopting a soteriological approach to the question of advocacy in early Judaism and rabbinic literature helps to nuance certain preconceptions and overgeneralizations regarding late ancient Jewish approaches to law and salvation. A great portion of rabbinic discourse, for example, involves the presentation of a legal tradition or scriptural text, each of which initiates both exegetical interpretations and legal-theological discussions. In the case of halakhic principles, discussions aiming to determine the correct legal opinion have an underlying motive of preserving a community in proper relationship with their God, where righteous behaviors ensure the ongoing election of Israel in both the present world and the restoration to come. Yet rabbinic theology, like its biblical and Second Temple predecessors, understood the limits of human action and provided safeguards for moments where halakhic observance proved insufficient for staving off divine condemnation or imminent crises. Acknowledging the soteriological aspects of advocacy, therefore, yields two immediate takeaways. First, the number of narratives where advocacy confronts the uncertain and at times tenuous nature of Israel's existence reveals that late ancient Jewish advocacy occurs quite frequently within the imaginary divine courtroom. Recent scholarship attune to this phenomenon has emphasized the rhetorical skills employed in such occurrences of supporting speech; yet scholars often overlook the soteriological motives presupposing these forms of argumentation. Absent of the core principles of ancient Jewish salvation doctrine, the crafting of advanced arguments before God loses its substantive meaning. Second, the unilateral actions undertaken by God and mediated by the advocate demonstrate the limitations on human merit within rabbinic teachings. This challenges the preconceptions of antinomian thinkers, who have characterized rabbinic theology as overly legalistic and over reliant on human action as a means to salvation.

The dissertation of Aaron D. Samuels is approved

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2022

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## Abbreviations

AB	Anchor Bible
AJP	<i>American Journal of Philology</i>
AJS Review	<i>The Journal of the Association for Jewish Studies</i>
BHS	<i>Biblia Hebraica Stuttgartensia</i> . 4th rev. ed.
BBR	<i>Bulletin for Biblical Research</i>
CBET	<i>Contributions to Biblical Exegesis and Theology</i>
CBQ	<i>Catholic Biblical Quarterly</i>
CEJL	<i>Commentaries on Early Jewish Literature</i>
CHJ	<i>The Cambridge History of Judaism</i>
GR	<i>Genesis Rabbah</i>
HB	Hebrew Bible
HTR	<i>Harvard Theological Review</i>
HUCA	<i>Hebrew Union College Annual</i>
JBL	<i>Journal of Biblical Literature</i>
JLR	<i>Journal of Law and Religion</i>
JRJ	<i>Journal of Reform Judaism</i>
JSJ	<i>Journal for the Study of Judaism in the Persian, Hellenistic, and Roman Period</i>
JSNT	<i>Journal for the Study of the New Testament</i>
JSOT	<i>Journal for the Study of the Old Testament</i>
JSOTSup	<i>Journal for the Study of the Old Testament, Supplement Series</i>
LHR	<i>Law and History Review</i>
MRI	<i>Mekhilta d'Rabbi Yishmael</i>

LAB	Pseudo Philo ( <i>Liber Antiquitatum Biblicarum</i> ).
LCL	Loeb Classical Library
LSJ	<i>Liddell-Scott-Jones Greek-English Lexicon</i>
MRI	<i>Mekhilta d'Rabbi Yishmael</i>
NTS	<i>New Testament Studies</i>
OECT	<i>Oxford Early Christian Texts</i>
OTP	<i>The Old Testament Pseudepigrapha</i> , 2 Volumes. Edited by James H. Charlesworth.
PAAJR	<i>Proceedings of the American Academy for Jewish Research</i>
PCW	<i>Philonis Alexandrini opera quae supersunt</i>
PRK	<i>Pesikta D'Rav Kahanna</i> (פסיקתא דרב כהנא)
SBLEJL	Early Judaism and its Literature Series
STDJ	Studies on the Texts of the Desert of Judah
SupJSJ	Supplements to the Journal for the Study of Judaism
NovTSup	<i>Supplements to Novum Testamentum</i>
TDOT	<i>Theological Dictionary of the Old Testament</i>
TSAJ	Tests and Studies in Ancient Judaism
VT	<i>Vetus Testamentum</i>

## VITA

Aaron Samuels received his Bachelor of Music from Kent State University, with a concentration in Piano Performance. He continued his education at Fuller Theological Seminary, where he earned his MA in Theology, concentrating in Biblical Studies. He went on to study at the University of California, Los Angeles, earning a MA in Ancient History. Mr. Samuels currently works as a researcher and translator for the Posen Library of Jewish Culture and Civilization. He has also worked as a Jewish educator in the Cleveland, Los Angeles, and Baltimore metropolitan areas.

# Chapter 1: Advocacy and Soteriology in Late Ancient Judaism

## 1.1 Introduction: Statement of the Problem

The limited scholarly attention to advocates in early Judaism and rabbinic literature has demonstrated an interesting distinction. Scholars of early Judaism, on the one hand, have commonly associated supporting speech with phenomena relevant to salvation, such as atonement for sin, intercession, divine forgiveness, and covenant renewal.<sup>1</sup> These studies, nevertheless, normally remain grounded within more specific questions related to a given text tradition and do not, by and large, consider advocacy or intercession on a broader scale. Scholarly treatment of advocacy in rabbinic literature, by contrast, has often framed the topic within the distinction between adversarial and inquisitorial systems of legal procedure. The classical rabbis, as representatives of inquisitorial justice, would naturally stand opposed to supporting speakers for hire.<sup>2</sup> As a result, discussions of the rabbis and advocacy often overlay the admonition in *Mishnah Abōt*: אל תעש עצמך כעורכי הדין / “Do not conduct yourselves as advocates for hire,”<sup>3</sup> without inquiring as to what historical, theological, or literary contexts

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<sup>1</sup> Daniel Johansson, “‘Who Can Forgive Sins but God Alone?’ Human and Angelic Agents, and Divine Forgiveness in Early Judaism,” *JSNT* 33, no. 4: 351-374; Simone M. Paganini, “Adjusting the Narrative Emotions and the Prayer of Moses (Jub 1:19–21),” in *Ancient Jewish Prayers and Emotions*, ed. Friedrich V. Reiterer, Beate Ego, and Tobias Nicklas (Berlin: Walter de Gruyter, 2015), 59-69; Jonathan Paige Sisson, “Intercession and the Denial of Peace in 1 Enoch 12-16,” *Hebrew Annual Review* 11 (1987): 371-386.

<sup>2</sup> Paul L. Ross, “Lawyers and Judges in Hebrew Jurisprudence,” *United States Law Review* 67 (1933), 21: “It may be easily read between the lines that the framers and builders of the Hebrew judicial system regarded paid advocates as an abomination and a nuisance.” Further representative are Dov Frimer, “The Role of the Lawyer in Jewish Law,” *JLR* 1, no. 2 (1983): 297-305; Daniel B. Sinclair, “Advocacy and Compassion in the Jewish Tradition,” *Fordham Urban Law Journal* 21, no. 1 (2003): 99-110; Yuval Sinai, “Al Ta’as Azmecha KeOrchei HaDayaanim,” (“Do not Conduct yourselves as the Advocates”), in *Anaim B’Mishpat Avri v’b’Halacha: Dayn v’Diyun (Studies in Jewish Law: Justice and Judgment)*, ed. Yakov Chava and Amitai Radzyner (Ramat Gan: Bar Ilan University Press, 2006), 93-128.

<sup>3</sup> *m. Abōt* 1:8: All citations from the Hebrew Mishnah are based on the Hebrew text found in the 6-volume Phillip Blackman edition, *Mishnayoth: Pointed Hebrew text, English translation, introductions, notes, supplement, appendix, indexes, addenda, corrigenda*. Volumes 1-7. Gateshead: Judaica Press, 1977. The translations are my own.

might have given rise to such a declaration. A presentation of the ideal, inquisitorial rabbinic courtroom, modelled on *Mishnah Sanhedrin*, therefore, holds considerable sway in the discussion of advocates, evidencing the general truth that professional advocates are excluded from rabbinic courts, that any representation of a defendant issues from one of the judges, and that rabbinic jurisprudence strongly differs in many areas from Greek and Roman forms.

More recent scholarship, on the other hand, has been more conscientious of why the rabbis condone advocates in their imaginary, divine courtrooms, while remaining in principle opposed to advocates for hire operating in the worldly Jewish court.<sup>4</sup> These discussions show a strong focus on both the rhetorical and social contexts of supporting speakers and have clearly furthered the study of late ancient Jewish advocacy. The deeply theological nature of late ancient Jewish literature, however, warrants a more fundamental approach to the subject of Jewish advocates. Regardless of the legal, exegetical, liturgical, or rhetorical forces at work, the fuel igniting much of the ancient Jewish text traditions remains the hope of reclaiming and preserving Israel's divine election. A perceived state of former glory, spanning as far back as the romanticized period of Israelite wandering in the wilderness, can only be restored through a mighty project of salvation for both the individual and collective. The continuous drive to save the people of Israel, both in daily life and the world to come, occupies a vast arsenal of spilled Jewish ink and subsequent reflection. Advocacy, not surprisingly, participates in this undertaking, such that the close relationship between supporting speech and core theological principles of Jewish salvation doctrine warrants much closer attention.

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<sup>4</sup> Strongly representative is Richard Hidary, *Rabbis and Classical Rhetoric: Sophistic Education and Oratory in the Talmud and Midrash* (Cambridge: Cambridge University Press, 2017), 216-63.

The presence of advocacy in early Judaism and rabbinic literature points to one of many legal-religious intersections of Greek, Roman, and Jewish cultural forces during the early centuries of the Common Era.<sup>5</sup> Within its broader theological sphere, such representations of supporting speakers capture competing claims of soteriological privilege among late ancient Jewish and Christian text traditions; that is, the one qualified to speak on behalf of God's elect community participates in the determination of who acquires salvation, both in the immediate world and the world to come. The act of speaking in defense of an individual or group's long-term welfare helps reveal the place of soteriology among a broad range of advocacy narratives. While soteriology can be broadly defined as the study of salvation doctrine, its application to the study of late ancient Jewish advocacy can be argued as follows: the act of salvation in ancient Judaism often entails a state of corrupted relationship between two or more parties, a predicament threatening disaster for the weaker member of the group. A subsequent act of salvation then occurs, one which both restores the proper relationship and also absolves the weaker party from guilt and punishment.<sup>6</sup> When a supporting speaker stands in the breach

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<sup>5</sup> The scholarship on late ancient Judaism within its Greek and Roman orbit is legion. Informing the current discussion are Boaz Cohen, *Jewish and Roman Law: A Comparative Study in Two Volumes* (New York: JTS, 2011); Catherine Hezser and Peter Schäfer, eds., *Talmud Yerushalmi and Graeco-Roman Culture*, 3 vols. (Tübingen: Mohr Siebeck, 1998-2002); Seth Schwartz, *Imperialism and Jewish Society: 200 B.C.E. to 640 C.E.* (Princeton: Princeton University Press, 2004); Martin Goodman, *Judaism in the Roman World* (Leiden: Brill, 2007); Hayim Lapin, *Rabbis as Romans: The Rabbinic Movement in Palestine, 100-400 CE* (Oxford: Oxford University Press, 2012); Paula Fredrikson, "Jewish Romans, Christian Romans, and the Post-Roman West: The Social Correlates of the contra Iudaeos Tradition," in *Conflict and Religious Conversation in Latin Christendom: Studies in Honour of Ora Limor*, ed. I. Yuval and Ram Ben-Shalom (Turnhout: Brepols, 2014), 23-52; Seth Schwartz, "Law in Jewish Society in the Second Temple Period," in *Judaism and Law*, ed. Christine Hayes (New York: Cambridge University Press, 2017), 48-75.

<sup>6</sup> This specific orientation to soteriology is in basic agreement with theologian Michael Root, in his discussion of soteriology in its narrative form. See Michael Root, "The Narrative Structure of Soteriology," *Modern Theology* 2, no. 2 (1986): 145: "Soteriology presumes two states of human existence, a state of deprivation (sin, corruption) and a state of release from that deprivation (salvation, liberation), and an event that produces a change from the first state to the second. It presumes then the sufficient conditions of a narrative: two states and an event that transforms the first state into the second." Elsewhere Root speaks of "how humanity has moved or can move from a state of deprivation (however understood) to a state of release from deprivation" (146). While the author specifically focuses on the Jesus narrative as instrumental in this shifting of states, the notion of soteriology reflecting a narrative shift is, I would argue, very much operative across a broad range of late ancient Jewish literature.

between the two parties in question, speaking on behalf of the weaker, incriminated party, the act of advocacy as a soteriological phenomenon in Judaism has taken place.

With these considerations in mind, this thesis will argue that advocacy in late ancient Jewish literature cannot be adequately understood apart from core tenets of Jewish soteriology, such as expiation, election, covenant breach, covenant forfeiture, covenant renewal, exile and ingathering, and eschatology. Late ancient Jewish representations of advocacy perform a soteriological function, this in relation to both the ongoing need for atonement and the perceived process of Israel's salvation being determined in an imaginary divine courtroom. In each case, the endeavor to maintain Israel's divine election was frequently in view, both in the immediate present and the eschaton. Accompanying this argument are a few other fundamental claims surrounding the relationship between advocacy and salvation. First, many instances of advocacy involve crisis situations requiring immediate divine intervention. Such emergencies reflect those instances where the people of Israel can no longer be vindicated by their own merit. Second, references to advocacy in early Jewish writings, halakhic arguments, and larger midrashic narratives further illustrate a collapsing of time, wherein realized and imminent eschatology converge in the attempt to secure Israel's salvation in both the unstable present and the messianic world to come. Finally, the advocate works as an agent of salvation, at times for the individual but more often for the collective, during moments when covenant obedience to the life of Torah cannot overcome a crisis situation.<sup>7</sup> Such crises encourage the texts to reflect on sins of the past, present, and future, resulting in close connections between advocacy and eschatological outcomes.

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<sup>7</sup> Distinctions between supporting speech on behalf of the individual member of Israel and the larger collective of Israel will receive further treatment below. In either case, it is crucial to note how often both phenomena maintain a close relationship to the halakhic principle under discussion.



The text traditions used to support the argument of this thesis first include a number of pre-rabbinic texts, mainly apocalyptic, that illustrate the advocate's task of diffusing a crisis, where the people of God confront imminent threats to their survival. Such texts show atonement, covenant renewal, exile and ingathering, and divine election unfolding within a strongly urgent state of eschatology. Examples of advocacy are further drawn from both Philo and the Gospel of John. While substantively different literary works in style, purpose, and audience, these text traditions share a general tendency to avoid an urgent eschatology, instead situating advocacy within the daily life of either the individual or the community of the redeemed. Moving to the early rabbinic literature, excerpts from texts such as the Mishnah and Tosefta will grapple with statements against advocacy for hire, scattered references to the Paraclete, and the place of advocacy in the mishnaic midrash on Honi the rainmaker. Discussions of later rabbinic literature will focus first on briefer occurrences of advocacy serving halakhic arguments, later moving on to larger themes such as the eschatological rabbinic new year. The aggadic midrashim will then be mined for their interpretations of the two foremost biblical advocates, Abraham and Moses. How the rabbis understood these prophets' respective defenses of Sodom and Israel will reveal many of the soteriological principles this thesis considers operative within late ancient Jewish advocacy.

The importance of adopting a soteriological approach to late ancient Jewish advocacy rests in the idea that the impetus behind late ancient Jewish writings, time and again, returns to the restoration and preservation of Israel's divine election. How advocacy contributes to this literary project reveals an ongoing tension between the human acquisition of divine merit and the concession that salvation cannot be altogether earned. While covenant obedience or properly executed halakha provide two foundational means of preserving divine election in late ancient

Judaism, there exist forces beyond human control, be they internal or external, that at times necessitate unilateral divine action. The reality that so many instances of advocacy suggest the limitations of human initiative, and that salvation ultimately depends on divine action, places Jewish election in an interesting light, revealing both its internal and external settings of dispute. The competition, furthermore, for who maintains the stature of God’s elect has an important place in the historical study of religion, both within the textual traditions themselves and their later reception history. Within the writings of early Judaism, divine election ranks among the driving forces of intra-Jewish polemical disputes.<sup>8</sup> The New Testament Gospels and epistles further exhibit sectarian competition over election, with certain groups of early Christ-believers laying claim to the privilege of becoming the elect remnant of God’s covenant people.<sup>9</sup> Rabbinic literature, while not as bitterly engaged in direct disputes with religious opponents over the high stakes of salvation, nevertheless singles Israel out consistently as the elect people of God.<sup>10</sup> The nature of intercessory, supporting speech within ancient Judaism contributes one of many moving parts to this phenomenon; for no matter the religious community’s state of moral

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<sup>8</sup> See, for example, the Qumranic references to the “Man of Falsehood” (אִישׁ הַכֹּזֵב, *IQpHab.* 2.1-2), who is argued by many scholars to be a Pharisaic teacher. See Lawrence H. Schiffman, “The Pharisees and their Legal Traditions according to the Dead Sea Scrolls,” *Dead Sea Discoveries* 8, no. 3 (2001): 262-277; Daniel C. Timmer, “Sectarianism and Soteriology. The Priestly Blessing (Numbers 6,24-26) in the Qumranite Community Rule (1QS),” *Biblica* 89, no. 3 (2008): 389-396. Unless indicated otherwise, the Hebrew edition of the Qumran corpus is taken from *The Dead Sea scrolls. Study Edition*, 2 vols., ed, Florentino García Martínez and Eibert J.C. Tigchelaar (Leiden: Brill, 1997-1998).

<sup>9</sup> Mark 13:20, 22, 27 (variants in Matt. 24:22, 24 31), positions God’s elect, those who serve Jesus, in the forefront of God’s diasporic ingathering of the exiles. Paul’s conception of election is strongly legal: τίς ἐγκαλέσει κατὰ ἐκλεκτῶν Θεοῦ; Θεὸς ὁ δικαιοῶν/“Who shall prosecute the Elect of God? God is the one who vindicates.” 1 Peter 2:9 goes so far as to call the Christ-believers a “chosen race” (γένος ἐκλεκτόν).

<sup>10</sup> *b. Ber.* 6a has God himself speaking to the unique stature of Israel: ואני אעשה אתכם, ואתם עשיתוני חטיבה אחת בעולם, /חטיבה אחת בעולם/ “You have made me the sole object of your love; I, therefore, shall make you the sole object of my love in the world [to come].” See also *b. Hagg.* 3a.

integrity or covenantal obedience, the divinely approved intervention of its intercessory spokesperson allows the congregation a much stronger assurance of election.

## **1.2 Brief Survey of Secondary Literature**

### **1.2.1 Introductory Observations**

Advocacy-related incidents have received relatively minor attention in the scholarship on rabbinic literature. Apart from some exceptional studies that explore in more depth the question of supporting speech in rabbinic settings, one normally finds brief discussions within larger studies of rabbinic law and theology. An organized presentation of scholarly sources, therefore, demands a certain degree of creativity. In this effort, I have broken down the secondary sources according to four general categories: early to mid-twentieth century scholarship, worldly courtroom approaches, divine courtroom literature, and ancient legal prayer petitions. Despite only providing a map of the potential topics in play, I believe these categories offer an effective synopsis of some of the main scholarly orientations toward supporting speech in rabbinic works.

Although an underlying assumption of the present work is that the boundaries between divine and human courtrooms are somewhat porous in the ancient Jewish imagination, it still makes sense to present the secondary literature according to its treatment of either earthly or heavenly courts and the roles advocates presumably play in each legal-religious sphere. It is worth noting, however, that with the more recent scholarly treatments of the divine courtroom, this binary begins to collapse. Moreover, some rabbinic episodes demonstrating advocacy, while occurring outside strictly legal settings, still retain prayer patterns exhibiting legal formulae, such as cases of holy men intervening in crisis situations. In these instances, scholarly treatment of such

sources provides a useful bridge between scholarship focusing on either worldly or otherworldly courts.<sup>11</sup>

With respect to socio-historical and cultural contexts, representations of legal advocacy in rabbinic Judaism often demonstrate the degrees of tension and harmony between Jewish legal-religious developments and broader Greek and Roman cultural forces. Such crossing of cultural borderlines, be they real or imagined, has generated extensive treatment by more recent scholarship in rabbinic Judaism. Considerable attention has been paid to the role rabbis played as provincial players, freely interacting with their Greek and Roman cultural surroundings. The attempt, therefore, to identify any particular rabbinic teaching or tradition as distinctly Jewish, Greek, or Roman, in either origin or substance, remains inherently problematic.<sup>12</sup> Within this busy scholarly playing field, innovative approaches to ancient Jewish legal discourse have paved new ground,<sup>13</sup> and one subject of particular interest has been the ancient Jewish conception of a

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<sup>11</sup> The issue of scholarship centered on classical Greek, Roman, and New Testament sources requires comment. Advocacy in classical Greek and Roman sources belongs to a different field and thus exceeds the scope of this dissertation. However, while advocacy in classical Athens, the Hellenistic Empire, the late Roman Republic, and the Roman Principate does not immediately pertain to topics related to late ancient Jewish sources, the broader contextual background of Greece and Rome still comes into view, as for example in chapter 2 of this study. The New Testament scholarship dealing with the Spirit-Paraclete, on the other hand, shows a long tradition of spilled ink, cutting across several fields. It cannot, therefore, receive adequate treatment in this summary and will instead be selectively considered in chapter 4 below. Those works will be mined in relation to their potential relevance for understanding, or at minimum appreciating, the later rabbinic material within a wider matrix of Jewish sectarian salvation theologies.

<sup>12</sup> This approach could be considered more of an expansion and resurgence of earlier precedents, rather than as an outright innovation. For earlier studies, Saul Lieberman, *Hellenism in Jewish Palestine: Studies in the Literary Transmission, Beliefs and Manners of Palestine in the I Century B.C.E.-IV Century C.E.* (New York: JTSA, 1950). By the same author, "Roman Legal Institutions in Early Rabbinics and in the Acta Martyrum," *JQR* 35, no. 1 (1944): 1-57; Henry A. Fischel, ed., *Essays in Greco-Roman and Related Talmudic Literature* (New York: KTAV Publishing House, 1977). More recently, Yaron Z. Eliav, "The Roman Bath as a Jewish Institution: Another Look at the Encounter between Judaism and the Greco-Roman Culture," *JSJ* 31, no. 4 (2000): 416-454; Daniel Boyarin, "Hellenism in Jewish Babylonia," in *The Cambridge Companion to the Talmud and Rabbinic Literature*, ed. Charlotte Fonrobert and Martin Jaffee (Cambridge: Cambridge University Press, 2007), 336-364; Michael Satlow, "Beyond Influence: Toward a New Historiographic Paradigm," in *Jewish Literatures and Cultures: Context and Intertext*, ed. Anita Norich and Yaron Eliav (Providence: Brown Judaic Studies, 2008), 37-53; Hayim Lapin, *Rabbis as Romans: The Rabbinic Movement in Palestine, 100-400 CE* (Oxford: Oxford University Press, 2012).

<sup>13</sup> Among the many important studies, Catherine Hezser, "Roman Law and Rabbinic Legal Composition," in *The Cambridge Companion*, ed. Fonrobert and Jaffee, 144-64; Beth Berkowitz, *Defining Jewish Difference: From*

divine courtroom, where the God of Israel presides as supreme judge amidst a diverse cast of accusers, defendants, ministering angels, and advocates.<sup>14</sup> As divine courtroom scholarship has developed, the subject of advocacy within its Jewish theological context has inevitably entered the discussion, although with the exception of Richard Hidary's work, there has yet to appear any recent, in-depth treatment with respect to rabbinic literature and its possible connections to Late Second Temple antecedents.<sup>15</sup> On the other hand, many scholars have addressed the subject of advocacy within the context of broader topics such as philosophical studies of the law, courtroom procedure, the divine courtroom, and the influence of Greek and Roman rhetorical traditions on rabbinic halakhah and midrash. The following survey does not attempt to be exhaustive; rather, it seeks to identify some of the more important problems and proposed solutions regarding the presence of supporting speakers within the rabbinic corpus.

### 1.2.2 Early to Mid-Twentieth Century

In the late nineteenth century, the Lithuanian born and American educated rabbi, Samuel Mendelsohn, published his main work, *The Criminal Jurisprudence of the Ancient Hebrews*,<sup>16</sup>

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*Antiquity to the Present* (Cambridge: Cambridge University Press, 2012), 60-158; Moshe Simon-Shoshan, *Stories of the Law: Narrative Discourse and the Construction of Authority in the Mishnah* (New York: Oxford University Press, 2012); Natalie B. Dohrmann, "Law and Imperial Idioms: Rabbinic Legalism in a Roman World," in *Jews, Christians, and the Roman Empire: The Poetics of Power in Late Antiquity*, ed. Natalie B. Dohrmann and Annette Yoshiko Reed (Philadelphia: University of Pennsylvania Press, 2013), 63-78; Christine Hayes, *What's Divine about Divine Law? Early Perspectives* (Princeton: Princeton University Press, 2015), 166-370.

<sup>14</sup> Most notably, Meira Kensky, *Trying Man, Trying God: The Divine Courtroom in Early Jewish and Christian Literature* (Tübingen: Mohr Siebeck, 2010); Shalom E. Holz and Ari Mermelstein eds., *The Divine Courtroom in Comparative Perspective* (Leiden: Brill, 2015); Nicholas Ellis, *The Hermeneutics of Divine Testing: Cosmic Trials and Biblical Interpretation in the Epistle of James and Other Jewish Literature* (Tübingen: Mohr Siebeck, 2015); Shalom E. Holtz, *Praying Legally*, Brown Judaic Studies 364 (Providence, RI: Brown Judaic Studies, 2019).

<sup>15</sup> See Hayes, *What's Divine about Divine Law*," 191-202; Kensky, *Trying Man, Trying God*; Hidary, *Rabbis and Classical Rhetoric*, 216-63.

<sup>16</sup> Samuel Mendelsohn, *The Criminal Jurisprudence of the Ancient Hebrews*, 2nd ed. (New York: Hermon Press, 1968). Mendelsohn's contribution to Jewish law within the English-speaking world is well stated by D. B. Kopel in

which despite its rather dry forms of comparative interpretation, is helpful in revealing the problem with overstating the rabbinic opposition to professional advocates. Arguing this purely legal approach to advocacy as problematic was by no means the intention of Mendelsohn himself, yet the shortcomings become apparent through critical interpretation of his discussion of rabbinic trial procedure.<sup>17</sup> Mendelsohn did acknowledge that, in Jewish courts, “no counsel or advocate is allowed to either side,” and he offered a brief explanation for this phenomenon:

If the legal fraternity of today find this low estimate of their usefulness strange and unwarranted, let them look back to the Talmudic age, when the *synegoroi* and *advocati* flourished in Greece and Rome, and perverted judgment in both countries. Nor was this idea confined to the Rabbis.<sup>18</sup>

Some important considerations, however, militate against Mendelsohn’s view. First, the diversity of rabbinic sources cited in Mendelsohn’s work indicate the insecure borders between divine and human courtroom procedure. That is, some rabbinic texts he identifies as illustrating trial procedure, if examined within their broader context, appeal to divine courtroom guidelines as the basis for the rabbinic court’s protocol.<sup>19</sup> Second, although professional advocates are strongly discouraged, other courtroom participants, such as the disciple (תלמיד) undergoing judicial training, may speak in defense of an accused party.<sup>20</sup> Finally, Mendelsohn’s approach conflates the Greek and Roman systems of courtroom advocacy. While scholars are under no illusion that the classical Greek system was purely voluntary in practice, in principle the Greek advocates

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an article concerning the Jewish legal right to self-defense, “The Torah and Self-Defense,” *Dickinson Law Review* 109, no. 1 (2004): 35: “He is not even remotely as prestigious as Maimonides or Rashi, nor was Mendelsohn’s work especially original. However, for an English-language audience, he did provide a good summary of what the more prestigious commentators had concluded.” In other words, Mendelsohn provided for English speaking readers of the time a vast compendium of Jewish legal traditions, along with the most esteemed exegetical interpreters who grappled with these teachings over the centuries.

<sup>17</sup> Mendelsohn, *Criminal Jurisprudence*, 108-52.

<sup>18</sup> *Ibid.*, 140, n. 327.

<sup>19</sup> *b. Sanhedrin 29a, 32a*

<sup>20</sup> *B. Sanhedrin*, 40a. See Mendelsohn’s summary of this possibility in *Criminal Jurisprudence*, 141-42.

were prohibited from receiving payments, and this restriction distinguishes them at least in theory, and partially in practice, from their later Roman counterparts.

An article by Paul L. Ross in the 1933 edition of the *US Law Review* adopted a similar perspective to that of Mendelsohn, narrowing the subject of advocacy to the confines of the worldly courtroom and considering advocates only as lawyers:

It may startle some readers to discover that the profession of the law was no part of the judicial system of the Hebrews. There were no advocates in the sense that lawyers serve as such in modern times. There were no lawyers in the modern sense;—men who demanded and received fees to prosecute and defend cases. In a civil suit, the privilege of sending a representative to court was extended to the plaintiff, who prosecuted the suit. This agent acted only as attorney in fact, and not as one at law.<sup>22</sup>

Neither Mendelsohn nor Ross dwelled too deeply on this situation; nor should they have been expected to when writing for an American audience more interested in comparative civil and criminal legislation than the theological underpinnings of such laws. They therefore did not consider that other forms of advocacy, issuing from either the judges, their disciples, or the public itself could still indicate the presence of formal, supporting speakers.

The mid-twentieth century scholarship dealing with intersections between rabbinic, Hellenistic, and Roman modes of legal discourse, interpretation, and codification provides an important advancement in the study of legal-religious literature. These works are important here not so much for attending to the presence of advocacy within the rabbinic corpus; rather, it is their rigorous analysis of classical rhetorical techniques, which illuminates the rabbinic appropriation of specific Greek and Roman legal categories. Here the work of David Daube, Saul Lieberman, and Boas Cohen figure prominently. Daube's identification of Greek and Latin forms of argumentation in rabbinic literature, while subject to critique on a case-by-case basis, offers

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<sup>22</sup> Ross, "Lawyers and Judges," 20.

one lens through which to view the literary and rhetorical contexts of supporting speakers in rabbinic writings.<sup>24</sup>

Saul Lieberman's extensive treatment of Greek and Roman influences on rabbinic literature has received considerable attention,<sup>26</sup> notably regarding his analysis of the abundant rabbinic use of Greek terms and cultural influences, among which the Greek titles for "advocate" are briefly acknowledged.<sup>27</sup> Although Lieberman does not deal directly with advocacy itself, his careful and rigorous textual analysis of classical rhetorical forms in rabbinic writings provides a basis for exploring specialized topics such as supporting speakers. Lieberman does identify a few of the terms for advocates in the rabbinic lexicon, such as *synēgoros*, *paraklhētos*, *dikologos* (δικολόγος), and a specialized meaning of *rhētōr* (ρήτωρ). Lieberman also considers an important passage from Genesis Rabbah 49.2, where Abraham's pleas to God for Sodom are situated within a Greek courtroom, which times the litigants' testimonies by means of a water-clock referred to as the *clepsydra* (κλεψύδρα). He further discusses an advocate (ρήτωρ/לַאִיטוֹר) appearing in *Sifre Deuteronomy* 343, where the speaker adheres to the protocol of publicly praising (*ēlogium*) the king prior to defending his client. These rabbinic parables seeking to explain divine courtroom procedure, according to Lieberman, did not represent stylistic flourishes. Rather, they were real-world analogies based on a rabbi's legitimate exposure to a Roman court of law.<sup>28</sup>

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<sup>24</sup> David Daube, "Rabbinic Methods of Interpretation and Hellenistic Rhetoric," *HUCA* 22 (1949): 239-264.

<sup>26</sup> See n. 15 above.

<sup>27</sup> Lieberman, "Roman Legal Institutions," 27-30.

<sup>28</sup> *Ibid.*, 28.



### 1.2.3 Worldly Courtroom Approaches

As mentioned above, a number of scholars have focused on the rabbinic antipathy toward advocacy, an approach strongly evident in studies focused principally on Jewish civil and criminal law. Yet any evaluation of rabbinic statements against advocates should be considered within their specific literary and theological contexts, and if possible, within their cultural and historical contexts. While there exists a clear hostility toward professional legal advocates in various rabbinic discussions, this by no means exhausts the possibilities for advocacy within these traditions. It points more, as will be discussed below, toward the struggle for rabbinic legal independence and authority within a Roman imperial environment potentially prone toward overseeing both civil and criminal law and courtroom procedure. Thus far the secondary literature has not mined these imperial contexts to their potential depths.

An essay by Dov Frimer in the *Journal of Law and Religion* reflects the relatively limited value of limiting rabbinic advocacy to earthly courtroom procedure.<sup>29</sup> Frimer was correct that rabbinic halakhah hardly guarantees one the right to counsel, and at times the lawyer could pose an obstacle to arriving at the truth. Frimer was also justified in the observation that Jewish law in rabbinic antiquity, being principally an inquisitorial rather than adversarial system, granted far greater powers to a judge and insisted, at least in principle, on the litigants' adherence to honest testimony. Frimer maintained that, within inquisitorial courts, the lawyer had no necessary functions through which to serve a case, even if one of the principal responsibilities of a lawyer is to advocate for his or her client. However, the strict equivalence between a lawyer and advocate is upheld, which is consistent with Frimer's focus on earthly courtroom procedure and not on the broader range of meaning for supporting speakers found within divine courtroom

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<sup>29</sup> Frimer, "The Role of the Lawyer," 297-305.

literature, rabbinic holy men narratives, and other extra-courtroom settings. Since the terms for advocates and lawyers do not always suggest a precise equivalence in the rabbinic literature, Frimer's analysis poses limitations on the inquiry into formal, supporting speech in rabbinic writings. Some of his arguments, nevertheless, will enter the discussion below when examining both tannaitic and amoraic sources for advocacy.

Jewish legal scholar Daniel Sinclair has argued on similar grounds, targeting the advocate-for-hire phenomenon and focusing on well-known rabbinic texts showing opposition toward adversarial forms of legal procedure.<sup>30</sup> Sinclair likewise appeals to *m. Abōt* 1:8 and *b. Shabbāt* 139a as evidence, but similar to Frimer, does not engage in any significant exegesis of these passages. Sinclair, however, has offered a compelling argument for the gradual attenuation of resistance to advocacy within halakhic discussions. He finds evidence of gradual acceptance in the talmudic literature, although it is difficult to understand the progressive breakdown of resistance in light of his claim that the earlier Jerusalem Talmud evidence demonstrates greater acceptance of advocacy than does the Babylonian Talmud. Sinclair refers to such acceptance as the “permissive approach” to advocacy revealed in some talmudic sources.<sup>31</sup> The author has in mind judicial advocates acting on behalf of litigants requiring assistance, rather than professional supporting speakers, whose role is to persuade both public and judicial opinion.

Another legal scholar who restricts the rabbinic occurrences of advocacy to the domain of lawyers for hire is Michael J. Broyde, who has contributed for both lay and scholarly audiences a survey of the dilemma of Jewish lawyers.<sup>32</sup> Broyde approaches the issue through the conflict of

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<sup>30</sup> Sinclair, “Advocacy and Compassion,” 99-110.

<sup>31</sup> *Ibid.*, 102.

<sup>32</sup> Michael J. Broyde, *The Pursuit of Justice and Jewish Law: Halakhic Perspectives on the Legal Profession* (New York: Michael Scharf Publication Trust of the Yeshiva University Press, 1996).

interest a lawyer presents to the early rabbinic courts, which ostensibly banned advocates in light of their capacity to misstate the facts of a case. In his critique of supporting speakers within rabbinic sources, the author focuses mainly on the term, עורך דין, which in the rabbinic writings refers to one who advocates as a legal professional on behalf of either an accused or prosecuting party. He also adopts the same premise shared by other scholars that Jewish courts are modeled on the inquisitorial pattern, whereby judges are actively involved in the court proceedings, while still in principle maintaining an impartial view of the litigants prior to arriving at a verdict. This model, as stated previously, in theory allows no room for courtroom advocates. The judge functions so as to scrutinize and assess the unrehearsed testimonies of the litigants and witnesses, rather than impartially umpire the prepared statements of supporting speakers.

Broyde cites *m. Abōt* 1:8 as evidence that judges work within an inquisitorial system of justice, refusing to treat any of the litigants with partiality; yet he also maintains that legal advisors, so long as they are not accomplished scholars and do not offer impartial legal counsel that will result in harm to the other litigant, may give legal counsel for pay.<sup>33</sup> Broyde further acknowledges the exceptions within the sources for providing legal advice, in that while it may not occur formally by a paid advocate during courtroom proceedings, it is still permissible for a non-scholar to offer legal advice to someone outside of the courtroom. In other words, the traditional Jewish prohibitions on advocacy pertain to the formal legal profession, where legal advocacy would not be permitted during official periods of litigation within the idealized rabbinic courtroom; yet outside of it, advocacy may be offered by someone who is neither a scholar nor judge. The details on how such para-courtroom advocacy would take place, either in

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<sup>33</sup> Broyde provides a more detailed legal discussion of the precise intent of *m. Abōt* 1:8 in an earlier article, "The Lawyer as Advice Giver in Jewish Law: An Explication of Ethics of the Sages 1:8," *The Jewish Lawyer* 10 (1995): 29-40.

the form of supporting speech or private counsel, is not altogether clear in Broyde's work, but his general argument that advocacy can manifest beyond the courtroom, while still pertaining to the case, is generally persuasive.

#### 1.2.4 Advocacy and the Divine Courtroom

Any assessment of advocacy in early Judaism or the rabbinic period, whether tending more toward legal settings or crisis related intercession, needs to grapple on some level with Meira Kensky's formidable work, *Trying Man, Trying God*.<sup>34</sup> In her investigation of ancient Jewish and early Christian legal-religious writings, Kensky's larger argument centers on how divine courtroom literature consistently invited its audience to try God's justice within a reader-constructed literary court. Divine courtroom texts, from this perspective, enable readers to participate in the assessment of whether the divine judge will judge justly.<sup>35</sup> The current study is less concerned with the many strengths of Kensky's thesis and more focused on her brief attention to the integration of classical advocacy forms with Jewish intercessory traditions. Kensky's analysis of the Johannine Paraclete, for example, is important in the sense that she understands the multiple soteriological roles the Paraclete can provide and thus does not narrowly restrict the meaning and functions associated with the term. Her interpretation, as well as the work of A. T. Lincoln that largely guides her argument,<sup>36</sup> represents an important effort to converge both the legal and theological properties of the Johannine Paraclete.

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<sup>34</sup> Kensky, *Trying Man, Trying God*. In terms of relevance to the current study, see the author's discussions of Second Temple Judaism (119-180), the Gospel of John (223-241), and rabbinic literature (293-342).

<sup>35</sup> For the impact of Kensky's work on more recent scholarship, see Ari Mermelstein and Shalom E. Holtz, "Introduction: The Divine Courtroom in Comparative Perspective," in *The Divine Courtroom in Comparative Perspective*, ed., Ari Mermelstein and Shalom E. Holtz, (Leiden: Brill, 2015), 1-5.

<sup>36</sup> Andrew T. Lincoln, *Truth on Trial: The Lawsuit Motif in the Fourth Gospel* (Peabody, MA: Hendrickson, 2000).

Kensky addresses the rabbinic application of the Greek terms for defense and accusation,, *συνήγορία*/א/סניגוריא and *κατηγορία*/א/קטיגוריא, acknowledging that these concepts demonstrate considerable attestation in rabbinic literature and, furthermore, that certain biblical figures such as Moses appear periodically in rabbinic midrash as playing the role of advocate. Kensky then attends to the extended series of Mosaic advocacy episodes occurring in Exodus Rabbah. While acknowledging the forensic nature of these defenses, Kensky does not consider the possible eschatological content in these midrashim. Her interpretation of the collapsing of time, nonetheless, is quite useful, insofar as I would argue below that Moses' defense of Israel often pertains to the past moment of the offense, the immediate objective of acquittal applied to Israel's current state in this world, and the ultimate outcome of Israel's vindication in the world to come. This merging of past and present with end times eschatology, as argued above, occurs commonly in rabbinic advocacy passages. Kensky also discusses the midrashim presenting Moses' unsuccessful pleas on his own behalf in Deuteronomy Rabbah, namely his abortive efforts to evade death in the desert and enter the holy land. When addressing these passages below, I will argue that such defense arguments had succeeded on behalf of Israel because the author[s] perceived advocacy as carrying far more credence before God when it was conducted for the congregation rather than for the purpose of securing individual needs.

Christine Hayes, in her study of Jewish religious law spanning from the biblical through rabbinic periods,<sup>37</sup> addresses rabbinic conceptions of divine law by asking the following question: What is the relationship between divine legislation and the truth, ontologically speaking, within rabbinic writings? Put another way, do rabbinic texts discussing divine law share a close relationship with an objectively verifiable standard of truth? And is this truth

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<sup>37</sup> Hayes, *What's Divine about Divine Law?*

represented as eternal, unchanging, and preexistent, or is it only revealed through the scriptural and rabbinic law itself? Given that the God of Israel is considered the source of both the oral and written law, Hayes' analysis of rabbinic law therefore centers on the relationship between divinely revealed law and its truth-value.

Hayes sets out to discover texts demonstrating standards of authenticity for divine laws, those employing criteria such as "character, quality, or content." These are distinguished from "validity," meaning law deriving from an ostensibly divine source. Having established the tension between strict standards of truth and practical standards of justice, Hayes at one point provides a brief overview of Richard Hidary's distinctions between heavenly and earthly advocates, an analysis which attempts to support the notion that truth is not necessarily the universal rabbinic standard informing judicial verdicts. As stated above, at issue for Hayes is the role of truth in the law court trial, particularly within the Jewish court and its imagined representation in the supernal realm. Hayes claims that the divine court, as it is conceived of in the aggadic literature, retains the prominent attribute of a contest awarding victory to the most persuasive argument rather than to the most truthful. One aspect of the argument, as applied by Hayes, makes sense: that too strict a standard for truth in the divine court would render all people unworthy of a favorable verdict. This leads Hayes, however, to engage in overgeneralizations regarding the role of advocates in the divine court:

Lawyers and advocates care nothing for truth—only for victory. The divine-human relationship cannot be sustained when truth is the ultimate goal, and the presence of lawyers and advocates in the heavenly court ensures that truth does not prevail.<sup>38</sup>

This in many ways mischaracterizes the presence of advocates in the aggadic literature, reducing their activity to divinely sanctioned rhetorical exchanges which expiate human guilt through

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<sup>38</sup> Hayes, *What's Divine about Divine Law*, 191-92.

deceptive modes of persuasion. While it is certainly true that some of these arguments involve ruses, lies by omission, trickery, and other morally questionable rhetorical devices, these entertaining exchanges between advocate and deity are less motivated by applying falsehood toward acquittal than they are by the intention of averting imminent disaster through assertive, and at times disrespectful, arguments directed at God. Furthermore, not all the arguments in the heavenly court employ duplicitous rhetoric. Some arguments, as will be argued below, are grounded in biblical principles supported by quite standard rabbinic interpretive techniques. I would thus qualify Hayes' characterization of the divine court by stating that deviation from the truth forms a part of the advocacy process but does not necessarily govern its operation.

Richard Hidary has perhaps offered the strongest argument to date for why rabbinic literature rejects worldly courtroom advocates, while at the same time accepting them within the imaginary divine courtroom. He first addresses the traditional distinction between adversarial and inquisitorial legal systems, each respectively representing the ancient Roman and rabbinic litigation methods in the abstract, even if most judicial models incorporate elements of each.<sup>40</sup> While understanding that Roman court settings varied with respect to time and place, Hidary still notes that the consistent presence of advocates, increasingly professionalized from the Late Republic onward, was widespread according to an abundance of sources.<sup>43</sup> He then poses the question, given rabbinic Judaism's understanding of Roman court procedure, whether the ideal rabbinic courtroom would be inquisitorial or adversarial. Although accepting the rabbinic inquisitorial ideal, he concedes the possibility such a court may have existed more in the abstract world of theory than in the practical one of action. Therefore, when one observes a rabbinic

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<sup>40</sup> Hidary, *Rabbis and Classical Rhetoric*, 217-21.

<sup>43</sup> Hidary, *Rabbis and Classical Rhetoric*, 221-222.

attitude toward advocacy's place in the courtroom, it is difficult to discern to what degree this perception is motivated by the rabbinic ideal or realistic practice.

Hidary accepts that the rabbinic courtroom does ground itself in one universal, irrevocable truth to which the judges can appeal; yet the judges also understand persuasion as an essential element in the argumentative process leading to just verdicts. Rhetorical persuasion, however, will be abused and misapplied in the power of unscrupulous advocates and is thus better left in the hands of the judges themselves. During the deliberation process, the rabbinic courtroom becomes far more adversarial and grants the argumentative process of persuasion to judges who both defend and prosecute, such that the line between advocate and judge becomes essentially compromised. This raises the question, of course, as to how essentially different the Roman and rabbinic courtrooms are, if indeed defense posturing takes place in each. For Hidary, the adversarial element of courtroom deliberation must be subject to control mechanisms, which reflect that, while a pure objective truth in the trial does not exist, there still exists a just verdict that must be carefully ascertained.

Hidary then presents an insightful analysis of the heavenly court, which he argues is filled with accusers and advocates, who often adopt Greek and Roman methods of persuasive argumentation. Posing the problem why a practice generally rejected in rabbinic courts would occur so frequently in the heavenly courts, he argues that the reason lies partially in an historical inheritance from earlier Second Temple themes. Prominent among these themes is the earlier developed notion of the Satan as a heavenly accuser, one charged with prosecuting the people of God. Hidary, other than in isolated passages in the Book of Job, examines extra-biblical material for heavenly advocates. Through developments in Second Temple literature focused on heavenly intercessors, Hidary claims that the role of prophetic advocates gradually gave way to the



heavenly sort, perhaps because the human advocates were no longer thought capable of eliciting the heavenly compassion required. Hidary also reasons that the need for Roman style advocacy in the heavenly court stemmed from the reality that God would otherwise judge according to strict divine standards of justice, leaving his people with no means of exonerating themselves.

Hidary's analysis shows considerable nuance and successfully expands advocacy's presence in the rabbinic literature beyond strict, worldly courtroom procedure. Perhaps requiring greater clarity in this interpretation is, first, that several advocates in the amoraic literature are indeed human and are actually battling against supernatural prosecutors. Stated another way, rabbinic expressions of persuasive advocacy are not limited to the imagined divine courtroom. Second, surely the rabbis could not conceive of God as an inferior judge compared to those working in human courts. In reality, it appears that when Israel commits a serious transgression, it is the presence of the advocate in God's court that prevents wholesale condemnation, given that divine legal standards result in no possibility of vindicating the transgressor. Another factor overlooked in this interpretation are the stakes involved in vindicating Israel. The rabbinic texts of this period repeatedly seek to reaffirm Israel's elect and privileged position with God, which necessitates reconciliation between the two parties for any possible offense that still compromises that privileged relationship. While acts of rhetorical trickery are present in many of the advocates' arguments before God, one should not lose sight of their larger intention, which is to preserve Israel's ongoing stature as God's elect. The texts therefore demonstrate, beyond some measure of persuasion and trickery, both an apologetic and soteriological component.

### 1.2.5 The Ancient Legal Prayer Petition as a Soteriological Model

When advocacy in late ancient Judaism often occurs during crisis situations, the gap between divine and human legal settings may narrow appreciably. An urgent matter of crisis intervention, in other words, draws the divine courtroom into the immediate circumstances of worldly affairs. Joseph Heinemann's work entitled, *Prayer in the Talmud*, provides another useful guide, beyond the divine courtroom, for treating forms of advocacy existing outside human lawcourts. These liturgical performances show the convergence of legal and soteriological categories, which are expressed as a formalized ritual of human appeal to the divine.<sup>45</sup> In his study, Heinemann included a chapter dealing with the law-court prayer pattern, a performance whose biblical manifestations involve a specific form of prayer-petition modelled after a legal appeal to a judge. This appeal can be operative even if the immediate context is not a formal courtroom setting. As with the earlier biblical formulas, according to Heinemann, the rabbinic pattern has a distinctive legal character, often beginning its address in a format such as, "Lord of all worlds" ( ריבונו של עולם), while containing a presentation of the evidence defending the just nature of the petition. Heinemann structured such prayers according to three general sections: an address using formal appellations for the superior party, a plea involving the petitioner's defense by which he seeks to be justified, and the content of the prayer-request itself.<sup>46</sup> Further subcategories exist. For example, in a rabbinic confessional prayer, after addressing God formally, the petitioner often confesses their guilt, conceding that they cannot be justified according to the strict tenets of God's law.

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<sup>45</sup> Joseph Heinemann, *Prayer in the Talmud* (Berlin: Walter De Gruyter, 1977).

<sup>46</sup> *Ibid.*, 194.

In addition to blurring the boundaries between accuser and defendant, Heinemann argued that the servant-to-master prayers and the law-court prayer pattern are significantly different, despite that they share the acts of petition and an attempt for acquittal. Both patterns include instances of advocates and therefore are of relevance to this study. The difference is that the former advocates for the affected party with an eye to divine clemency, while the latter uses assertive legal argumentation in an effort to prove God is in the wrong. It is the difference between humble pleas for leniency accompanied by praise, on the one hand, and bold demands for justice that both accuse and defend simultaneously.

Heinemann's understanding of law-court prayer patterns has influenced subsequent interpretations of rabbinic holy men, where the interplay of legal rulings, soteriology, and rabbinic narrative are in play.<sup>52</sup> In this regard, Suzanne L. Stone's work on Honi the Circle-Drawer merits comment, as its application of Heinemann's method, along with a meticulous literary analysis, serves to draw out the rhetorical moves informing the rabbinic circle-drawer narratives.<sup>53</sup> Stone's argument, therefore, problematizes the neat division between earthly inquisitorial and supernatural adversarial justice, given that the earthly court of the rabbinic imagination invokes God's presence as either accuser or defendant. In breaking down this binary, one also observes that the advocate's arguments often seek absolution based on appeals for the accused party's merits, as opposed to the use of rhetorical trickery characteristic of

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<sup>52</sup> Joseph Tabory, "Prayers and Berakhot," in *The Literature of the Jewish People in the Period of the Second Temple and the Talmud, Volume 3: The Literature of the Sages*, ed. Shmuel Safrai, Zeev Safrai, Joshua Schwartz, and Peter J. Tomson (Leiden: Brill, 2006), 279-326; William Morrow, "The Affirmation of Divine Righteousness in Early Penitential Prayers: A Sign of Judaism's Entry into the Axial Age," in *Seeking the Favor of God, Volume 1: The Origins of Penitential Prayer in Second Temple Judaism*, ed. Mark J. Boda, Daniel K. Faulk, and R.A. Werline (Atlanta: SBL, 2006), 101-18.

<sup>53</sup> Suzanne L. Stone, "Rabbinic Legal Magic: A New Look at Honi's Circle as the Construction of Law's Space," *Yale Journal of Law & the Humanities* 17 (2005): 97-123.

advocacy arguments found in later aggadic midrashim. In short, the presence of advocacy before God's court cannot be categorically reduced to clever arguments and an ironic reliance on adversarial justice. The soteriological component is real, and advocacy is acceptable so long as Israel, or a community representative of Israel, remains the defendant facing condemnation.

Another study, Janet Jerrow's unpublished dissertation on Exodus Rabbah 42-44, has the primary objective of performing a literary analysis of God's character in the exegesis of Exodus Rabbah 42-44. Jerrow's exegesis of the early medieval midrash, specifically in relation to the golden calf, situates Moses' appeals to God largely within the petitionary form of the law-court pattern of prayer.<sup>54</sup> In doing so, Jerrow identifies instances where at times Moses is less focused on forgiveness and more intent on steering the Israelites clear of full-fledged disaster. The study correctly understands Moses as resorting to complaint and petition when addressing God for the people, bypassing the customary prelude to prayer by way of praising the sovereign. This sense of urgency is in general agreement with the current study, which attempts to uncover in the aggadic construction of supporting speakers a biblically legitimized model of prophetic intervention for the sake of preserving Israel from permanent destruction. I do, however, take issue with some of Jerrow's explanations for God's behavior in the midrash, many of which pertain to the tension between divine mercy and justice. These areas of disagreement will be addressed in the latter part of this dissertation during my own exegesis of Exodus Rabbah 42-44.

Another important discussion of the golden calf incident in Exodus Rabbah 42-44 occurs in an essay by Michael Graves, who focuses on the balance between sophisticated exegesis and

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<sup>54</sup> Janet Jerrow, "Arguing with God in the Wake of the Golden Calf Episode: The Rabbis Read Exodus 32," (PhD diss., Southern Methodist University, 2005).

expressions of cultural context within the rabbinic midrashim.<sup>57</sup> Graves' larger intention aims at accounting for how the "rabbinic Moses" developed over time within the Jewish text traditions, beginning with proposed late Second Temple antecedents, moving through the commentary of *Mekhilta de' Rabbi Ishmael*, and then concluding with the much later work of Exodus Rabbah. Graves views Exodus Rabbah as "a full representation of Moses as seen by rabbinic Jews of late antiquity and the Middle Ages."<sup>58</sup> In his analysis of extra-biblical representations of Moses as advocate in the midrash, Graves concentrates on the re-creation of Moses within a rabbinic image, while at the same time viewing these passages as complex exegesis in their own right.

Graves also understands the expanded role of Moses as mediator in the later midrashim as evidence of a significant change in the rabbis' world itself, as the narrative expansions of the biblical Moses are suggested as reflecting contemporary concerns. Graves has emphasized the different rabbinic lenses through which Moses commits the same act of advocacy for the Israelites following the golden calf incident, raising the question as to why this role of Moses acquired such prominence among the later rabbis. The author's solution points toward the hostility encountered by Jews in Christian-ruled societies, and that the elevation of Moses to such great heights constitutes a response against Christian accusations that Moses himself rebuked Israel and could no longer suffer their continual disobedience toward God. The ability of Moses to deliver Israel from disasters would have reflected, according to Graves, the disasters the diasporic Jewish communities confronted in Christian-ruled lands, where persecution was an ongoing possibility.

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<sup>57</sup> Michael Graves, "Scholar and Advocate: The Stories of Moses in Midrash Exodus Rabbah," *BBR* 21, no. 1 (2011), 1-22; On the presence of "recurring patterns" in rabbinic midrashim as a lens through which to interpret socio-historical background, Richard Kalmin, "Midrash and Social History," in *Current Trends in the Study of Midrash*, ed. Carol Bakhos (Leiden: Brill, 2006), 133-60.

<sup>58</sup> Graves, "Scholar and Advocate," 2. One could argue that Graves' analysis is overly teleological, but his discussions of the limited texts he chooses still yield insightful results.

While there is little in the way of smoking-gun evidence for this connection between the textually constructed rabbinic Moses and Christian-ruled environments, the notion that Moses as advocate reflects an ongoing effort to avert disaster does intersect with the broader argument of the current study: that the soteriological role of both prophets and holy men as advocates consisted largely in staving off an impending verdict of condemnation against Israel both in the immediate present and eschatological future, and that disaster indeed awaited Israel absent of direct intervention by one of God's spokespersons. In Graves' defense, the connection between this soteriological approach and a response to Christian replacement theology cannot be ruled out, given that even early Christian texts have Jesus directly interceding for his people before God the father, a phenomenon whose forensic significance is similarly in view. My argument below, however, will view the rabbinization of Moses, as well as his advanced argumentative skills, as more of an internal development among elite rabbinic scholars, who recast the prophetic nature of advocacy into that of the consummate scholar excelling in legal and academic environments. That the scholarly Moses still prioritizes the salvation and election of Israel does not automatically imply direct competition with Christian ideology, since this project of legitimizing Israel's special standing with God long predates late ancient and early medieval Judaism.

### **1.3 Summary of the Secondary Literature**

The current discussion has engaged with scholarship on ancient constructions constructions of Jewish advocacy, mainly within the spheres of earthly courtroom lawyers and litigants, Greek and Roman rhetorical influences, divine courtroom literature, and divinely favored intercessors performing lawcourt prayer patterns, often as a mode of crisis-intervention on behalf of the

congregation of Israel. Approaches focusing on the rabbinically constructed earthly court generally consider advocacy in terms of defense lawyers for hire, the presence of which is deemed strongly objectionable in comparison to the idealized construction of inquisitorial rabbinic legal procedure. The exceptions to advocacy's prohibition in the rabbinic courtroom, however, namely the principle that those incapable of understanding the facts and procedure surrounding a case deserve some form of advocacy from the judges, opens up opportunities to explore advocacy in the late ancient rabbinic lawcourt.

More innovative approaches to rabbinic occurrences of advocacy have recently focused on the divine courtroom, where scholars have emphasized Greek and Roman argumentative techniques, unresolved issues of theodicy, and the relationship between law and truth. There has also been a modest attempt to expand the role of advocates beyond the human court into other spheres of human affairs, where holy men or prominent individuals of means might advocate on behalf of either an individual or collective confronting an imminent crisis. Within any of these areas, the combined influences of Greek, Roman, and traditionally Jewish or Israelite rhetorical elements potentially come into play.

Divine courtroom scholarship and studies of lawcourt prayer patterns provide promising avenues for assessing the place of supporting speakers in the rabbinic corpus. It is important, however, that these approaches engage in responsible exegetical interpretation of the literature in question, with a view to understanding the larger literary contexts and theological motivations underlying a given textual unit. Hidary's work is representative in this regard, as he has drawn on several Second Temple and rabbinic sources to support his argument that divine courtroom advocates operated within a Roman-style courtroom. These sources, however, are rarely considered in terms of their larger textual settings and how they might contribute to a broader

vision of the salvation and ongoing election of Israel. Stated another way, if divine courtroom literature portrays advocates as employing adversarial courtroom strategies, what further purposes, beyond immediate exoneration of the defendant, do such strategies serve?

A deeper dive into many of these early Jewish and rabbinic sources demonstrates a strong intersection between advocacy and corporate salvation. The rabbinic advocate is quite often pleading for acquittal in the immediate present, which then extends temporally to Israel's long-term salvation. Since so many of the passages containing advocacy terminology and discourse involve Israel's need for clemency and acquittal in the past, present, and future, it follows that much of this literature contains strong soteriological motivations. A defense of Israel in the divine court reflects a larger rabbinic defense of Israel in the divine economy of election and salvation. Where holy men are at work interceding on behalf of a collective, the question likewise emerges as to whether such interventions also serve larger apologetic purposes. Alternatively, where eschatology becomes increasingly realized and less urgent, the nature of Jewish advocacy exhibits a combination of forensic and soteriological properties.

#### **1.4 Overview of Advocacy Text Traditions**

At this juncture, a brief overview is warranted concerning the arguments and text traditions included in this dissertation. This analysis of early Jewish texts presenting supporting speech does not attempt to be exhaustive but rather identifies important passages evidencing the soteriological functions of advocacy before the God of Israel. Many of the pre-rabbinic advocacy texts in chapter 3 of this study deal with prophetic, scribal, priestly, angelic, or postmortem figures who plead the case of their people before divine authorities. These texts are immersed in eschatological anticipation, attempting at the same time to account for why redemption from evil



powers has yet to occur. Attempting to reconcile the assurance of deliverance with the prolonged agony of everyday life leads some of these texts to engage in lawcourt patterns of prayer, while others resort to more penitential forms of pleading. It will be argued that the nature of advocacy in these texts is largely dependent on the degree of eschatological urgency. To the extent that many of these texts are apocalyptic, the advocate engages in crisis resolution, attempting to reclaim what is perceived as Israel's lost status of election in spite of a pervasive atmosphere of despair. It will be further argued that advocacy in such text traditions incorporates several longstanding themes of Jewish theology, through which the gulf between hopeful expectation and dismal reality is negotiated. 1 Baruch and 4 Ezra, for example, will approach the disastrous state of Israel's banishment through the principles of covenant forfeiture and renewal, offering prayers of confession followed by intercessory appeals. Ezra's appeals will move closer to lawcourt prayer patterns, given his direct challenge to the angel Uriel concerning the salvation of both Israel and the world at large.

Angelic figures appear often within such early Jewish texts, playing the roles of advocate, accuser, protector, and compiler of human deeds. In some texts, as will be shown in the Testaments of Levi and Dan, angelic patrons may represent the state of Israel and act as both atoning, intercessory, and custodial figures. The diverse functions of divine messengers in these apocalyptic traditions demonstrate the inadequacy of covenant obedience alone, instead pointing to the reality of supernatural figures exchanging forces beyond human control.

These same exhibitions of divine power occur also on behalf of postmortem souls pursuing deliverance in anticipation of heavenly judgment, as in the partially preserved text of the *Apocalypse of Zephaniah*. Here the struggle of the intermediate soul for safe passage to eternal peace hinges on the intercessory appeals of numerous benevolent angels. The destiny of the

postmortem soul, and its need for supporting speech, is also considered in relation to the first Hebrew patriarch in the *Testament of Abraham*. In this text, the patriarch functions in some measure as a role model of the honorable postmortem soul, learning not to condemn others but instead to constantly intercede on their behalf. Again, humanity's state of helplessness is underscored, existing in tension with covenant breach and faithfulness. When Moses appears as advocate, the issues of covenant instability and human weakness occupy the forefront, as in the Book of Jubilees. Moses will attempt to convince God that supernatural forces compromise the Israelite's faith, a situation all the more dire considering the people's innate inability to remain faithful in the first place.

Whereas the texts mentioned thus far are largely apocalyptic and express a great state of urgency igniting the act of advocacy, other works adopt either a more rigorous exegetical approach, as in the case of Philo, or capture an inaugural state of eschatology as demonstrated in the Gospel of John. I will argue, therefore, that the decreased temperature of eschatological longing allows both text traditions to consider advocacy within a more daily life cycle of divine favor and salvation. Both writers present the role of an advocate-intercessor within non-apocalyptic contexts, yet their writings still reveal a strong soteriological component, which in Philo's case may also reflect the human realm of delivering a person facing immediate disaster. Such is the case, for example, of the Paraclete who assists the disgraced governor, Flaccus. More commonly, the Paraclete manifests within the divine economy of salvation, atonement, intercession, and guardianship. Since Philo did not live to see the decimated state of Jerusalem and the destruction of the Second Temple, he can consider divine advocacy within a more stable, romanticized state of Israel, regardless of the chaos and anti-Judaism he may have witnessed in his day. John's Gospel, however, must salvage the longevity of Israel *post dēstructionē templī*,

and his creative solution rests in the long-term preservation of the redeemed community through the patronage and protection of the divine Paraclete. The protection and representation afforded by the Paraclete removes the problem of prophecies unfulfilled and leaves the ultimate arrival of the eschaton open-ended.

The rabbinic text traditions within this study belong to a qualitatively different literary, religious, and cultural environment in comparison to the diverse writings of early Judaism. To begin, the theological assumptions conveyed in much of the tannaitic literature suggest an Israel already redeemed, something akin to an inaugurated restoration eschatology, whether that manifests through reflections on the past or discussions of an idealized present. This phenomenon, together with the literary, pedagogical, and rhetorical influences of the Greek Second Sophistic, provides a backdrop for the tannaitic proclamations regarding advocacy in *Mishnah Abōt*, the *Mekhilta d'Rabbi Yishmael*, and *Sifre Deuteronomy*. I will argue that an intellectual identity among the rabbis embracing Hebrew language, idealization of the past, judicial autonomy, and an inaugurated state of eschatology represents one key to understanding advocacy passages in early rabbinic literature. Passages within the Tosefta suggesting the expiatory functions of a Paraclete will also receive due consideration. Finally, the narrative of Honi the Circle Drawer, most likely first attested in narrative form within *Mishnah Peah*, illustrates an instance where halakhic observance cannot resolve a crisis, leading the rabbis to enlist the intercessory powers of a holy man and adapt them to their halakhic arguments.

The amoraic literature demonstrates a growing rabbinic tendency to place advocacy statements within much larger discussions involving a halakhic opinion or argument. A more intense focus also emerges in terms of Israel's election and separation from other nations of the world. In that sense, defending Israel often occurs alongside of distinguishing her privilege when

divine judgment occurs. Several brief passages appear stating that “an accuser cannot become an advocate.” While the references may not always suggest something theologically profound, they do indicate the degree to which Roman constructions of advocacy could enter seamlessly into halakhic conversations. The amoraic literature will also expand on the possibilities of inanimate objects and abstract principles working as advocates, where repentance, good deeds, and patriarchal merit act as objects one can appeal to when finding oneself on the wrong side of God’s judgment. This section will also examine a narrative from the Jerusalem Talmud that compares the Roman patron to that of God itself, mainly in an attempt to demonstrate the vast superiority of the latter; but as has not been discussed much by scholars, this superiority exists foremost within the predicament of crisis, arguing that the worldly patron proves ineffectual when charged with the request to save a person’s life.

A number of Amoraic texts exhibiting advocacy, however, do interact with more weighty theological concerns, especially in the more detailed discussion of the rabbinic new year festival and the various intercessory elements associated with its eschatology. These midrashim, taken from both *Leviticus Rabbah*, *Pesikta Rab-Kannah*, and the two Talmuds, will illustrate the frequent inseparability between supporting speech and eschatological deliverance. The texts will also show a relatively stark separation between Israel and other nations, suggesting perhaps a more hostile political environment confronted by the authors of these texts. Texts involving renowned biblical figures further tend to embrace more theologically significant topics, for they attempt to transfer advocacy incidents happening in the Hebrew Bible to either the present world or the world to come. This is especially true in the case of Elijah, who occupies a unique status among corporate Israel in the rabbinic writings, at once an adviser and counsellor concerning the

finer points of halakhah, but on the other hand one represented as a herald for the anticipated world to come.

Abraham and Moses, however, command a different level of respect when their biblical acts of advocacy are considered within the talmudic literature and aggadic midrashim. Rabbinic interpreters consistently reinvent these two figures as consummate Torah scholars, who by virtue of their storied accomplishments and divine favor, serve as vehicles through which Israel's elect standing among the nations attains greater clarity and confirmation. Both Genesis Rabbah 49 and Exodus Rabbah 42-44 show each advocate pleading for both Sodom and Israel before an imaginary divine court, not so much to reconfirm the piety of the prophet or the forgiveness extended to Israel, but rather to collapse past, present, and future time within the project of celebrating Israel's inviolable state of election. In this setting, the polished and articulate spokesperson also becomes a rabbinic model for scholarly excellence and piety. The aggadic midrashim dealing with these figures, both the late ancient texts composed in Palestine as well as the early medieval compilations such as Exodus Rabbah, retain the premise that Israel cannot secure salvation by merit alone. At various times, God's intervention is requisite for the ongoing preservation of Israel, and the responsibility of eliciting such intervention often falls on the advocate.

Despite the relatively advanced moral standing and wisdom attributed to advocates pleading before the rabbinic divine court, even Moses, preeminent among them, falls prey at times to human imperfection. In the case of Moses in Deuteronomy Rabbah 11, Moses pleads persistently before God that he might be granted passage into the land of Israel prior to his death. The prophet amasses a number of audacious arguments, displays contempt for his own people, and even raises the possibility that his ban from Israel has resulted in the Torah's becoming a

fraudulent document. This narrative functions as a closing argument for how closely the rabbinic advocate's office connected to the welfare of corporate Israel, and how putting the advocate's well-being above the collective welfare of God's people could only result in a swift divine response affirming the primacy of the latter.

## Chapter 2: Terminology and Methodological Considerations

### 2.1 Introduction

The convergence of divine and human judges, courtrooms, discussions, and doctrines in late ancient Judaism, as a legal-theological environment informing the textual landscape inhabited by supporting speakers, takes place within a broader sociohistorical setting: that being the Greek and Roman imperial arena of legal contests from the Hellenistic period forward, along with the schools of rhetoric that emerged as training centers for up-and-coming legal professionals.<sup>60</sup> In this environment, can one consider Jewish authors, both in Palestine and the diaspora, as literary participants in and adapters of Greek and Roman advocacy traditions? The Jewish people, having been imperial subjects of the Ptolemies, Seleucids, and Romans, and during the Roman period having remained in several cities that retained a Greek cultural identity, present an illuminating case of cultural convergence regarding legal traditions in Late Antiquity. Within the provinces where the rabbinic teachings, literature, and culture are evidenced, Jewish legal traditions show varying degrees of influence from both Greek and Roman cultural forces. These influences function, I would argue, more on the level of cultural interplay rather than as primary determinants of Jewish text traditions. The phenomenon of legal advocacy present in rabbinic literature, for example, demonstrates this convergence quite aptly, as its earlier Israelite elements are attested in the biblical corpus, often inseparable from theological constructions of Yahweh's court. Much later within the rabbinic corpus these biblical traditions apply Greek and Roman

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<sup>60</sup> On Greek law in the Ptolemaic territories, Hans-Albert Rupprecht, "Greek Law in Foreign Surroundings: Continuity and Development," in *The Cambridge Companion to Ancient Greek Law*, ed. Michael Gagarin and David Cohen (Cambridge: Cambridge University Press, 2005), 328-342; on the Late Republic, J. G. F. Powell and Jeremy Paterson, eds., *Cicero the Advocate* (Oxford: Oxford University Press, 2004); on the development of rhetorical schools, M.L. Clarke, *Rhetoric at Rome: A Historical Survey* (New York: Routledge, 1996); Michael C. Alexander, "Oratory, Rhetoric, and Politics in the Republic," in *A Companion to Roman Rhetoric*, ed. Jon Hall and William Dominik (West Sussex: Wiley-Blackwell, 2010), 98-108; Robert A. Kaster, *Guardians of Language: The Grammarian and Society in Late Antiquity* (Berkeley: UC Press, 1997); On general legal developments in Late Antiquity, Jill Harries, *Law and Empire in Late Antiquity* (Cambridge: Cambridge University Press, 1999).

terminology, adding real-life analogies in discussions among rabbinic exegetes and expounders of legal procedure.

Given the complex Greek and Roman cultural forces at work, the following chapter will first present a brief overview of the nature and significance of advocacy in ancient Athenian and Roman courts of law. By observing the shades of meaning associated with Greek and Roman advocates, as well as the perception of their roles among various ancient authors, a few insights will hopefully emerge regarding the Jewish appropriation of classical models of supporting speech. The function of an advocate as patron, and sometimes as a supporter of the less privileged, will demonstrate how easily this notion could merge with the attributes of benevolence and guardianship associated with preeminent biblical figures, whom many rabbis perceived as legitimate post-mortem advocates.<sup>61</sup> The tradition in ancient Athens that an advocate should receive no pay,<sup>62</sup> as opposed to the gradual development of a professional class of Roman advocates by the Late Republic, indicates that the rabbinic writers were in one respect more at home with the Greek model and repudiated the highly adversarial nature of Roman litigation. On the other hand, the ability of a Roman advocate to invoke identity associations between himself and his client bears a strong resemblance to some rabbinic forms of advocacy. Roman advocates even appealed to inanimate entities as advocates for the defense, which likewise is characteristic of certain rabbinic texts.<sup>63</sup> Another noteworthy element of Roman advocacy is the disdain exhibited by several writers, from the first century forward, against

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<sup>61</sup> To take but one example, in *b. Bav. Metz.* 85b, Elijah explains his late arrival to the rabbinic academy as being due to his customary awakening and preparation of the three Jewish patriarchs, who regularly perform intercessory prayers on behalf of the people.

<sup>62</sup> *Dem., Against Stephanus* 2, XL.VI.26; *Rhet. Alex.*, 1444a-1444b, 40-41.

<sup>63</sup> James M. May, "The Rhetoric of Advocacy and Patronclient Identification: Variation on a Theme," *AJP* 102, no. 3 (1981): 309; Cicero, *Pro Sestio* 31, 71.



advocates who do not belong to the traditional Roman aristocracy and theoretically pose a threat to an idealized form of advocacy based on patronage. The threat to those traditionally occupying elite positions in the forensic sphere may offer an additional explanation for why rabbis expressed contempt toward advocacy for hire. As the scholarly class managing their own courts of law, it would make sense to reject a form of forensic activity that could potentially compromise the authority of rabbinic judges.

Having established the nature and terminology of advocacy in ancient Athens, and broadly over the main historical divisions of the Roman Empire, the focus of this chapter will turn to defending the soteriological basis for interpreting ancient Jewish advocacy narratives. Attention will first be drawn to the strong juridical component of salvation in late ancient Jewish literature. I will argue that this convergence of legal and soteriological elements often shows porous dividing lines between the human and divine courts of rabbinic literature. The key phenomena, therefore, characteristic of advocacy narratives will pertain to accusation, condemnation, defense, acquittal, and redemption, all of which are relevant to the rabbinic court seeking its cues from the heavenly court above. I will further argue that the narrativizing of advocacy occurrences consistently maintains the predicament of a broken relationship between two parties, which the advocate works to reconcile in order to produce a saving outcome. Finally, I will again take up the argument for the close connection between advocacy and renewed divine election, given the strained relationships between two parties that necessitate an advocate's intervention. Many texts involving supporting speakers, in this case, maintain a larger focus on reaffirming Israel's privileged place in the divine economy of salvation.

## 2.2: Principles of Advocacy in Ancient Athens

The common term for an advocate in ancient Athens is *synēgoros* (συνήγορος). The act of speaking alongside another person or being in agreement, by extension, conveys the sense of an advocate, most often a public spokesperson selected by the state, enjoined with such responsibilities as “to defend laws against proposed changes before the *nomothetai*”<sup>64</sup> and “to conduct public prosecutions.”<sup>65</sup> As opposed to volunteer prosecutors, when critical political-economic interests came into view, a *synēgoros* could be appointed to represent the state. Such cases might involve interstate arbitration,<sup>66</sup> rights to sanctuaries,<sup>67</sup> vital public prosecutions for high-profile criminal cases or corruption,<sup>68</sup> and defense of laws pending amendment or nullification.<sup>69</sup> Advocates in private cases, however, were well-known for both prosecuting and representing defendants facing prosecution, while they were prohibited from collecting fees for their services, a restriction often claimed to have been violated. Those representing private litigants, be it a friend, family member, fellow-citizen of the deme, or colleague, could simply assist at a particular point of the trial or else plead the case entirely. In other instances, the

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<sup>64</sup> A committee of dicasts in ancient Athens entrusted with revisions to the laws.

<sup>65</sup> Liddell, Henry George, Robert Scott, Henry Stuart Jones, and Roderick McKenzie, *A Greek-English lexicon*. (Oxford: Clarendon Press, 1940), 1491. From here on forward cited as LSJ.

<sup>66</sup> Sheila L Ager, *Interstate arbitrations in the Greek world, 337-90 B.C* (Berkeley, Ca: University of California Press, 1996), 218-219; 253, 274; Adele C. Scafuro, “IG II2 204: Boundary Setting and Legal Process in Classical Athens,” in *Symposion 1999. Vorträge zur griechischen und hellenistischen Rechtsgeschichte*, ed. Gerhard Thür and Francisco J. Fernández Nieto (Köln: Böhlau, 2003), 123-143.

<sup>67</sup> Nikolaos Papazarkadas, *Sacred and Public Land in Ancient Athens* (Oxford: Oxford University Press, 2011), 101-102; 188.

<sup>68</sup> Steven Johnstone, *Disputes and Democracy: The Consequences of Litigation in Ancient Athens* (Austin: University of Texas Press, 1999), 6, 38.

<sup>69</sup> Robert Johnson Bonner, *Lawyers and Litigants in Ancient Athens: The Genesis of the Legal Profession* (Chicago: University of Chicago Press, 1927), 200.

litigant relied on the prepared speech of a logographer as the vehicle through which to present his argument.<sup>70</sup>

To the degree that Athens possessed a relatively advanced system of laws and legal procedures, an accompanying demand emerged for advocates in possession of specialized knowledge and litigation skills.<sup>71</sup> It can be argued, therefore, that fifth-fourth century BCE Athens witnessed the birth of advanced courtroom rhetoric.<sup>72</sup> This allowed the opportunity for advocates to speak as those knowledgeable regarding the facts and events of a case and how they should be interpreted. They also could act as those who truly knew the litigant and how honorable he conducted himself as a citizen, offering rhetorical flourishes and emotional appeals, along with the request for a decision in support of the litigant they would represent.<sup>73</sup> S.C. Todd's monumental work on Athenian law argues that the presence of *synēgoroi* in Athenian law courts presupposed that, while every citizen presumably maintained an equal right to defend their interests in a court of law, not every citizen possessed equal knowledge or rhetorical skills.<sup>74</sup> With the permission of the courts, an advocate could be appointed for a litigant perceived to be at a disadvantage.<sup>75</sup> It was requisite, however, that no close financial or professional connection

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<sup>70</sup> Aristophanes, *Clouds*, II., 1089-1090; *Isaeus* IV. George Kennedy, "The Rhetoric of Advocacy in Greece and Rome," *AJP* 89, no. 4 (Oct. 1968): 419.

<sup>71</sup> Anton-Hermann Chroust, "Legal Profession in Ancient Athens," *Notre Dame Law Review* 29, no. 3 (1954): 341.

<sup>72</sup> Hans Julius Wolff, "Demosthenes as Advocate: The Functions and Methods of Legal Consultants in Ancient Athens," in *Oxford Readings in the Attic Orators*, ed. Edwin Carawan (Oxford: Oxford University Press, 2007), 91-115.

<sup>73</sup> *Isaeus* IV.26: ὅπερ ἂν οὖν καὶ ὑμῶν ἕκαστος ἀξιῶσαι, τοῦτο καὶ τουτοῖσι τοῖς νεανίσκοις βεβαιώσατε./ "Whatever each of you would deem proper for yourselves, confirm that [ruling] in favor of these young men."

<sup>74</sup> S.C. Todd, *The Shape of Athenian Law* (Oxford: Clarendon Press, 1993), 94; Kennedy, "Rhetoric of Advocacy," 220.

<sup>75</sup> Robert J. Bonner, *Evidence in Athenian courts* (Chicago, University of Chicago Press, 1905), 82-83.

existed between litigant and advocate.<sup>76</sup> Advocates are evidenced as fellow members of the litigant's clan,<sup>77</sup> blood-relatives,<sup>78</sup> and simply as friends.<sup>79</sup>

One prominent rhetorician of the late ancient period, Hermogenes, speaking in the second century CE, posed four situations in which an advocate would be warranted for pleading a case. These included (1) the case of a female, who presumably was legally prohibited from pleading on her own behalf; (2) the situation of being either too young or old to adequately litigate in court; (3) that of being a slave or any other individual lacking citizen rights; and (4) the case of a male prostitute.<sup>80</sup> The first three settings pertain to those lacking the legal right to litigate, while the final scenario involves one who might legally represent themselves but due to exigent circumstances requires an advocate to perform virtually the entire case on their behalf.<sup>81</sup> To take one noteworthy example, Herodotus characterizes the plight of the soldier Miltiades, who returned to Athens from Paros and faced impeachment. He was forced to endure his impeachment trial on a bed in court, owing to his thigh rotting away (σηπομένου) from a battle-wound, and received the assistance of friends who advocated (ὑπεραπελογέοντο) for him successfully in the courtroom.<sup>82</sup>

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<sup>76</sup> Todd, *Shape of Athenian Law*, 94.

<sup>77</sup> *Andocides* I:150.

<sup>78</sup> *Dem.* 32.1

<sup>79</sup> *Lys.* 5.1, cited in Lene Rubinstein, *Litigation and Cooperation: Supporting Speakers in the Courts of Classical Athens* (Stuttgart: F. Steiner Verlag, 2000), 159.

<sup>80</sup> *Hermog.*, *Staseis*, 40.15. For a summary of the primary source evidence for the prostitution law, see Konstantinos Kapparis, *Prostitution in the Ancient Greek World* (Berlin: Walter de Gruyter, 2018), 161-171.

<sup>81</sup> *Antiphon* I; *Hyperedies* IV, *For Euxenippus*.

<sup>82</sup> *Herod.* VI.136.

In terms of political ideology, advocacy was thought to embrace the fundamental values of a democracy. This principle receives one of its most outspoken statements in the writings of the fourth century BCE Athenian orator, Hypereides, who is reported in one case to have defended a man facing impeachment on the charge of accepting a bribe. The payment was received, so the prosecution claimed, in return for falsely reporting an oracular dream in the Temple of Amphiaraus.<sup>83</sup> During the defense of his client, Hypereides celebrates legal advocacy as ranking among the most cherished institutions of a democratic polis, a form of litigant-support which the prosecution has compromised and manipulated toward its own benefit.

καὶ πρὸς τούτοις οὐδὲ βοηθεῖν οὐδένα φησὶ δεῖν αὐτῷ οὐδὲ συναγορεύειν, ἀλλὰ παρακελεύη τοῖς δικασταῖς μὴ θέλειν ἀκούειν τῶν ἀναβαινόντων. καίτοι τί τοῦ<του> τῶν ἐν τῇ πόλει βέλτιον ἢ δημοτικώτερόν ἐστι, πολλῶν καὶ ἄλλων καλῶν ὄντων, ἢ ὅποτε τις ιδιώτης εἰς ἀγῶνα καὶ κίνδυνον καταστάς μὴ δύνηται ὑπὲρ ἑαυτοῦ ἀπολογεῖσθαι, τούτῳ τὸν βουλόμενον τῶν πολιτῶν ἐξεῖναι ἀναβάντα βοηθῆσαι καὶ τοὺς δικαστὰς ὑπὲρ τοῦ πράγματος τὰ δίκαια διδάξαι;

You further claim that no one should be permitted to assist him or to advocate for him; rather, you advise the jurors to deny a hearing for the [supporting speakers] coming up. Yet what is better among those [institutions] within the polis, or more democratic among the many other beautiful things that exist, than this: whenever some private citizen is standing in danger at trial, and is unable to act as a defendant on his own behalf, to permit someone, who among the citizens desires to step up, to help this man and to instruct the jury regarding the just [presentation] of the case.”<sup>84</sup>

Hypereides’ argument exhorts jurors to take note of vulnerable citizens under indictment, those incapable of adequately pleading their case and thus facing grave consequences should they be convicted unjustly. The orator believes that the prosecution has denied the defendant the fundamental right to advocates speaking on his behalf.

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<sup>83</sup> On the Temple of Amphiaraus, see *Pausanias*, I.34, in *Pausanias. Description of Greece, Volume I: Books 1-2*, trans., W. H. S. Jones. LCL 93 (Cambridge, MA: Harvard University Press, 1918), 182-87; John G. Pedley, *Sanctuaries and the Sacred in the Ancient Greek World* (Cambridge: Cambridge University Press, 2006), 32-34.

<sup>84</sup> *Hypereides* IV.11. The Greek text of *Hypereides* IV is taken from C. Jensen, *Hyperidis orationes sex cum ceterarum fragmentis* (Stuttgartiae: Teubner, 1963), 42. The translation is my own. See also *Hypereides* I.10.

Within the complex system of public and private litigation that existed in ancient Athens, the ideal portrait of advocacy presented by Hypereides should be considered in light of the legitimate fear the ancient Greeks harbored for abuses inherent within legal representation. These involved the receiving of pay and the attendant risk of advocates speaking whatever they were paid to say, as opposed to the truth itself. This apprehension demonstrates that the risk of compromising the truth in legal cases is not a uniquely rabbinic phenomenon associated with an inquisitorial system of justice. Just as the rabbis appealed to a higher, divine power underlying the laws and their application, ancient Athens had its own political, moral, and religious principles underlying their pursuit of truth in the courtroom. Therefore, while professional advocacy for hire was against the law in ancient Athens,<sup>85</sup> some sources raise the possibility that certain advocates indeed received remuneration for their services, and according to the *Rhetorica ad Alexandrum*, accusations concerning advocacy for hire were a common occurrence that litigants needed to be ready to defend against.

τὸν αὐτὸν δὲ τρόπον κἄν | ἡμᾶς ἐπὶ μισθῷ συνηγορεῖν λέγει τις, ὁμολογήσαντες εἰρωνευσόμεθα καὶ τὸν αἰτιώμενον ἡμᾶς ἐπιδείξομεν τοῦτο ποιοῦντα καὶ τοὺς ἄλλους ἅπαντας. τῶν δὲ μισθῶν διαιροῦ τὰ εἶδη, καὶ λέγε ὡς οἱ μὲν ἐπὶ χρήμασιν, οἱ δὲ ἐπὶ χάρισιν, οἱ δὲ ἐπὶ τιμωρίαις, οἱ δὲ ἐπὶ τιμαῖς συνηγοροῦσιν· | αὐτὸν μὲν οὖν ἀπόφαινε διὰ χάριν συνηγοροῦντα, τὸν δ' ἐναντίον λέγε οὐδ' ἐπὶ μικρῷ μισθῷ συνηγορεῖν· ὅπως γὰρ λάβῃ ἀργύριον ἀδίκως, οὐχ ὅπως μὴ ἐκτίσῃ, δικάζεται.

In the same way also, if someone says that we are acting as advocates for financial reward, we shall admit it in an ironical tone, and prove that the person accusing us does the same, and so does everybody else. Now, distinguish between the different sorts of reward and say that some people act as advocates for money, others as a favor, others for revenge, others for honors; and then show that you yourself are acting as advocate for a favor, but say that your opponent is acting for a reward, and not a small one, as he is bringing the case in order to receive money dishonestly, not in order to avoid having to pay money.<sup>86</sup>

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<sup>85</sup> *Dem.* 46.2, *Against Stephanus* 2.

<sup>86</sup> *Rhet. Alex.*, 1444a-1444b, 40-41. Greek text taken from LCL 317.

In Lycurgus's *Against Leocrates*, the measure of a supporting speaker's worth is their ability to defend someone "on behalf of democracy and the laws" (ὕπερ ὑμῶν καὶ τῶν νόμων καὶ τῆς δημοκρατίας),<sup>87</sup> while those who defend criminals for a fee demonstrate their willingness to participate in the crimes themselves.<sup>88</sup> One observes, therefore, within the Athenian institution of legal advocacy both the ideal to which supporting speakers were expected to aspire and the violation of the ideal itself, which was commonly attributed to a litigant's opponents. The ideal embraced such values as friendship, favor, public services to the state, and democracy, while its opposite entailed the application of rhetorical skill to either the distortion of the truth or the furthering of criminal activity in order to profit by it.

At this juncture, it is worthwhile to consider what components of ancient Athenian advocacy may be relevant to supporting speech episodes in late ancient Judaism. To begin, the prohibition on advocates receiving pay also existed in rabbinic courtrooms, although in the case of rabbinic writings, the grounds for such appear more theological in nature. Rabbinic courts, modelling themselves largely as vehicles for expressing the divine will in everyday legal situations, perceived divine truth as corruptible if legal decisions bore the influence of financial incentives.<sup>89</sup> Therefore, the admonition to judges in *Mishnah Abōt*, for example, not to play the role of advocates, considered in its larger literary context, belongs to a set of guidelines

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<sup>87</sup> Lycurgus, *Against Leocrates*, 138. Greek text taken from LCL 395.

<sup>88</sup> τὸ γὰρ ὑπερ τῶν ἀδικησάντων ἀπολογεῖσθαι τεκμήριόν ἐστιν ὅτι καὶ τῶν πεπραγμένων οἱ τοιοῦτοι ἂν μετάσχοιεν. οὐ γὰρ δεῖ καθ' ὑμῶν γεγενῆσθαι δεινὸν ἀλλ' ὑπερ ὑμῶν καὶ τῶν νόμων καὶ τῆς δημοκρατίας/ "For [their] speaking in defense of criminals is proof that men such as these would partake in the actions themselves. The [supporting speaker] ought to have developed his skill not to act against you, but rather in defense of you, the laws, and democracy."

<sup>89</sup> This principle will receive attention in chapter 5 below, where I will discuss early rabbinic texts, such as the *Mekhilta de-Rabbi Yishmael* 23.7, which claim a perversion of truth takes place among judges who act as advocates for hire.

safeguarding the judges' ability to express divine truth in their rulings. In ancient Athens, violating the prohibition on advocacy-for-hire represented a breach of the idealized notion of supporting speech itself, one placing it among the safeguards of democratic ideals and institutions.

Putting aside how factual Hypereides' reports might have been concerning unscrupulous advocates, his claims capture an essential belief common to both Jewish and ancient Athenian courtroom procedure: that the legally disadvantaged have the right to receive counsel and representation in the face of prosecutors who would presumably deny this option. While this Athenian right to fair representation was facilitated by a supporting speaker, the Jewish courtroom places the responsibility for fair counsel on the shoulders of the judges, who can still advise a litigant in the capacity of an impartial advocate. It is clear that the ideal Hypereides invokes with respect to supporting speech is a political one, where advocacy embraces the ideals of democracy. As argued below, the rabbinic motivation involves an inquisitorial courtroom procedure informed by a strong theological impulse to reflect the divine will in human courts.

In situations permitting advocacy, rabbinic sources show evidence of allowing members of the community an opportunity to speak on behalf of a condemned person, if this should influence the outcome of a case.<sup>90</sup> While this does not suggest the existence of Jewish advocates possessing advanced argumentative skills, it does point at least to the possibility of volunteer-advocates who, not standing to gain anything financial from the engagement, were permitted to speak for those requiring additional representation beyond the judges. Attention, moreover, to the inability of some individuals to either receive a legal defense, or else advocate for themselves, appears operative in both ancient Athenian and rabbinic literature. Women and

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<sup>90</sup> *m. Sanhedrin, 6.1*



slaves figure prominently into this equation, and an examination of the Jewish sources should seek to identify to what extent either class either received supporting speech or spoke for themselves.

### 2.3 The Roman Patronus

The purpose of this section is to examine what differences and innovations distinguished republican and imperial Roman advocacy from its earlier Athenian counterpart, and to assess how these distinctions bear relevance to an extended analysis of advocacy forms in rabbinic literature. Perhaps the first term worth investigating in this regard is that of *pātrōnus*, which embodies at once the identities of both protector and advocate. Among those attributes distinguishing the Roman *pātrōnus*, he retained the power to not be summoned by the prosecutor to deliver testimony.<sup>91</sup> The Plebeicite *Lex Cincia*, moreover, contained a categorical prohibition on the advocate's receiving of gifts from their client (*rēus*).<sup>92</sup> Scholars have likewise noted that a defendant at times would have access to more than one advocate depending on the circumstances of his defense strategy.

Unlike the typical procedure in an Athenian court of law, where the plaintiff and defendant ordinarily spoke on their own behalf, the Roman litigant normally enlisted one or more *patroni*, rhetorical advocates, to speak in support of his case. The implications of such a "rhetoric of advocacy" are manifold, particularly with regard to the scope of rhetorical ethos, for in Rome it is not only the ethos of the litigants which now comes into play, but the characters of the *patroni* as well. Thus, in the hands of a rhetorically skilled

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<sup>91</sup> Cicero, *In Verrem*, II.2.24: nonne te mihi testem in hoc crimine eripuit non istius innocentia, sed legis exceptio? Is it not on account of, not the innocence of your [client], but the exception deriving from the law, that I am deprived [of calling you in] as a witness on this charge?" Latin text of Cicero is taken from *OCT*. Latin translations, unless stated otherwise, are my own.

<sup>92</sup> Tacitus, *Annals*, XI.5: . . . consurgunt patres legemque Cinciam flagitant, qua cavetur antiquitus ne quis ob causam orandam pecuniam donumve accipiat/ "The fathers rose up and urgently demanded the Lex Cincia, in which it is decreed in the ancient tradition that no one shall receive either money or a gift in exchange for the pleading of a case." Latin taken from *OCT*. translation is my own.

advocate, particularly one endowed with a very strong personality, the rhetoric of advocacy can be an extraordinarily powerful weapon.<sup>93</sup>

The general view among scholars has been that, while Greek litigation occasionally offered the service of an advocate due to a litigant's lack of skill, citizenship, or appropriate age, supporting speech grew to be the norm in ancient Rome and was commonly adopted by both the prosecution and defense.<sup>94</sup> As Kennedy observes, the lexical treasury of Latin terms for a supporting speaker proves quite broad, including such words as *orator*, *advocatus*, *laudator*, *cognitor*, *defensor*, *patrōnus*, and *causidicus*.<sup>95</sup> The tendency of Roman advocates, furthermore, to occupy a broad scale of functions with respect to both defense and accusation, places their office in a rather interesting context in relation to the often-stated rabbinic axiom that "an advocate cannot become an accuser." Were the rabbis, when repeating this phrase within a variety of halakhic discussions, responding to an imperial context wherein advocates and accusers were interchangeable depending upon opportunity for profit, social mobility, and advancement of reputation?

Kennedy has identified Cicero's early oration, *Pro Roscio Amerino*, as an effective demonstration of advocacy in the late Roman republican setting. In the first place, Cicero, unlike the model for Greek supporting speakers, held no individual stake in or personal relationship with the accused party, Roscius. By virtue of his distance from the client, Cicero maintains the assurance that, whatever risk he undertakes in litigating against powerful accusers, the dangers remain minimal in comparison with those confronted by his client. Cicero, nevertheless, also

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<sup>93</sup> May, "Rhetoric of Advocacy and Patronclient Identification," 308.

<sup>94</sup> Kennedy, *Rhetoric of Advocacy*, 427. Note, however, that Rubinstein's monograph, *Litigation and Cooperation*, makes a strong case for a much more robust presence of advocates in ancient Athenian courtrooms.

<sup>95</sup> *Ibid.* 427. Kennedy goes on to distinguish these terms according to legal function. The *cognitor*, for example, would entirely replace the litigant, the *advocatus* would advise but not necessarily speak for the litigant, and the *patronus* would both advise and present the case before a jury.

employs the device of self-identifying with the client in order to stir the pathos of the judge and jurors. The advocate's dual identity as both impersonal counsel and self-identifying performer, as one can imagine, departed significantly from the Greek tradition of enlisting one's friends, fellow demesmen, or family members as spokespeople for the defense.

Michael C. Alexander's unpublished dissertation remains an important study of Roman advocacy in the Late Republic, and provides a basis for probing the differences which developed in Late Antiquity and how they may have affected subject peoples such as the Jews.<sup>96</sup> Alexander clarified that the term, "lawyer," designating a specialist educated in the law, was not a fundamental identity marker or professional requirement of the late Republic advocate.<sup>97</sup>

Alexander also engaged the compelling question concerning the relationship between the client and courtroom advocate, namely whether the bond between the two involved some faithful pledge of protection (*fidēs*), as was evident in social, non-forensic settings such as those between a freedman and his emancipator. Alexander argued that the forensic context of the *pātrōnus* evolved from its earlier, broader environment marked by political and economic representation and support. Nonetheless, there were relatively few instances, by the time of the late Roman Republic, where the courtroom advocate also acted as patron for his client in non-forensic situations. Succinctly stated, "the bonds formed in court cases, though sometimes important, could be transitory and informal."<sup>98</sup>

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<sup>96</sup> Michael C. Alexander, "Forensic Advocacy in the Late Roman Republic," (PhD diss., University of Toronto, 1977).

<sup>97</sup> Ibid., 1: "The word 'advocate' has been preferred to 'lawyer,' which implies a familiarity with the law, for while that may have been a desirable attribute of Roman court speakers, it was not an essential characteristic."

<sup>98</sup> Ibid., 142.

James M. May, on the other hand, has argued that the rhetorical technique of “patron-client” identification proved quite persuasive in building an acquittal for the defense, such that while the pure elements of *fidēs* may not have presupposed the relationship between litigant and advocate, the performative linking of these two individuals still provided an effective method of drawing up support. As May understands this strategy, “By identifying himself with his clients and their causes with his cause, Cicero bestows upon their defenses a measure of his own authority.”<sup>99</sup> Among the more striking developments of this rhetorical method in Cicero is the advocate’s self-identification as a client being represented by a *pātrōnis* none other than the *rēs publica* itself. This rhetorical ploy, to have one’s cause defended by one of the most cherished entities in existence, is arguably similar to the later Jewish strategy of enlisting abstract entities such as Torah, patriarchal merit, and acts of benevolence as one’s advocates. In this instance, Cicero had conflated the very instability of his political office, as well as his standing with the Roman people, with the overarching health and welfare of the Roman Republic, which had become his patron representative.<sup>100</sup> May’s observations are in keeping with the rhetorical direction of *Pro Sestio* and other post-recall speeches by Cicero aimed at identifying his *causa* with the Republic.

The speech on behalf of Sestius is, in terms of the skillful use of the options opened by the rhetoric of advocacy, a *tour de force*. The patron Cicero defends his client not so much on the strength of a logically constructed proof as by the weight of his own personal influence, *auctoritas*, which, in turn, is given further clout by the support of the State (*res publica*).<sup>101</sup>

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<sup>99</sup> May, “Advocacy and Patronclient Identification,” 309. See May’s observations on Cicero’s speech in support of the disgraced praefectus of Alexandria, Aulus Avilius Flaccus, in *Pro Flacco*. Cicero himself was confronting the danger of exile at the time.

<sup>100</sup> See, for example, *Pro Sestio* 31, 71, where Cicero’s cause is specifically that of the state itself. Section 112 is most telling: *nemo fuit, qui se non rem publicam mecum simul revocare in suas sedes arbitraretur*/ “There was no one who did not believe that recalling me was at the same time recalling the Republic back to its own residence.”

<sup>101</sup> May, “Advocacy and Patronclient Identification,” 311.

The tendency to associate advocates with patrons of the privileged class, who took on cases of either new or previously established clients, does not adequately account for the changing legal and political circumstances governing imperial Rome following the demise of the Republic. Leanna Bablitz has argued that, in the transition from the late Republic to the Principate, the phenomenon of patrons acting as advocates on behalf of their clients increasingly gave way to many advocates lacking these same patron-client connections. Moreover, with the emergence of Roman advocates as a distinct professional class, the opportunities offered by this vocation extended in larger measure to those outside the traditional landed nobility. In light of the vast territorial reach of the Roman empire, the opportunities for advocates extended likewise to numerous provinces.<sup>102</sup> Bablitz considers the issue of post-republican advocacy by concentrating on three main developments: advocate income, the aristocratic belief that the profession was declining in quality, and which terms accurately refer to advocates. In terms of remuneration, the compromise that the emperor Claudius struck in 47 CE, which capped the amount of income an advocate could receive, indicates that some advocates relied on a certain level of income from their services and were not merely exacting excess reward. Bablitz attributes the alleged decline in oratory during Late Antiquity to the upper-class hostility at that time toward upwardly mobile advocates for hire, who had not been born into wealth nor amassed any significant fortune prior to a career in advocacy. Pliny, for one, lamented what he considered to be second-rate advocates, whose primary motivations consisted of gratifying their audience.<sup>103</sup> With the emperor assuming the role of supreme patron, those in need of an advocate were no longer in principle bound to a noble upper-class patron acting as advocate. The playing field much was now wider.

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<sup>102</sup> Leanna Bablitz, *Actors and Audience in the Roman Courtroom* (New York: Routledge, 2007), 236; For one observation on the provinces, see Juvenal VII.148-149.

<sup>103</sup> Pliny, *Epistles*, 2.14.

In light of these basic elements of Greek and Roman advocacy, a few considerations are in order. First, while the rabbis staunchly opposed the Roman system of advocacy for hire, the advocates who appear in the rabbinic literature do exert great effort in the art of self-identification with the client they represent, in most cases that being the collective congregation of Israel. It is also apparent that the Greeks perceived advocacy as a fundamental legal right within a democracy, whereas for the rabbis it holds no celebrated status. The rabbis rather perceive advocacy and intercession as a means to an end, and when alluding to the worldly practice of it, they are content to generally have the Roman adversarial system in mind. Finally, the rabbinic writings employ many inanimate, abstract entities as advocates for an accused Israel, among which are included the Torah, acts of benevolence, the ram's horn, and previous acts of merit, either by individuals or the renowned patriarchs. In these cases, the rabbinic literature is approximately in the arena occupied by Cicero, whereby he can appeal to a higher abstract principle as his defense when pleading a case. The question now arises, given these comparative observations, as to how theological principles constituted the driving force behind late ancient Jewish constructions of advocacy.

#### **2.4 Advocacy, Soteriology, and the Intersection of Divine and Human Judgment**

The presence of advocacy in several late Second Temple and rabbinic writings offers evidence for the strong juridical nature of salvation present within ancient Judaism. Before a divinely enthroned judge a skilled advocate at times may intervene, the primary objective being to intercede, either through formal speech or an appeal to a sacred entity, on behalf of an individual or collective facing guilt and condemnation based on strict standards of divine justice. An advocate takes on several forms, such as a voluntary speaker, patron, prophet, holy man,

post-mortem Israelite leader, or even some inanimate entity such as patriarchal merit or the ram's horn. While hardly a household name in Jewish text traditions, the advocate frequently appears during high-stakes incidents, where the fate of the congregation's deliverance hinges on skilled intervention. Even where the stakes are not immediately high, the soteriological implications may still prove significant. What advocate appearances lack, therefore, in textual frequency are compensated for by the theological weight of their connections to crisis and redemption.

The degree to which the ancient rabbis borrowed or assimilated Greek and Roman conceptions of advocacy and accusation poses an interesting inquiry, but perhaps this manner of raising the question should be reframed, given ancient Judaism's centuries long immersion in Greek and Roman culture by the advent of the rabbinic period. With this understanding, it may be more useful to examine late ancient advocacy as a convergence of Greek and Roman advocacy forms with their Jewish counterparts. This in many ways would reflect an outcome of long-term imperial encroachment on the legal and religious institutions of ancient Israel. Within this imperial matrix of Jewish assimilation and resistance, the legal and soteriological properties of supporting speech consistently intersect one another, for salvation was often perceived in ancient Judaism as a form of acquittal from a guilty verdict in God's imaginary court of justice.

Spanning simple tannaitic statements to extended speech performance in the aggadic midrashim, the rabbis applied the phenomenon of advocacy toward Israel's place in the divine economy of judgment, condemnation, acquittal, and salvation. Rabbinic advocacy, therefore, demonstrates a soteriological phenomenon incorporating strong legal associations. Like late Second Temple advocacy, the texts remain grounded in biblical themes, while increasingly adapting, and at times grappling with, various aspects of Greek and Roman legal forms. This intersection between law and soteriology raises fundamental questions about rabbinic

eschatology and earned merit, since the urgent crises associated with advocacy occurrences relate in some measure to the inaugurated eschatology of the rabbis.<sup>104</sup> The realization of either daily or futuristic salvation, in this context, cannot fully rely on earned merit through observance of the halakhah. Divine merit is sometimes unearned and acquired through the pleading of the advocate for God's immediate intervention.

Further grounds exist for expanding the rabbinic discussion of supporting speakers beyond the worldly rabbinic court and into the theological sphere of salvation doctrine. Focusing disproportionately on legal contexts overlooks several key developments in the rabbinic appropriation of classical advocacy terms and ideas. These include, for example, the increased appearances of advocates in the rabbinically constructed divine courtroom, along with strong elements of Greek and Roman rhetorical strategies employed by advocates for Israel in aggadic midrashim, such as *Genesis and Exodus Rabbah*. The performative role of biblical figures, past events, and instruments of power further contribute to rabbinic advocacy traditions. In sum, the bridge between expiatory performance for and legal defense of Israel, both included within the advocate's functions, cannot possibly receive an adequate treatment when limiting advocacy to the arena of rabbinic approval and disapproval of lawyers, especially when one considers that the ideal rabbinic courtroom may have existed more in the imaginative sphere, given the lofty standards governing its presentation in the tannaitic and amoraic corpora.

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<sup>104</sup> The division of eschatology according to the categories of apocalyptic, realized, and inaugurated marks an orientation generally restricted to New Testament studies. It is surprising that realized and inaugurated eschatology have received so little attention in rabbinic texts, given their focus on either a well-ordered Jewish world reflecting realized eschatology, or else a relatively stable relationship to the divine that remains vocal about the futuristic world to come. Inaugurated eschatology, balancing the present and future, has received some attention in relation to ancient Judaism and will be discussed further below as a means of understanding rabbinic eschatology. See Grant Macaskill, *Inaugurated Eschatology in Ancient Judaism and Early Christianity* (Leiden: Brill, 2007).



Normally going by the terms *synēgoros* (συνήγορος/סניגור) and *paraklētos* (παράκλητος/פרקליט), as well as other variants capturing the meaning of a spokesperson, defender, helper, or intercessor, advocates in rabbinic writings present compelling insights into the rabbinic theologies of election, accusation, appeal, redemption and eschatology. As such, the advocate represents one of many phenomena demonstrating the strong legal orientation toward salvation in ancient Judaism, a phenomenon that neither began nor ended with the classical rabbinic text traditions composed from the period of the Mishnah through the early medieval midrashim. Supporting speakers in rabbinic texts to some degree reflect an outgrowth from and new orientation toward earlier biblical and Second Temple divine court passages, in which the divine sovereign Yahweh would pursue a covenant lawsuit (ריב/*rib*)<sup>105</sup> case against an offending party, the accused often being Israel herself or the neighboring southern state of Judah.<sup>106</sup> Prophetic advocates would function as intercessory supporting speakers who would “stand in the breach” between the prosecuting divine judge and the offending Israel.<sup>107</sup> The rabbinically constructed divine courtroom likewise presents Israel’s defense in light of her previous covenant violations, ongoing state of exile, and anticipated hope of divine restoration. The rabbinic construction of advocacy, therefore, forms part of a larger rabbinic legal orientation toward Israel’s ongoing and permanent vindication, functioning as a defense of Israel in not only the

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<sup>105</sup> H. Ringgren, “ריב” *TDOT* 13:475-78.

<sup>106</sup> Is. 1:2-3; Micah 6:1-2; James Limburg, “The Root ריב and the Prophetic Lawsuit Speeches,” *JBL* 88, no. 3 (1969): 291-304; Michael De Roche, “Yahweh’s Rib against Israel: A Reassessment of the So-Called ‘Prophetic Lawsuit’ in the Preexilic Prophets,” *JBL* 102, no. 4 (1983): 563-574; Kirsten Nielsen, *Yahweh as Prosecutor and Judge: An Investigation of the Prophetic Lawsuit (Rib Pattern)*, JSOTSup 9 (Sheffield: Sheffield Academic Press, 1978), 5–26.

<sup>107</sup> Ps. 106:23: וַיֹּאמֶר לְהַשְׁמִידֵם לִדְלִי מִנְּשָׂה בְּחִירֹו עָמַד בְּפָרֶץ לְפָנָיו לְהַשְׁיֵב חֲמָתוֹ מִהַשְׁחִיתָם / “He said that He would have destroyed them had not Moses, His elect, stood up in the breach before Him, in order to turn away his fury from destroying them.

biblical past and rabbinic present, but in the eschatological anticipation of final collective acquittal.

The intersection of the legal and soteriological properties of advocacy manifests largely through the tenuous borders between earthly and divine courtrooms in rabbinic literature. One means of demonstrating this phenomenon, both forensically and theologically, is by considering advocacy and intercession within the religious intersections of divine and human judgment. The practice and performance of advocacy normally presupposes a political head, legal judge, or some other authority figure before whom one appeals for clemency and forbearance. In rabbinic text traditions, because judgments take place in both human and divine courts, charting the intersectionality between these loci is essential to assessing the presence and significance of Jewish advocacy.

The relationship between human and divine judgment is vital to the project of interpreting ancient Jewish texts in general, one that scholars in various branches of Jewish legal traditions, with regard to several topics, have grappled with in no small measure. Haim Shapira has stated the matter as follows:

The majority of classical Jewish sources in the Bible and in Rabbinic literature that deal with law and the legal system reflect a certain relationship between human judgment and divine justice. Thus, we find in the Bible the notion that God emanates His authority to the judges who perform this function. In this spirit, Moses commands the judges whom he has appointed: "judge righteously. . . for the judgment is God's."<sup>108</sup>

Shapira further addresses the boundaries between human and divine judgment; that is, the degree to which they exist apart from or in concert with one another.

At one end, one might describe God as the transcendent source of authority of the legal system, whose practical significance is limited. On the other end, one might describe it

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<sup>108</sup> Haim Shapira, "For the Judgment is God's": Human Judgment and Divine Justice in The Hebrew Bible and in Jewish Tradition," *JLR* 27, no. 2 (2011-12): 273.

as a Divine Presence that inspires the judges and even allows them to appeal to God and to involve Him in the legal decision.<sup>109</sup>

This tension between the transcendental divine source and imminent divine presence surfaces in important texts involving divine and human courts; and in instances where accusers and advocates confront one another, the nature of the divine presence does well to explain what attributes of Jewish legal and soteriological teachings are in view. In fact, the alleged divine presence presupposing the proper functioning of the earthly rabbinic court presumably explains why advocates are theoretically unwelcome during litigation: in short, the advocate compromises the judges' ability to recognize the divine presence informing each aspect of the legal process. Even if God should hover more remotely in the background, the judge still acknowledges his ultimate fidelity to the God of Israel, who provides the foundation for the creation, interpretation, and implementation of the law.

Shapira has examined divine and human judgment across the broad historical map of Jewish religious law, and it is their intersection in the late biblical and rabbinic stages that are of concern in the current discussion of advocacy and intercession. His analysis comprises four general stages. The rabbinic avoidance of direct divine judgment is first considered, followed by a "theoretical approach" to the question of God remaining present during rabbinic judgment. Then Shapira deals with judicial authority and the potential for discretion, and finally the rabbinic judge's perspective on judgment and the potential fear of such judgment."<sup>110</sup> The Rabbis

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<sup>109</sup> Ibid.

<sup>110</sup> Shapira, "For the Judgment is God's," 291 ff.

ostensibly reject divine ordeals such as the Sotah, as well as prophetic authority with respect to legislation and judgement.<sup>111</sup>

The direction in which I propose taking these principles is that of situations where the interaction between human judge and divine guide loses stability, where uncertainty manifests to a degree capable of triggering a profound crisis. The convergence between the divine and human court still persists, but it enters new ground, where an advocate or intercessor must make direct appeal to God, since human judicial power is compromised for lack of immediate, available legal options. In short, when the methodical, rhythmic performance of rabbinic discussion, presupposing an ongoing human dialogue with the divine judge himself, indicates a crisis confronting Israel or the individual, the dialogue with God transforms into one where rabbinic authority significantly wanes and direct divine judgment must enter the discourse.

One underlying question for the current study, therefore, which assumes the intersection of worldly and otherworldly judgment in rabbinic midrash, and by extension how the balance impacts the function of a supporting speaker, is that of how imminent God's presence remains within human law, and in a similar vein, in humanity's presence within the divine court. Of further concern is the status of the advocates themselves. Are they purely human or at times partially divine, as is the case with a figure such as an angel or the prophet Elijah, who although taking on human form still possesses some degree of postmortem, supernatural power. The prevalent rabbinic notion that legislation, interpretation, and judgment have been entrusted by God to the rabbis, with the divine retaining its presence as a barometer of righteousness, places

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<sup>111</sup> So, *Sifr. Behukotai*, 13.7): "Rabbi said," 'These are the commandments' (Lev. 27:34): This teaches that tithing a beast is a commandment. 'These are the commandments:' [This teaches] that there is no prophet, from this point forward, with the authority to make any new legislation." This position, of course, does not receive universal approval in the amoraic literature, as prophetic texts continue among some rabbis to carry legal authority rather than the mere status of received, inspired tradition.

the position of an advocate within a brighter light. In this sense, the advocate often speaks directly to God, occupying a position which the rabbinic judge or common litigant lacks the power to perform. It is not the prevailing mode of legal action and is reserved often for moments where the rabbinic system cannot produce the benefit or guarantee of a sound halakhic ruling; nor can the judges ensure salvation for an individual or congregation.

Caution should prevail, however, when inquiring into the legal and soteriological contexts of supporting speakers in rabbinic literature; namely, that such an inquiry by no means aims to perpetuate the unfortunate stereotype of a “legalistic” rabbinic view of salvation. With the publication of E.P. Sanders’ *Paul and Palestinian Judaism*,<sup>112</sup> the widespread pejorative view of post-exilic, late Second Temple, and rabbinic Judaism as legalistic, works-righteousness religious expressions—and thus suggesting an inferior path to salvation—experienced a long, overdue challenge, one directly confronting New Testament and early Christian scholars who had overlooked the multivalent and nuanced character of rabbinic theology.

For the purposes of the current study, this challenge bears direct relevance to rabbinic soteriology, which on account of its diversity can only be generalized in broad strokes. The nature of any one salvation tradition, both in the present world and world to come, is subject to specific literary and theological contexts surrounding the composition or pericope in question. This is nothing new, of course, as even a much smaller text collection such as the New Testament demonstrates soteriological differences, with Paul, Luke, Matthew, James, or John of Patmos not standing wholly united on the criteria for corporate salvation. Given the differences existing in New Testament literature, it naturally holds that a corpus as vast as the tannaitic and amoraic literature would display considerable degrees of deviation, depending on accompanying

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<sup>112</sup> E. P. Sanders, *Paul and Palestinian Judaism: A Comparison of Patterns of Religion* (Philadelphia: Fortress Press, 1977).

sets of historical, sociocultural, literary, and theological contexts surrounding a given textual tradition.

In reality, the forensic aspects of salvation were already present in biblical, late Second Temple, and early Christian literature. The rabbis of Late Antiquity were among many religious literati engaged in such conversations, and the midrashic literature representing advocacy in particular often demonstrates how strongly rabbinic figures conceived of the immediate and ultimate salvation of Israel in terms of courtroom procedure. Furthermore, the application of Greek and Roman legal terminology to Jewish religious phenomena was already emerging during the Second Temple period, well demonstrated for example in the figure of the heavenly Paraclete of both Philo and the Johannine literature. The rabbinic midrashim, however, offer a unique application of Greek and Roman legal categories to the soteriological and eschatological status of Israel as a collective, whereby the Jewish people *in totō* required various categories of supporting speakers to represent them before the divine judge.

The theological principles of strict justice, earned merit, human agency, expiation, and the world to come are among the many soteriological forces at work in the assessment of advocacy in rabbinic narrative. A tension, earlier noted, between adversarial and inquisitorial justice was identified as a prime mover in the rabbinic opposition to advocates in idealized Jewish lawcourts, with some scholars such as Hidayi claiming that adversarial justice persists in the rabbinically conceived divine courtroom. The tension between strict justice, on the one hand, and the opportunity to plead for mercy and perform repentance on the other, occupies a similar position in the soteriological realm. How rabbis envision justice in their courtroom versus salvation in life itself finds a place in narratives containing supporting speakers. Expiation, a religious performance closely related to intercession and supporting speech, should rightfully be identified

whenever it converges with rabbinic conceptions of advocacy. Likewise, the degree to which humanity plays an active role in salvation, having the power to either achieve, preserve, or negate salvation, again bears relevance concerning the appeals of advocates, who often seem to compensate for the powerlessness of Israel to maintain its good standing with God.

Given the strong Christian presence in the field of soteriology, as well as the cultural and theological distance between Palestinian and Babylonian rabbinic Judaism, on the one hand, and the branches of Christian salvation doctrine on the other, are there grounds for applying the subject of soteriology to early Jewish and rabbinic texts concerning advocacy? In the introduction to one of the few recent volumes to apply soteriology to Jewish studies in the Second Temple period and beyond, an illuminating assessment of the lexical data runs as follows:

In a comprehensive treatment of the terminology, W. Foerster observes that within religious texts connotations involve everything from deliverance from an undesired situation to physical well-being. G. Fohrer sifts through a myriad of lexical data to find that in the LXX  $\sigma\acute{\omega}\zeta\omega$  is used primarily for the verb,  $\text{נָשָׂא}$ , 143 times for the *hiphil* ‘to save’, ‘to free’, ‘to help’, ‘to come to the help of’. In such instances the deliverance ‘is imparted to the weak or oppressed in virtue of a relation of protection or dependence in which he stands to someone stronger or mightier who saves him out of his affliction. The thought is neither that of self-help nor of cooperation with the oppressed. The help is such that the oppressed would be lost without it’.<sup>113</sup>

Among the many settings for the procurement of salvation, Fohrer’s analysis identifies one of them as the “resolution of legal disputes.”<sup>114</sup> His study also acknowledges corporate deliverance from disasters, eschatological rescue associated with the end of days, and the ingathering of Israel’s exiles from abroad (restoration eschatology).<sup>115</sup> Each of these settings provides an

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<sup>113</sup> Daniel M. Gurtner, ed., *This World and the World to Come: Soteriology in Early Judaism* (London: T&T Clark, 2011), 4 (editor’s introduction).

<sup>114</sup> *Ibid.*, 5

<sup>115</sup> Fohrer, *TDNT* 7, 973.

effective vantagepoint through which to observe the intersection of soteriology and advocacy. Resolving a legal entanglement presupposes two parties in a state of conflict, along with a superior judicial party presiding above them. It can also involve a complaint issuing from the judge himself, as found for example in the indictments issued in certain prophetic texts.<sup>116</sup> As mentioned above, the positioning of advocates in Jewish texts often comes with the intention of rescuing a party from disaster, be it drought, persecution, disease, or some other form of ruin. Restoration of Israel's land and sovereignty also figures into these narratives, for ultimately the election of Israel surrounding certain advocacy narratives envisions a renewed state of national sovereignty. These settings also indicate the presence of a weaker party either seeking rescue from a stronger, persecuting entity, or else needing to be reconciled to the stronger party in which it is bound to a covenant relationship. In most cases, the presence of the advocate aims to resolve these relationships of crisis.

## **2.5. Conclusion**

This chapter has reviewed selected aspects of advocacy in ancient Athens and Rome that point toward the imperial expression of these institutions in late ancient Judaism. While both Greece and Rome positioned advocates within trials that exhibited the competitiveness of athletic contests, many of the rhetorical facets of these confrontations leaked into the legal discourse of rabbinic Judaism: these include the identification of patron with client, the appeal to community members to speak on behalf of an accused party, the opportunistic condemnation of advocates as a professional class, and the appeal to abstract entities as representative of intercessory power. To the degree that trials manifest adversarial relations between two or more parties that require

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<sup>116</sup> Amos 2.4; Ezek. 28:6-10;



resolution, the soteriological basis for interpreting ancient Jewish advocacy narratives can be examined more closely. This orientation stems from the juridical features of ancient Jewish salvation doctrine, where acquittal from a state of guilt constitutes one of the primary goals of attaining salvation.

The integration of forensic and soteriological attributes often shows fluid borderlines between the human and divine spheres of jurisdiction. This makes sense, in so far as many late ancient Jewish narratives are the product of human authors attempting to understand the theological nature of accusation, prosecution, advocacy, exoneration, and redemption. The rabbinic court places these processes under the jurisdiction of a divine judge, who has granted the rabbis a great deal of license in the crafting of their laws, so long as the rabbis honor that deity with ongoing discussions aimed at imparting the divine character on legal decisions. I have also argued that advocacy narratives maintain a precarious state of division between two or more parties, the reconciliation of which embodies one of the core endeavors of soteriology. The advocate's project of dissolving dispute and promoting concord helps generate salvation for those whom the writer deems deserving of such. In the case of Israel, the state of peace and agreement between reconciled parties reestablishes the election of God's people amidst an ongoing environment of imperial encroachment.

In light of the Torah-centric, land-focused system of Jewish salvation, expressed in both daily, vigilant Torah engagement, continuous judgments of individuals, and the eschatological judgment of the collective, it stands to reason that the project of a supporting speaker would be one of preserving a favorable judgment in the current age as well as in the world to come. The advocate would also provide explanations for Israel's past mistakes and recontextualize them within the present. Situated within that place where the daily, realized eschatology of halakhic

discussion cannot fully assure an individual or collective of salvation, where divine judgment at times supplements human initiative and judgment, and where the human courtroom converges with the imagined divine courtroom: in these discursive spaces are found advocates and intercessors performing their soteriological function of mending the divide between conflicting parties.

## **Chapter 3: Advocates and Intercessory Figures in Early Judaism**

### **3.1 Introduction**

Several early Jewish texts from the late Second Temple period, as well as its immediate aftermath, present advocate-intercessors pleading on behalf of an individual, Israel, or some other community of God's redeemed. These works provide a useful pre-rabbinic lens through which to view core tenets of ancient Jewish theology applied to supporting speech. Interpreting such pre-rabbinic writings by no means implies that consistent, direct lines of religious thought bridge the late Second Temple writings with subsequent rabbinic works. Rather, such an investigation seeks to identify how the legal nature of Jewish soteriology manifests through episodes of supporting speech conducted within an imaginary divine courtroom, or at minimum in some other supernal setting suggesting the presiding of a divine magistrate.

This chapter will investigate a selection of apocalyptic and rewritten Bible texts that present advocates speaking amid a strong state of urgency to resolve a crisis. These include selections from such works as Apocryphal Baruch, the Book of Watchers, 4 Ezra, and Jubilees. With the background of crisis in mind, this chapter will argue that the soteriological function of advocacy, in relation to the main thesis stated in chapter 1, manifests frequently in these texts through the broken relationship between either God and Israel or else God and humanity at large. The narrational function of advocacy in these texts, therefore, consists of reconciling the relationship through legally articulated expressions of intercession, acquittal, and redemption. I will further argue that the narrational function of the advocate to secure salvation is strongly informed by the futuristic nature of eschatology in these texts. With universal judgment looming imminent, a crisis confronts the advocate: namely that of reconciling redemption unrealized with the near-anticipated eschaton. Under such conditions, various forms of the lawcourt pattern of prayer

constitute a common mode of expressing advocacy within eschatological writings marked by imminent expectation. Finally, covenant forfeiture and renewal, exile and ingathering, expiation, and election consistently impact these selected advocacy texts. Two quite innovative theological phenomena assist in the articulation of these essential principles of Jewish soteriology. First, the divine courtroom diversifies, opening the way for angelic patrons and adversaries to participate in the legal struggle to either condemn or save God's people. Second, the post-mortem state of humanity becomes far more graphic, allowing these texts to consider the immediate afterlife's connection to the ultimate afterlife in the world to come.

In the texts below, intercessory advocates frequently express their appeals through the act of penitential prayer, whose general nature, as reflected in biblical traditions, can be seen through the divine assurances issued in Leviticus 26:40-42 and 1 Kings 8:33-34. The people are exhorted to turn back to God (שׁוּב), confess wrongdoings (הוֹדוֹת), pray (הִתְפַּלֵּל), and implore divine favor (הִתְחַנֵּן) as a means of atonement, with the result that the community attains forgiveness and a renewed state of salvation. With regard to Second Temple settings, penitential prayer often functions as a prelude to the more assertive lawcourt prayer patterns aiming to resolve a crisis. It has been defined as a “direct address to God in which an individual, group, or individual on behalf of the group confesses sins and petitions for the forgiveness as an act of repentance.”<sup>117</sup> There also exist non-prayer forms of advocacy or intercession, whether they be voiced through an individual commissioned by God or by someone simply acting on their own initiative. These situations present advocates performing crisis intervention through forms of direct speech that exhort the God of Israel and admit to the helpless situation of the people. The eschatological

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<sup>117</sup> Rodney A. Werline, “Defining Penitential Prayer,” in *Seeking the Favor of God, Vol. 1: The Origins of Penitential Prayer in the Second Temple Period*, ed. M. Boda, D. K. Falk, and R. A. Werline, SBLEJL 21 (Leiden: Brill, 2007), xv.

significance of so many of these advocacy settings warrants the claim that many texts of early Judaism continued the tradition of viewing expiation from a judicial perspective, that pleading the case of Israel was at once an act of collective atonement.

Advocates in early Judaism confront a seemingly insurmountable state of exile, oppression, and institutional corruption, which would naturally merit quite assertive modes of pleading; yet despite the relative frequency of this phenomenon, any attempt to be exhaustive in identifying late Second Temple models of advocacy would compromise the more specific task at hand: that of identifying the relationships between advocates, accusers, and the vast heavenly host in a cross-section of pre-rabbinic writings, along with the common backdrop of crisis situations in need of resolution. The objective rests in assessing trends which were operative among these works, and then offering some comparative insights with respect to later halakhic and midrashic rabbinic material. The focus, moreover, remains soteriological in the sense that most of the literature involves high-stakes incidents demanding immediate deliverance for individuals or communities.

### **3.2 Advocacy and Covenant Restoration**

Scholars have traditionally offered several possibilities for the dating of the apocryphal book of Baruch, with proposed dates ranging from the Babylonian exile to the period immediately following the destruction of the Second Temple. Most scholars, based on the style of the Greek text, have proposed a mid to late second century BCE dating, during the Seleucid period of control over Judaea.<sup>118</sup> There are references to Daniel 9 within the confessional portion of the

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<sup>118</sup> On the relatively widespread agreement for a mid-late second century BCE dating for 1 Baruch, see Kipp Davis, "Prophets of Exile: 4QApocryphon of Jeremiah C, Apocryphal Baruch, and the Efficacy of the Second Temple," *JSJ* 44, 4-5 (2013): 499-501.

text that would also support this more specific date range. The text situates itself in the aftermath of the Babylonian exile, where Baruch functions as the scribe of the prophet Jeremiah. The structure of the work can be divided into an introduction, collective confession of guilt, an appeal of Baruch on behalf of the guilty, a poem celebrating wisdom, and a poetic exhortation for Jerusalem that attempts to comfort the city in anticipation of promised divine deliverance. My focus on this text deals specifically with apocryphal Baruch's confessional prayer and the elements of appeal directed at the divine sovereign on behalf of the exiled community (1:15-3:8). The theological topics of covenantal forfeiture and renewal are especially relevant in this section, demonstrating the strong soteriological character of the advocate's office.

In a recent essay dealing with the closing section of the Apocryphal Book of 1 Baruch, Ruth Henderson considers the process of covenant forfeiture, redemption, and restoration within the larger scope of Israel's biblical and post-biblical history. Confronting the sins of the past and the apocalyptic vision of the future, according to Henderson, "the author deals with the problem of how to bridge the gap between these two conceptions by relating his scriptural sources to the present situation of the city in the second century BCE."<sup>119</sup> Covenant forfeiture and restoration, furthermore, takes place alongside the stages marking a common Israelite eschatological timeline: chastisement during exile, redemption, ongoing election, and the ultimate vindication of God's people in the world to come. This orientation toward Israel's checkered past and restorative future, one viewed through the immediate present and envisioned eschaton, often includes an intercessory spokesperson pleading for the people of Israel.

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<sup>119</sup> Ruth Henderson, "Baruch's Jerusalem: The Conception of Jerusalem in 1 Baruch 4:5-5:9," *JBL* 135, no. 3 (2016): 543.

1 Baruch establishes early on the reality of covenant forfeiture, when the scribe Baruch sends to Jerusalem both the scroll and the instructions on what to read before the people remaining in the city following the Babylonian Exile. The disloyalty of God's people has led them to this disastrous moment.

We have disobeyed him and have not heeded the voice of the Lord our God, to walk in the statutes of the Lord that he set before us. From the time when the Lord brought our ancestors out of the land of Egypt until today, we have been disobedient to the Lord our God, and we have been negligent in not listening to his voice. So to this day there have clung to us the calamities and the curse that the Lord declared through his servant Moses at the time when he brought our ancestors out of the land of Egypt to give to us a land flowing with milk and honey.<sup>120</sup>

Following the introduction comes an extended penitential prayer for those suffering exile in Babylon, a plea to God on behalf of the people, which captures the crisis mode of entreating for immediate intervention on behalf of those who have disobeyed the Torah. The biblical allusions contained within the appeal are assessed by Michael H. Floyd as follows:

All these texts share the notion of exile as the divinely mandated consequence of Israel's sinful national history, a consequence understood in terms of the "calamities and curse" that have fallen on Israel as a result of its unfaithfulness to the covenant.<sup>121</sup>

Floyd sees the structure of the corporate plea for mercy as being divided into two parts, the confession of guilt and a petition for mercy,<sup>122</sup> in many ways similar to the lawcourt patterns of prayer discussed above. These confessions and appeals, as Floyd understands them,

"are grounded in the concept of the Law and the Prophets. The guilt of the exiles is due to their not following the statutes of the Lord given through Moses and their not heeding the voice of the Lord spoken through his prophets. Thus they have come under the curse that results from disobeying the Law, and they have seen the prophecies of judgment spoken against them fulfilled. Likewise the prayer for mercy is predicated on the possibility of

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<sup>120</sup> 1 Bar. 18-20, trans. NRSV.

<sup>121</sup> Michael H. Floyd, "Penitential Prayer in the Second Temple Period from the Perspective of Baruch," in *Seeking the Favor of God, Volume 2: The Development of Penitential Prayer in Second Temple Judaism*, ed. Mark Boda, Daniel Falk, and Rodney A. Werline (Atlanta: SBL, 2007), 68.

<sup>122</sup> As evidenced in 1 Bar. 2:11-3:8.

repentance promised in the Law (2:27–35; see Deut 30:1–5), and on the exiles’ willingness to heed the prophetic word.<sup>123</sup>

The structure of the penitential prayer, however, follows a more nuanced progression than simply confession of sin and petition for mercy.

There is first the introductory address to the deity, identifying him according to his most memorable act of salvation on behalf of Israel, that being the exodus from Egypt. A confession of the community’s collective guilt follows, leading to an extended plea for forgiveness and deliverance. The petition then acknowledges that neither the present generation nor their ancestors have possessed any righteousness: “For it is not because of any righteous deeds of our ancestors or our kings that we bring before you our prayer for mercy, O Lord our God” (19).<sup>124</sup> There also exists a prophetic basis for Israel’s disobedience (27-30), namely God’s assurance to Moses that the Israelites would violate the terms of their covenant agreement. Through God’s unilateral act of granting a new mind to those in exile (3:7), the Jews will ultimately be ingathered to their land. The appeal also poses a clear distinction between God’s absolute righteousness and the people’s absolute wickedness:

For you are enthroned forever, and we are perishing forever. O Lord Almighty, God of Israel, hear now the prayer of the people of Israel, the children of those who sinned before you, who did not heed the voice of the Lord their God, so that calamities have clung to us. Do not remember the iniquities of our ancestors, but in this crisis remember your power and your name. For you are the Lord our God, and it is you, O Lord, whom we will praise. For you have put the fear of you in our hearts so that we would call upon your name; and we will praise you in our exile, for we have put away from our hearts all the iniquity of our ancestors who sinned against you.<sup>125</sup>

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<sup>123</sup> Michael H. Floyd, “A Glimpse of the Emerging Synagogue in the Book of Baruch,” in *Studies on Baruch: Composition, Literary Relations, and Reception*, ed. Sean A. Adams (Berlin: Walter De Gruyter, 2016), 29.

<sup>124</sup> Citations of Baruch are drawn from the NRSV translation.

<sup>125</sup> 1 Baruch 3:3-7



The intercessory prayer for the people, therefore, attempts to distinguish God's elect, although powerless, as repentant, and therefore entitled to salvation. The extended praise, however, acknowledges the absolute powerlessness of the people, as even their desire to invoke their God derives from God's impressing the fear of him in their minds.

Judith Newman argues that the confessional prayer of 1 Baruch "institutes the practice of efficacious confession to bring about the return from exile."<sup>126</sup> The confessional prayer pattern presents someone qualified to speak on behalf of the congregation at large, who confesses corporate guilt for transgressions spanning the long duration of Israel's history. He admits to the justified punishment exacted by the divinity and seeks to reverse the curses incurred through covenant breaches and forfeiture. These prayers often seek to end exile and achieve wholesale restoration, but whether they function as intercessory pleas, lamentations, or some combination of the two depends on the unique character of each confessional prayer. Newman contends, regarding 1 Baruch, that it is "centrally concerned with intercessory prayer, even instructing the population in Jerusalem to pray for the exiles (Bar 1:13)."<sup>127</sup> I would further argue that the direct speech aimed at averting corporate disaster also constitutes advocacy before the divine judge, given that a legal argument is made for assuaging the deity's anger and reversing deserved condemnation. Alluding to the divine giving of the Torah through Moses in the Sinai wilderness, Baruch claims that God not only foreknew the Israelites' disobedience and exile, but he also claimed that the chastisement of exile would produce a repentant attitude capable of obedience.

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<sup>126</sup> Judith H. Newman, "Confessing in Exile: The Reception and Composition of Jeremiah in (Daniel and) Baruch," in *Jeremiah's Scriptures: Production, Reception, Interaction, and Transformation*, ed. Hindy Najman and Konrad Schmid (Leiden: Brill, 2016), 232.

<sup>127</sup> *Ibid.*, 240.

God has promised that his people would permanently dwell in a state of covenant renewal and return to their land in a perpetual state of peace.

“Yet you have dealt with us, O Lord our God, in all your kindness and in all your great compassion, as you spoke by your servant Moses on the day when you commanded him to write your law in the presence of the people of Israel, saying, ‘If you will not obey my voice, this very great multitude will surely turn into a small number among the nations, where I will scatter them. For I know that they will not obey me, for they are a stiff-necked people. But in the land of their exile they will have a change of heart and know that I am the Lord their God. I will give them a heart that obeys and ears that hear; they will praise me in the land of their exile and will remember my name and turn from their stubbornness and their wicked deeds, for they will remember the ways of their ancestors, who sinned before the Lord. I will bring them again into the land that I swore to give to their ancestors, to Abraham, Isaac, and Jacob, and they will rule over it, and I will increase them, and they will not be diminished. I will make an everlasting covenant with them to be their God, and they shall be my people, and I will never again remove my people Israel from the land that I have given them.’

Appealing to the previous words of the deity holds him legally accountable to his assurances, in spite of the shameless past behavior of the people.

Scholars have further recognized a relationship between the confessional prayers in 1 Baruch and Daniel 9, where the prophetic petition on behalf of the collective is clearly at work.

The confessional prayers of both Daniel 9 and 1 Baruch show several elements that will comprise later supplications by rabbinically constructed advocates: the confession of guilt (unless the urgency of the crisis precludes such), the belief that archetypal sins of the ancestors perpetuate the continued exile of the people, the intercessor’s open acknowledgment of his belonging to the larger community such that their destinies align, the realization that the people have no righteousness according to the strict attributes of God’s justice, the frequent urgency of the petition in the face of imminent disaster, that the divinity should act immediately, and the mention of Jerusalem and the Temple as cues toward redemption and return from exile.

The first-century CE Book of 4 Ezra offers further illustrations of a prophet recognizing the gravity of Israel’s disaster and attempting to both expiate and speak for his congregation in crisis,

one brought on largely by failure to abide by covenant terms. Generally thought to have been written in response to Rome's destruction of the Second Temple, it is possible to see 4 Ezra as a text seeking to endure the aftermath of destruction by looking forward to when the Roman Empire would collapse, after which Israel would be justified before her God.<sup>128</sup> On the other hand, the protagonist's identity as the post-Babylonian exile priest and scribe, who was responsible for establishing the Torah as the fundamental basis of the Jews' renewed covenant with God, indicates a textual emphasis on the priestly scribe as the suitable representative of a people dwelling in a state of doom. Now playing the additional role of prophet, Ezra possesses the expiatory and prophetic credentials to speak directly with the divine.

The current discussion addresses this apocalyptic work in relation to the following concerns: (1) the question Ezra raises as to whether those who are vindicated by God may intercede on behalf of the ungodly (4 Ezra 7:102-117); (2) the continued pleas of Ezra after receiving an unfavorable divine response; and (3) the penitential prayers presented in 4 Ezra 8:20-36, 42-45, which are better understood within the larger context of the text's seven apocalyptic visions. The intercessory appeals occur within the first three visions, structured within a set of dialogues conducted between the prophet and the angel Uriel. The third vision contains the most extended penitential prayer. While in this case the crisis has already transpired, the long-term risks of condemnatory judgment remain high, with the eternally rewarded and doomed juxtaposed, and the prophet Ezra voicing an extended appeal, first for what appear to be the multitudes of all who are condemned, and then later for the sake of the unrighteous of Israel (8:26-36). This encounter

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<sup>128</sup> B.M. Metzger, "The Fourth Book of Ezra," in James H. Charlesworth ed., *The Old Testament Pseudepigrapha, Volume 1, Apocalyptic Literature and Testaments* (Garden City: Doubleday & Company, 1983), 520; M.E. Stone, *Fourth Ezra: A Commentary on the Book of Fourth Ezra*, Hermeneia (Minneapolis: Fortress Press, 1990), 40. Excerpts from 4 Ezra are drawn from Metzger's translation in *OTP 1*.

belongs to one of several dialogues between Ezra and the angel Uriel during Ezra's third vision (6.35-9.25).

As with 1 Baruch, 4 Ezra's intercessory pleas on behalf of the unrighteous raise the issue of covenant breach and forfeiture (8.24-26).<sup>129</sup> While sharp dividing lines are drawn between those characterized as subhuman in their wickedness and those righteously serving God, the futility of human righteousness is again acknowledged as intrinsic to the human condition. Of further gravity is the role Ezra plays as a prophet speaking on behalf of the collective of Israel.<sup>130</sup> An engaging essay by Earl Breech appreciates the representation of the congregation of Israel undertaken by the prophet.

Ezra is not the representative of an opposing party; the narrative sections of the book make clear that he is a prophet acting on behalf of his community. The community has been entrusted to Ezra (5:17) and, in fact, Ezra is the last prophet left for the community (12:42). When the people come out to the field to beg Ezra not to desert them, he replies that he has been away from them "to pray on account of the desolation of Zion and to seek mercy on account of the humiliation of your sanctuary" (12:48). It is clear, then, that Ezra's questionings serve to express the religious problematic which the community experiences.<sup>131</sup>

At various points in the dialogues, Ezra insists on the necessity of advocating for defeated Israel, and repeatedly he confronts the impossibility of interceding despite the danger of imminent judgment. The angel Uriel informs Ezra that possibilities of prophetic intercession and covenant restoration for violators have been exhausted by the end of time.

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<sup>129</sup> Lorenzo DiTommaso, "Penitential Prayer and Apocalyptic Eschatology in Second Temple Judaism," in *Prayer and Poetry in the Dead Sea Scrolls and Related Literature*, ed. Jeremy Penner, Ken Penner, and Cecilia Wassen, STDJ 98 (Leiden: Brill, 2011), 127: "Passages such as 8:26–28 and 33–34 attest to the covenantal focus of the prayer and its overall Deuteronomistic tenor."

<sup>130</sup> H. Gunkel, "Das vierte Buch Esra," in *Die Apokryphen und Pseudepigraphen des Alten Testaments*, ed. E. Kautzsch (Tübingen: Mohr, 1900), 335, 339.

<sup>131</sup> Earl Breech, "These Fragments I Have Shored against My Ruins: The Form and Function of 4 Ezra," *JBL* 92, no. 2 (1973): 271.

As one who has earned God's favor, the speaker refuses to accept the angel's response that, when the final judgment ensues, the prayers of the righteous will be rendered ineffectual. The prophet's argument emerges from the outset of the text's third vision. The Gentile nations are declared worthless, while Israel receives the privileges of being the reason for creation itself, the title of God's first-born, and the rightful inheritors of the goodness of creation.<sup>132</sup> The basis for the complaint and subsequent intercessory appeals, therefore, is Ezra's more universalist approach to the possibility of advocacy and redemption. The angel Uriel, however, acknowledges Israel as the basis for creation, but he cautions Ezra that even the righteous must endure terrible trials in order to be groomed for the immortality granted in heaven. Moreover, the advent of the messiah will result in wholesale destruction of the unrighteous, with no foreseeable opportunity for repentance (36-39; 82).<sup>133</sup>

The imminence of the divine judgment is such that even at death, during the intermediate state of the spirit prior to the eschatological event, the unrighteous dead shall already begin experiencing torment, while the righteous shall remain under the guardianship of angels (78-87). Ezra is dissatisfied with the widespread condemnation of the wicked, and he has already argued that there is not a man in existence who has not acted wickedly.<sup>134</sup> The prophet inquires, therefore, as to the possibility of the righteous interceding on behalf of the condemned, pointing to this phenomenon as an essential project of heralded biblical figures since the time of the patriarchs.

I answered and said, "How then do we find that first Abraham prayed for the people of Sodom, and Moses for our fathers who sinned in the desert, and Joshua after him for Israel in the days of Achan, and Samuel in the days of Saul, David for the plague, and

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<sup>132</sup> 4 Ez. VI.55-59.

<sup>133</sup> Ibid., VII.14, 36-39, 82.

<sup>134</sup> VII.47-47, 68-69.

Solomon for those in the sanctuary, and Elijah for those who received the rain, and for the one who was dead, that he might live, Hezekiah for the people in the days of Sennacherib, and many others prayed for many? If therefore the righteous have prayed for the ungodly now, when corruption has increased and unrighteousness has multiplied, why will it not be so then as well?”<sup>135</sup>

God, however, is resolute in explaining that the final judgment unveils the consummate divine glory, such that righteousness and unrighteousness have achieved their final outcomes, and there is no longer any need for sifting out the repentant from the condemned.<sup>136</sup>

Uriel’s response reflects a common attribute of apocalyptic eschatology, which dictates that human initiative has little to no impact on a future that is more or less fixed.<sup>137</sup> Human initiative is therefore relatively ineffectual in relation to a future appearing divinely settled and irreversible. As DiTommaso observes in his study of apocalyptic eschatology as it applies to penitential prayer, “Ezra enquires about intercession, which assumes human action can influence the future (a key component of the old theology of history but incompatible with apocalyptic determinism) on the Day of Judgment. Uriel replies with an unambiguous negative (7:102–115).”<sup>138</sup> Ezra does concede that God best understands the vast multitudes of humanity, yet the seer persists in advocating for Israel, arguing that God would be better served by focusing on the deeds of the righteous rather than the sins of the wicked. The prophet-scribe further presses the issue that not a single man has sidestepped some committing of sin. Ezra’s mentioning of the

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<sup>135</sup> Ibid., VII.36-41. Boyarin makes a strong case for liturgical elements present in this recapitulation of biblical witnesses, whose elements are restated within newer contexts in the early rabbinic literature (*m. Ta’anit* 2.4; *t. Berachot*). See Daniel Boyarin, “Penitential Liturgy in 4 Ezra,” *JSJ* 3, no. 1 (1972): 30-34.

<sup>136</sup> 4 Ez. VII.104-105.

<sup>137</sup> See Mladen Popovic, “Apocalyptic Determinism,” in *The Oxford Handbook of Apocalyptic Literature*, ed. John J. Collins (New York: Oxford University Press, 2014), 258-261. The author provides a good cross-section of apocalyptic texts tending to periodize history and thus fix the unfolding of according to preordained divine initiative.

<sup>138</sup> DiTommaso, “Penitential Prayer,” 130, n.45.

great prophets and kings of Israel demonstrates that those meriting divine favor were always praying on behalf of the unrighteous, especially during times where wickedness was multiplying on earth. While such pleading, especially the prophet's own reckoning of himself among the unrighteousness, earns him further divine merit, he still cannot persuade God to nullify the impending judgments issued against the multitude of unrepentant Israel.

In the face of overwhelming odds against him, Ezra offers a penitential prayer in chapter 8 that exhibits the earmarks of lawcourt prayer patterns. As in I Baruch, the formal address begins by expressing God's identity, attributes, and character; yet this direct address is relatively prolonged (8:20-24). It features God's eternal residence, immeasurable throne, and his incomprehensible glory. He is the deity who evokes awe among the angels and makes assured declarations. In spite of the divinely declared futility of interceding, Ezra claims that he will speak out for as long as he lives and breathes. The appeal appears slightly contradictory, for Ezra first urges God to only regard those who live righteously and to not reckon against Israel the behavior of the wicked. Yet following this plea, Ezra confesses that both his generation and that of his ancestors are without righteousness.

Among the concerns raised by Ezra in this exchange with the angel Uriel is that of the nature of salvation and the ability of those finding divine favor to intercede on behalf of the wicked. Similar to certain exchanges occurring later between the rabbinically constructed Moses and God, where the prophet opposes strict divine judgment,<sup>139</sup> Ezra's arguments achieve enough legitimacy to place Uriel on the defensive. Karina M. Hogan, in her monograph on 4 Ezra,

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<sup>139</sup> In Exodus Rabbah, one of Moses' arguments for acquittal, in the aftermath of the golden calf incident, is that the people of Israel have only recently been liberated from foreign bondage, and therefore they are incapable of living in complete obedience to the strict standards of God's Torah.

recognizes the persuasiveness of Ezra's appeal and the defensive posture employed by the angel Uriel.

This last remark is the first hint that Uriel recognizes the power of Ezra's arguments, since he has to assert his authority in order to maintain the upper hand. He then attempts to undercut Ezra's faith in God's care for human beings by comparing them to seeds sown in the ground, only a few of which will take root (8:41). Uriel's strategy backfires, however. Perhaps emboldened by his own eloquence, Ezra dares for the first time to challenge the validity of one of Uriel's analogies.<sup>140</sup>

Challenging universal judgment, while often successful in later rabbinic midrashim, will still suffer occasional episodes of defeat, where the immutability of the judgment overrides the well-intended but futile pleas of the advocate. Alternatively, the occasional zealotry of the intercessor for punishment against those he considers irredeemable will also encounter moments of divine correction, which instruct him that, regardless of his privileged position as a spokesperson for Israel, he too is vulnerable to attitudes and actions considered incompatible with the standards of divine justice. These observations are significant in the sense that, regardless of how assertive the appeals were to God for clemency and deliverance, and no matter how strongly the justice of God was called into question, the texts seem to reserve just enough ultimate authority for God. While the advocate may be justified in challenging the delayed divine response to injustice and oppression, God maintains the final say, at times even using that authority to instruct the plaintiff during their moments of dissatisfaction and distress.

### 3.3 Diversification of the Divine Courtroom

A prominent **early** Jewish forensic setting for direct speech in favor of Israel remains the divine council, already well-developed in biblical literature and continuing to appear in various

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<sup>140</sup> Karina M. Hogan. *Theologies in Conflict in 4 Ezra: Wisdom Debate and Apocalyptic Solution* (Leiden: Brill, 2008), 146.



forms within late Second Temple texts focused on divine judgment. The biblical convening of divine assemblies for the purpose of judging both Israel and the nations appears to have exerted a profound influence on Second Temple eschatology. The functions of such a council include the declaration and waging of holy wars that allow for joint participation between the heavenly and human hosts,<sup>141</sup> as well as the presence of an accusatory figure (הַשֹּׁטֵן), who arguably performs the role of a prosecuting attorney engaging in strict, retributive justice when seeking out human transgressors.<sup>142</sup> The counterpart to the prosecutor was in some measure played by the angel of Yahweh (מַלְאֲכֵי יְהוָה), who was already beginning to assume the role of an advocate in the early Second Temple period,<sup>143</sup> although Yahweh himself could directly oppose the accuser, surrounded by the angelic figures of the heavenly court.<sup>144</sup>

Adopting Kensky's study on the divine courtroom as a useful historical and theological model, the question arises as to how a defendant and his potential intercessors functioned within the imaginary divine courtroom in Second Temple literature, as well as how God's court demonstrated the proper application of divine justice toward the righteous of Israel. Kensky has

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<sup>141</sup> HB antecedents include Deut. 33:26-29; See, Patrick D. Miller, "The Divine Council and the Prophetic Call to War," *VT*, 18, no. 1 (Jan. 1968): 100-107.

<sup>142</sup> Job 1:6-12; 2:1-6; Zech. 3:1-2; Ellen White, *Yahweh's Council: Its Structure and Membership* (Tübingen: Mohr Siebeck, 2014), 109-19; See the discussion of the biblical Satan occurrences in Carol L. Meyers and Eric M. Meyers, *Haggai, Zechariah 1-8: A New Translation with an Introduction and Commentary*, AB 25b (Garden City: Doubleday, 1987), 183-187.

<sup>143</sup> Zech. 3:1-7; Meyers and Meyers, *Haggai, Zechariah 1-8*, 185: "for the Angel of Yahweh is the Public Defender or advocate—the second, not the first, officer in any court."

<sup>144</sup> White, *Yahweh's Council*, 127; see further, in relation to the divine council text of Zech. 3:1-7, Meyers and Meyers, *Haggai, Zechariah 1-8*, 218: "The concept of Yahweh effecting his will in the arena of human affairs is given the reassuring dimension of divine justice through the imagery of the Heavenly Court. Yahweh's decisions vis-à-vis humanity reflect consideration of all ramifications. That Yahweh does not act without full knowledge of a given situation is emphasized by the courtroom scene and the angelic minions who compose it. God has gathered data from every conceivable corner—from the "four corners" of the world, as the opening and closing visions assert—and on the basis of such complete information, only a judicious and fully authoritative ruling can issue forth."

observed that the problem of one deity, in this case the God of Israel, at once playing prosecutor, defendant, and judge in the divine court, had created new concerns within the arena of theodicy.<sup>145</sup> Recall that Kensky's larger thesis examines the imaginary divine courtroom within the context of theodicy, whereby God's justice is either validated or deemed woefully inadequate by both the author and their audience. This process invites the readers themselves to become judges of God's justice. Regardless of whether such texts consistently invited the reader to play the role of God's judge, it does appear that some Second Temple texts attempted to expand on the number of advocates frequenting the heavenly court, given the absence within biblical henotheism and monotheism of a broader divine pantheon from which to choose judges, prosecutors, witnesses, defendants, and advocates. In fact, Kensky's conceives of the fourth role within the divine courtroom being that of the intercessor, whose biblical antecedents in figures such as Abraham and Moses at times resurface in the Second Temple literature.<sup>146</sup>

Kensky's analysis forms an important contribution to divine courtroom motifs and heavenly lawsuit themes operative within the Second Temple period, in particular concerning the literature spanning the Hasmonean period until the second century CE, shortly prior to the compiling of the Mishnah. The textual diversity of confrontations in the divine courtroom demonstrate that advocacy varied in its manifestations. At times writers situated the courtroom within the immediate afterlife, where the God of Israel exacted judgments with the assistance of preeminent biblical figures and prosecuting angels.<sup>147</sup> God's helpers, in this context, could plead on behalf of those confronting an immediate post-mortem verdict. Angels, moreover, did not strictly function

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<sup>145</sup> Meira Kensky, *Trying Man, Trying God: The Divine Courtroom in Early Jewish and Christian Literature* (Tübingen: Mohr Siebeck, 2010), 199-200.

<sup>146</sup> Ibid.

<sup>147</sup> *Apoc. of Zeph.*, 10-11.

as either prosecutors or recorders of human deeds, as they could also act as patron figures pleading for the condemned.<sup>148</sup> To the extent that judgments in such a divine court demanded that an advocate attempt to either reduce the severity of or nullify the verdict, it can be argued that this spokesperson performed a soteriological function by warding off the people's impending condemnation.

Prior to the publication of Kensky's monograph, Michael S. Heiser had offered a persuasive study of the divine council phenomenon as presented in both the biblical literature and post-biblical Second Temple texts, especially pertaining to the sectarian writings at Qumran. Within the sphere of late Second Temple studies, Heiser has argued that "the Qumran material contains numerous references to the divine council and its אלהים in precisely the same language and contexts as pre-exilic texts in the Hebrew Bible."<sup>149</sup> The terms, סוד and עדת, appear as the most operative words in the Qumran literature expressing the existence of a divine council.<sup>150</sup> Heiser also notes the use of some 175 occurrences of the Hebrew plural form denoting "gods" or "deities" (אלים, אלהים), further supporting his argument that "the sectarian texts at Qumran that are intact and lucid clearly distinguish the beings of the heavenly host, thereby retaining the hierarchical tiers of the pre-exilic divine council of the Hebrew Bible."<sup>151</sup>

Heiser's study would appear to strengthen the notion of a possibly unjust structuring of the divine courtroom, which Kensky views as essential to her argument for the courtroom's diversification in the Second Temple period. The phenomenon of one sovereign deity serving as

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<sup>148</sup> 1 Enoch 9:1-6.

<sup>149</sup> Heiser, "The Divine Council," 175-176.

<sup>150</sup> עדת אל, *IQHab*, col. XXVI: top 10; עדת אלים, *IQ22*, col. IV:1; סוד קדושים, *IQS*, col. VIII:5; *IQM*, I.10.

<sup>151</sup> Heiser, "The Divine Council," 189.

judge, prosecutor, defendant, witness, and advocate does not sustain itself in several texts. Other titles located within the Qumran literature include princely appellations for supernal beings (נשיא, ראש), expressing both political or military figures appointed as either worldly or heavenly leaders in the eschatological battles between good and evil. There also exists the council's divine vice-regent (מלך נשיאי), often considered by scholars to be either Melchizedek or the archangel Michael.<sup>152</sup> Regarding Melchizedek, it appears that he was represented as both the herald of the coming divine kingdom and the heavenly eschatological judge who would condemn the corrupt deities of the Psalm 82 council, thereby securing the unquestioned sovereignty of the true God over all the world.<sup>153</sup>

The question of advocacy occurrences within divine councils and imaginary courtroom scenes need not directly engage Kensky's broader thesis, which centers on the reader-response process of struggling with God's inconsistent application of justice and injustice, where the authors attempt to either persuade their audience that God is in fact justified in his judgments, or else encourage readers to actively participate in the assessment of divine justice. The current discussion leaves the merit of this thesis an open question and instead strives to understand how intercessors and advocates, given the greater degree of God's delegation of juridical functions to lesser divine entities, contributed to the altered configurations of the divine courtroom in early Judaism, and how key rhetorical, theological, and soteriological themes compare to later manifestations within the rabbinic literature.

Within the expanding arena of the divine courtroom in Second Temple literature, Kensky has been mindful of the part advocacy plays in the ongoing struggle to comprehend divine justice.

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<sup>152</sup> trans. by H. C. Kee (*OTP* 1:790).

<sup>153</sup> *11QMelchizedek*, II.13-14, 17-25

Alongside these questions are those that circulate regarding intercession and advocacy: what room is there for intercession before God? If intercession is favorable, what type of arguments are successful? Are there some cases when intercession subverts justice?<sup>154</sup>

Kensky, for example, discusses the Book of Jubilees, which she interprets as an extended defense for God's judgments based on the retelling of narratives from the books of Genesis and Exodus. Jubilees generally falls within the genre of "Rewritten Bible," although "Rewritten Pentateuchal narrative" may provide a more precise classification, in this case a creative recounting by an angel to Moses of Genesis and the first half of Exodus.<sup>155</sup> The work is normally dated within the mid-second century B.C.E. either just prior or subsequent to the Hasmoneans prevailing over the Seleucid Greeks.<sup>156</sup>

It is noteworthy, however, that Kensky does not mention Moses' early appeal in Jubilees on behalf of Israel, a strong example of a Second Temple advocacy text, which in many ways sets the tone for further Israelite offenses against God and their long-term ramifications.

And Moses fell upon his face, and he prayed and said, "O Lord, my God, do not abandon your people and your inheritance to walk in the error of their heart. And do not deliver them into the hand of their enemy, the gentiles, lest they rule over them and cause them to sin against you. Lord, let your mercy be lifted up upon your people, and create for them an upright spirit. And do not let the spirit of Beliar rule over them to accuse them before you and ensnare them from every path of righteousness so that they might be destroyed from before your face. But they are your people and your inheritance, whom

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<sup>154</sup> Kensky, *Trying Man, Trying God*, 160.

<sup>155</sup> On Rewritten Bible as a genre, Michael Segal, *The Book of Jubilees: Rewritten Bible, Redaction, Ideology and Theology*, SupJSJ 117 (Leiden: Brill, 2007), 4-5; Sidnie W. Crawford, *Rewriting Scripture in Second Temple Times* (Grand Rapids, MI: W. B. Eerdmans, 2008), 62. Alternatively, see Molly M. Zahn's argument for not employing Rewritten Bible as a distinct genre. Molly M. Zahn, "Genre and Rewritten Scripture: A Reassessment," *JBL* 131, no. 2 (2012): 274: "Insofar as Jewish Scripture of the Second Temple period comprised various genres—for example, legendary narratives, laws, historiography, prophetic visions and oracles, and other types of poetry—a given text classified as Rewritten Scripture could belong to any one of these genres. Thus, of texts usually agreed to represent Rewritten Scripture, we have rewritings of pentateuchal narrative (*Jubilees* and the *Genesis Apocryphon*), pentateuchal law (the *Temple Scroll*), and historiographic narrative (Chronicles). The biblical portions of Josephus's *Antiquities* cover all three of these genres."

<sup>156</sup> For the scholarship on the dating of Jubilees, see Miryam Brand, *Evil Within and Without: The Source of Sin and Its Nature as Portrayed in Second Temple Literature* (Bristol, CT: Vandenhoeck & Ruprecht, 2013), 198-99; Crawford, *Rewriting Scripture*, 62.

you saved by your great might from the hand of the Egyptians. Create a pure heart and a holy spirit for them. And do not let them be ensnared by their sin henceforth and forever.”<sup>157</sup>

This prayer offers many essential elements of a prophetic advocate pursuing salvation for the people of Israel. The prophet’s falling to the ground in obeisance reflects the gravity of the situation, namely that the people are at risk of losing their entire inheritance. The act of claiming the continued right to the promissory inheritance of old, as was witnessed in 4 Ezra, signifies the attempt to preserve Israel’s divine election. In the event of the impending catastrophe coming to fruition, Israel runs risk of falling subject to foreign sovereigns, who will cause her to transgress even further against God.

I would argue that the tension between repentance and redemption leans toward the latter in this text, with Israel not viewed as capable of securing its own deliverance. The spirit of righteousness Israel requires can only materialize through God’s power, and Israel is likewise helpless to ward off the evil spirit jeopardizing the people’s reconciliation with God. This evil spirit exerts control over Israel’s beliefs and actions in the absence of God’s intervention. Rather than advocating for Israel, it will actually accuse the people before God, leading them astray and ultimately to outright destruction. The Moses of Jubilees 1 advocates for Israel’s preservation and covenant renewal as opposed to her annihilation. The enemy spirit within the camp, formerly expressed in the Pentateuchal texts as Israel’s rebelliousness in the desert, has become personified as an evil spirit intent on casting accusations. The accuser cannot merely represent a functionary of God’s divine council, since the depiction of Beliar makes clear that the accuser attempts to assume power over God’s people and lead them to condemnation. Advocacy in this sense does not merely mean defending those who have lived righteously and obediently toward

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<sup>157</sup> trans., O.S. Wintermute, *OTP* 2, 53-54.

God. In the wake of such supernatural forces launching attacks against God's people regardless of their merits, the advocate must build a case for full divine protection from destructive forces beyond human control.

Under these conditions, where the Israelites are powerless before the spirit of Beliar, the advocate's job is to request immediate divine intervention: "Moses' request is clear: God should change Israel's nature right there at Sinai so that Israel will never fall into sin and will thereby avoid the religiously deleterious effects of exile."<sup>158</sup> David Lambert acknowledges that the prayer formally falls within the category of apotropaic prayer, a form of petition commonly used during the Second Temple period.<sup>159</sup> Yet the petition goes beyond the invocation of protection for individuals and family from demonic spirits, as its ultimate objective is the redemption of Israel in an eschatological sense. Although Moses requests that God stave off exile by removing the demons from Israel, who are viewed as the agents of sin, God does not honor the first part of the prayer. Israel will indeed experience exile, but then, by virtue of a new heart unilaterally provided by God, she will be gathered out of the diaspora for restoration to the land of her original inheritance. The imagined setting for this intercessory appeal warrants further discussion, that is, in terms of locating specifically where and when this petition would have taken place during Moses' interaction with God on Mount Sinai. There is no mention of the Golden Calf incident as the impetus for this prayer petition, as the dialogue looks forward to the future disobedience of Israel in her land and the ensuing calamity of exile. The action would therefore fall at some point during the revelation at Sinai, at the time of Israel's reception of the

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<sup>158</sup> David Lambert, "Did Israel Believe That Redemption Awaited Its Repentance? The Case of Jubilees 1," *CBQ* 68, no. 4, (Oct. 2006): 637.

<sup>159</sup> Esther Eshel, "Apotropaic Prayers in the Second Temple Period," in *Liturgical Perspectives: Prayer and Poetry in Light of the Dead Sea Scrolls*, ed., Esther G. Chazon, Ruth Clements, and Avital Pinnick, STDJ 48 (Leiden: Brill, 2003), 69-88; Brand, *Evil Within and Without*, 198-217.

laws, and the underlying message appears to be that Israel is responsible for all its curses, while God assumes full responsibility for the people's redemption.

Intercessory figures and their petitions show great diversity in the heavenly courts of early Judaism, wherein are the books providing the records of each person's righteous and sinful deeds. An advocate may appear as one of the postmortem patriarchs, a ministering angel, or a commissioned prophet. Kensky notes that Second Temple apocalypses, for example, focus heavily on intercession and deal with "what arguments can be brought forth in favor of man before God."<sup>160</sup> These situations play out in portions of the Book of Watchers from 1 Enoch, and the two instances of advocacy before the divine in chapters 9-16 are of particular interest. The significance of these texts for divine courtroom advocacy rests in their expression of multiple soteriological principles simultaneously. First, a profound crisis occurs, brought on by a series of outrages committed by a degenerate band of angels.<sup>161</sup> Beholding the beauty of mortal women, the angels descend upon the earth and procreate with them, spawning giants, who in turn ravage the earth's food supply. The giants eventually start murdering the people of earth, while also abusing the wildlife. They even resort to devouring one another and consuming blood. The angels have also taught the people of earth magical and practical arts that are considered forbidden forms of knowledge. The crimes have therefore created broken relationships on the most macro scale imaginable: the entirety of the heavens and earth.

Note that the trespasses committed by the angels have the two-fold effect of both creating a division between God and humanity, as well as a division between God and the angels

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<sup>160</sup> Kensky, *Trying Man, Trying God*, 169.

<sup>161</sup> 1 Enoch 6-9; The translation of 1 Enoch is taken from George W. E. Nickelsburg, Klaus Baltzer, Klaus Baltzer, James C VanderKam, and George W. E Nickelsburg eds., *1 Enoch: A Commentary on the Book of 1 Enoch. Hermeneia--A Critical and Historical Commentary on the Bible* (Minneapolis: Fortress Press, 2001).



themselves. Each of the weaker parties belonging to these relationships is therefore in need of an advocate to state their case before God. The human race requires intervention due to the sheer weight of her affliction, which poses the threat of outright annihilation. When the four archangels observe the desolation caused by the Watchers, they assume their role before the divine throne as supporting speakers for both departed human souls and the earth itself.

“The earth, devoid (of inhabitants), raises the voice of their cries to the gates of heaven. And now to <us>, the holy ones of heaven, the souls of men make suit, saying, ‘Bring in our judgment to the Most High, and our destruction before the glory of the majesty, before the Lord of all lords in majesty.’”<sup>162</sup>

The intervention of the archangels also attests to the powerlessness of God’s people, who require a greater supernatural power to speak and act for them in the face of angelic persecution. The archangelic case before God follows a fairly standard legal complaint in the divine courtroom. First comes praise of the divine sovereign, which articulates the omnipotence, omniscience, holiness, and creative powers of God (9:4-5). Following the doxology, the archangels itemize the nature of the crimes, which include unauthorized revelation of divine mysteries (6), angelic seduction of mortal women (7), imparting the ways of sin to humans (8), and the procreation of divine-human hybrids, who delight in violence against men and plunder of the earth (9). Finally, the archangels remind God of the legal claim made by the departed souls of earth who have suffered under such supernatural oppression. Rather than appeal for help, the archangels boldly question God’s apparent unwillingness to intervene (10-11).<sup>163</sup>

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<sup>162</sup> Ibid., 9:2-3

<sup>163</sup> See *1 Enoch: A Commentary*, 206: “Finally, and of greatest significance, the prayer ends without a petition. The angels repeat twice the motif of God’s universal knowledge and make the bold assertion that he has failed to act on it.”

The divine response is that of commissioning three archangels, who are charged with imprisoning the deviant Watchers, reserving them for eternal condemnation, destroying their progeny, and announcing the universal deluge that will destroy all the wicked of the earth. God also promises post-deluge blessings of prosperity and peace. With the entrance of Enoch in chapter 12, the prophet-scribe takes over the role of delivering the condemnatory verdict to the Watchers.<sup>164</sup> He is to inform them that they will forfeit peace, forgiveness, and the lives of their sons. Somewhat panicked, the Watchers respond by enlisting Enoch as their intercessory spokesperson. The angels, knowing they cannot escape their guilt, petition Enoch to advocate for them before God. The first prophetic commission occurs when an angel enjoins him to proclaim condemnation on the Watchers in the form of their offspring being destroyed. They are further told that, despite constant petitioning, their punishment is irreversible. Upon delivery of the announcement, the Watchers assign Enoch to be their advocate before God. They entreat him to write a prayer that advocates their cause before the divine throne of heaven.

And they asked that I write a memorandum of petition for them, that they might have forgiveness, and that I recite the memorandum of petition for them in the presence of the Lord of heaven. For they were no longer able to speak or to lift their eyes to heaven out of shame for the deeds through which they had sinned and for which they had been condemned. Then I wrote out the memorandum of their petition, and the requests concerning themselves, with regard to their deeds individually, and concerning <their sons> for whom they were making request, that they might have forgiveness and longevity.<sup>165</sup>

The combination of a written and spoken form of request both confirms Enoch's dual identity as prophet and scribe, while at the same time it grants an official status to the legal appeal.

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<sup>164</sup> Enoch's credentials derive from the perceived state of immortality gifted to him in Gen. 5:24, although 1 Enoch 12 expands on this by claiming that Enoch took up residence with the holy beings of the heavens. He thus receives a certain degree of authority by virtue of his residence and the company he keeps.

<sup>165</sup> Ibid., 13:4-6.

When Enoch begins reading these prayers at the “waters of Dan,” a deep sleep comes upon him and he experiences dream visions, which include plagues. Upon awakening, he addresses once more the offending angels, who are in a state of lamentation. The prophet relates his visions, along with the consequences of the Watchers’ crimes. Unfortunately for the Watchers, God refuses to listen to their appeals. The punishments include the following: imprisonment in the earth and banishment from the heavens; they will witness the annihilation of their sons; and Enoch’s advocacy on behalf of the Watchers will not receive a hearing. Enoch is then swept up in a throne-room vision. While terrified to look at God on his throne, Enoch is still placed before the supreme deity, where he directly receives the divine response to the Watchers’ appeal. God claims that it is more appropriate for angelic beings to intercede on humanity’s behalf, rather than a man like Enoch interceding for them.<sup>166</sup> God goes on to recount all their transgressions and to report the ultimate destruction of both them and their offspring.

The sequence of events expresses both the urgency and limits of advocacy when the eschatological orientation is one of imminent and consummate judgment. The fractured relationship between God and humanity will be resolved, as the archangels have exercised advocacy correctly by performing it on behalf of a weaker party, who is very much helpless to alter the course of events. As for the Watchers, their Hail-Mary attempt to have a human advocate plead for them confirms God’s rejection of their plea. The narrational resolution therefore consists of condemnation of the more powerful offending party and reconciliation between God and the afflicted party. It should be noted, however, that any remnant of divine-human offspring will be annihilated, with only the righteous members of humanity surviving the

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<sup>166</sup> While Enoch may enjoy a privileged place in the heavens, God’s claim that the prophet-scribe should not be advocating for angels indicates the preservation of Enoch’s general state of humanity.

impending cataclysm. This confirms the text's division between the elect people of God and the condemned.

Kensky interprets the different intercessory roles assumed by Enoch and the archangels as reflective of the diversification of the divine courtroom. The responsibility for advocacy rests on both the prophet and the angels, although it is likely that these two instances of intercession derive from originally separate text traditions. Kensky interprets the difference between the advocacy roles of the patron angels and Enoch, on the one hand, and the divine courtroom dramas played out in the Hebrew Bible.

This is an important distinction because the classic employment of the *rib*-pattern in the Hebrew Bible ascribes both the accusatory and the judicial roles to God, while here the book of Enoch is careful to assign the different judicial roles to a number of participants. A significant difference is present between this divine courtroom and those of the biblical prophets. Not only do the oppressed people receive efficient advocacy (Michael, Sariel, Gabriel), but *I Enoch* has even provided the *accused* with vigorous advocacy (in the figure of Enoch himself). God therefore just acts as judge, not as both judge and prosecutor, effectively "solving" the biblical *rib*-pattern issue pointed out forcefully by Job. No longer does God play all the courtroom roles. The development of the angelic intercessory force assures that an entire and orderly process of judgment proceeds apace in heaven.<sup>167</sup>

Clear distinctions have therefore emerged in I Enoch 9-16 between judge, plaintiff, defendant, and advocate. In the Book of the Watchers, the archangelic bureaucracy undertakes crucial acts of advocacy for the righteous members of the generation of the flood, pleading successfully to God for the preservation of the human race prior to an imminent eschatological judgment. Enoch himself also proclaims the destruction of the reprobate Watchers. The drama of division and reconciliation plays out on the stage where heaven meets the earth. The reconciliation between the two spheres is vital to the rescue of humanity and the restoration of cosmic order.

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<sup>167</sup> Kensky, *Trying Man, Trying God*, 131 (italics the author's).

### 3.4 Angelic Patrons in the Divine Courtroom

Kensky's discussion of the diversification of the divine council in Second Temple literature is also relevant to the phenomenon of angelic patrons and their representative roles in late Second Temple literature. By the time of the Second Temple period, Israel's position within the polities of nations was sometimes understood in terms of the Deuteronomic notion of God alone presiding over her, whereas this same God had assigned lesser, angelic beings as patrons over other nations.<sup>168</sup> The Book of Jubilees provides a staunch defense of God's exclusive patronage over Israel, as opposed to the lesser entities presiding over the nations.

But he chose Israel that they might be a people for himself. And he sanctified them and gathered them from all of the sons of man because (there are) many nations and many people, and they all belong to him, but over all of them he caused spirits to rule so that they might lead them astray from following him. But over Israel he did not cause any angel or spirit to rule because he alone is their ruler and he will protect them and he will seek for them at the hand of his angels and at the hand of his spirits and at the hand of all of his authorities so that he might guard them and bless them and they might be his and he might be theirs henceforth and forever.<sup>169</sup>

This perspective provides one way of justifying Israel's unique election among the other nations of the world. In spite of the claim made earlier in Jubilees that the wicked spirit of Beliar remained hot on the trail of the Israelites while on route to their divinely inherited land, the text later reinforces the notion of Israel's special claim to divine custodianship. It is other nations who actually suffer from wayward guidance at the hands of inferior divine entities.

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<sup>168</sup> Sir. 17:17 (NRSV): "He appointed a ruler for every nation, but Israel is the Lord's own portion."

<sup>169</sup> Jubilees 15:30-32. This tradition seems noticeably at odds with the earlier stated belief, in Jubilees 1, that Beliar took control of Israel and was causing them to sin.

Yet it also become fashionable to speak of patron angels presiding over Israel herself, as is attested in much of the apocalyptic literature.<sup>170</sup> Such is the characterization, for example in the *Testament of Levi* V.1-7.

At this moment the angel opened for me the gates of heaven and I saw the Holy Most High sitting on the throne. And he said to me, 'Levi, to you I have given the blessing of the priesthood until I shall come and dwell in the midst of Israel.' Then the angel led me back to the earth, and gave me a shield and a sword, and said to me, 'Perform vengeance on Shechem for the sake of Dinah, your sister, and I shall be with you, for the Lord sent me.' At that time I put an end to the sons of Hamor, as is written in the tablets of the fathers. And I said to him, 'I beg you, Lord, teach me your name, so that I may call on you in the day of tribulation.' And he said, 'I am the angel who makes intercession for the nation Israel, that they might not be beaten.' And after this I awoke and blessed the Most High.<sup>171</sup>

In this text, the ancestral son of Jacob, Levi, has been receiving a series of privileged revelations concerning the levels of the heavens, as well as the outcomes awaiting the righteous and the wicked among humanity. The lower heavens, while dark, observe all of humanity's wrongdoings and prepare instruments of judgment, while the second heaven houses the armies preparing to wage war against Beliar and the evil spirits. In the highest heaven, the archangels are charged with preparing sacrifices to God in order to atone for the unintentional sins of the righteous. The chief archangel in the text cited above, however, is specifically tasked with interceding on behalf of Israel so as to ensure her victory. The chief patron-angel has to some degree shared in the earlier Deuteronomistic role attributed exclusively to Yahweh of being Israel's patron-deity, and this office now includes an essential intercessory function. Furthermore, the combination of this

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<sup>170</sup> Dan. 10:21, 12:1; 2 Macc. 3:24-28; 3 Macc. 6:18-19; *T. Moses*, 10:1; *T. Levi*, 5:1-6; *IQS* iii.13-iv.1. See Darrell D. Hannah, "Guardian Angels and Angelic National Patrons in Second Temple Judaism and Early Christianity," in *Deuterocanonical and Cognate Literature Yearbook, 2007*, ed. Friedrich V. Reiterer, Tobias Nicklas, and Karin Karin Schöpflin (Berlin: Walter de Gruyter, 2007), 413-436.

<sup>171</sup> Text taken from *OTP* 1, trans. H.C. Kee, 790. For a general discussion of the Greek Testament of Levi in relation to the reconstructed Aramaic form, along with assessments of date and textual function, Robert A. Kugler, *From Patriarch to Priest: The Levi-Priestly Tradition from Aramaic Levi to Testament of Levi* (Atlanta: Scholars Press, 1996), 171 ff.

function with the atoning sacrifices of the angels occupying the highest heaven further demonstrates the intersection of expiation and advocacy among the angelic patrons.

A similar perspective on the patron-angel of Israel appears in the Testament of Dan, where like the Testament of Levi, the angel intercedes for Israel in the presence of her God, while at the same time standing guard against Satan and the evil angels. This points to another instance of warding off the accuser while playing the role of advocate.

“And now fear the Lord, my children, be on guard against Satan and his spirits. Draw near to God and to the angel who intercedes for you, because he is the mediator between God and men for the peace of Israel. He shall stand in opposition to the kingdom of the enemy. Therefore the enemy is eager to trip up all who call on the Lord, because he knows that on the day in which Israel trusts, the enemy's kingdom will be brought to an end. . . .<sup>172</sup>

A few important considerations come out of this admonition by the patriarch to his descendants. First, an interceding patron figure is necessary for Israel, who is powerless before supernatural forces much greater than herself. The angel also poses a direct challenge to the kingdom of the adversary, whose demise is assured simply through the trust of Israel in her God. Finally, when the enemy aims to lead astray those who invoke the God of Israel, they secure protection through the power of the patron-angel's responses to the pleas of Israel to their God. The peace of Israel, therefore, can no longer rely on simple obedience to God's commandments, but requires positioning the congregation alongside a supernatural figure capable of neutralizing the angelic accuser. The divine, angelic representative, as the text states, maintains the office of interceding for God's nation.

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<sup>172</sup> *Test. of Dan*, VI.1-4, taken from *OTP 1*, 810. .

### 3.5: Advocacy for the Postmortem Soul

Closely aligned with patron-angel narratives in late Second Temple literature are instances where post-mortem souls are gathered in considerable numbers for judgment. In this regard, apocalyptic texts often expand on the otherworldly environment confronting the sinful and the righteous immediately following death.<sup>173</sup> Such texts sometimes portray judgment through the opening of the heavenly books that keep record of each soul's deeds of virtue and lawlessness. This was already evidenced in 4 Ezra, where the eschatological context of the ingathering of righteous exiles prohibited any further intercessory appeals on behalf of the condemned. The precarious state of the intermediate soul may have functioned textually as a warning to its audience concerning the heavenly judicial process immediately following death, where the determination of eternal victory or defeat unfolds prior to the eschaton itself. As such, the post-mortem settings of judgment function as a prelude to the consummate judgment expected at the eschaton. The imagined environment of post-mortem judgment also considers whether any possibility remains for redemption following the expiration of the mortal body.

A compelling text in this regard is the *Apocalypse of Zephaniah*, whose recently deceased protagonist, in his intermediate state of the soul, passes through the various regions of the heavens. Within these locations, thousands of heavenly angels perform daily intercession for the souls facing torment in the depths of Hades. Common to many of the Jewish apocalypses, a prophet-seer experiences an ascent into the heavenly realms, where accompanied by an angel he witnesses both the glories of the divine domain and the agonies of the adverse judgments exacted upon the ungodly. The text, highly fragmented and missing a huge portion of its first section, commences in the fifth tier of heaven and demonstrates a distinct concern for the afterlife.

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<sup>173</sup> Martha Himmelfarb, *The Apocalypse: A Brief History* (Malden, MA: Wiley-Blackwell, 2010), 80.



The Apocalypse of Zephaniah is dependent upon a tradition of apocalyptic writing that is concerned with demonstrating God's justice and mercy by permitting a seer to witness scenes of postmortem judgment and places of blessing prepared for the righteous."<sup>174</sup>

In light of its strong eschatological focus, the text offers an apt illustration of the relationship between the intermediate and eschatological states of the soul, and how the accuser and intercessor function within this legally constructed soteriological battlefield.

The stages of the seer's itinerary illuminate the theological tension between salvation and condemnation, as well as between immediate and eschatological judgment. In the Sahidic Fragment of the text, the seer witnesses angels at the gate, who are respectively compiling evidence for and against a soul facing judgment. The postmortem entity has been removed instantly from its earthly body and serves as a model for those who fall before the prosecution of the accuser. Zephaniah, however, is encouraged to dig in his heels and endure the trial, as he will emerge victorious. "Be strong, O one who will triumph, and prevail so that you will triumph over the accuser and you will come up from Hades."<sup>175</sup> At Mount Seir, once again he sees an additional three men subject to judgment.

Then I saw two other angels weeping over the three sons of Joatham, the priest. I said, "O angel, who are these?" He said, "These are the angels of the Lord Almighty. They write down all the good deeds of the righteous upon their manuscript as they watch at the gate of heaven. And I take them from their hands and bring them up before the Lord Almighty; he writes their name in the Book of the Living. Also the angels of the accuser who is upon the earth, they also write down all of the sins of men upon their manuscript. They also sit at the gate of heaven. They tell the accuser and he writes them upon his manuscript so that he might accuse them when they come out of the world (and) down there."<sup>176</sup>

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<sup>174</sup> See O. S. Wintermute's introduction to the *Apocalypse of Zephaniah* in *OTP* 1, 505.

<sup>175</sup> *Apoc. Zeph.*, B.4, *OTP* 1, trans. O. S. Wintermute.

<sup>176</sup> *Ibid.*, III.5-9.

Just beyond the heavenly city, the prophet encounters angels escorting the wicked to their place of eternal condemnation, there being a three-day airborne transport period prior to arriving at the wretched destination.

In Hades, Zephaniah confronts the accuser attempting to prosecute men before God, along with the enigmatic figure, Eremiel, the benevolent angel who cares for the righteous souls incarcerated in the underworld.

He said to me, “Take heed. Don’t worship me. I am not the Lord Almighty, but I am the great angel, Eremiel, who is over the Abyss and Hades, the one in which all of the souls are imprisoned from the end of the Flood, which came upon the earth, until this day.”<sup>177</sup>

Even a prophet such as Zephaniah, whom the text describes as “pure,” depends on the assistance of an angel powerful enough to protect him from the accuser, who desires to condemn all men regardless of their righteousness. Therefore, no matter how piously a person may have lived their life, they are helpless in the afterlife without divine beings bearing them along the treacherous paths of the underworld. Eremiel fulfills this guardian role for Zephaniah by attending to him as the records of his past deeds, itemized to every detail, are read by the accuser in Hades. While the text is fragmented and missing the record of Zephaniah’s good deeds, he is surprisingly vindicated immediately after the reciting of his past deeds: “Triumph, prevail because you have prevailed and have triumphed over the accuser, and you have come up from Hades and the abyss. You will now cross over the crossing place.”<sup>178</sup>

In addition to his own episode of judgment in Hades, Zephaniah experiences visions of angels recording the deeds of other men and the judgments rendered against condemned souls. Among those facing torment are receivers of bribes, lenders who exact interest, and those who heard the

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<sup>177</sup> Ibid., VI.15.

<sup>178</sup> Ibid., VII.9.

instruction of God but did not act decisively on it. The third category is especially informative, for their plight raises the question as to whether repentance can still take place in the immediate afterlife. Zephaniah recounts, “And I said to him, ‘Then do they not have repentance here?’ He said, ‘Yes.’ I said, ‘How long?’ He said to me, ‘Until the day when the Lord will judge.’”<sup>179</sup> The texts has thus opened the possibility for some condemned souls to remain in an intermediate state of the soul until the final divine judgment.

The souls with undecided fates may find acquittal through the intercession of the post-mortem righteous, who are led by the Hebrew patriarchs and a great angel. the patriarchs are even found offering daily petitions to God on behalf of those facing condemnation.

“These who beseech the Lord are Abraham and Isaac and Jacob. Then at a certain hour daily they come forth with the great angel. He sounds a trumpet up to heaven and another sound upon the earth. All the righteous hear the sound. They come running, praying to the Lord Almighty daily on behalf of these who are in all these torments.”<sup>180</sup>

This text has managed to reconcile the undecided fate of the dead with the anticipated final judgment of all souls. The theatre for this performance is the afterlife, where unless one is automatically doomed due to a life of outright wickedness, the prayers of the post-mortem righteous offer an opportunity for each soul’s pardon when God completes his judgment of the earth. Patriarchal intercession alongside the angel, whose trumpet provokes widespread petitions among the righteous in heaven, also shows a convergence of advocacy forms operative in later rabbinic midrash. Patriarchal merit at times will constitute a direct, inanimate form of advocacy, as will the sounding of the ram’s horn, which on the rabbinic new year festival exhibits intercessory properties within an atmosphere of eschatological anticipation.

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<sup>179</sup> Ibid., X.10-11.

<sup>180</sup> Ibid., XI.4-6.

The *Testament of Abraham* concerns the fate of Abraham upon the announcement of his death, as well as his journey alongside the archangel Michael. God commands Michael,

“ . . . But you, archangel Michael, go to Abraham, my beloved Friend, announce his death to him, and give him this assurance, ‘At this time you are about to leave this vain world and depart from the body, and you will come to your own Master among the good.’”<sup>181</sup>

The text presents a case of Abraham and Michael interceding together in the hope that souls whose salvation hangs in the balance will be forgiven for their previous iniquities, that the scales of justice will tip toward their favor. The judgment scenes present a heavenly court scenario, where angels presiding on both the right and left of the post-mortem soul weigh the good and bad deeds, similar to how the *Apocalypse of Zephaniah* juxtaposes the angel of the Lord with the angel of the accuser. In one particular case, a soul in the process of incurring judgment is reckoned to have committed an equal amount of righteous and impious acts. As a result, he is temporarily denied entry through either the narrow gate of salvation or the broad gate of conviction. Soon Abraham comprehends that his intercession in response to the uncertain verdict may tip the scales in favor of redemption. Upon learning the power of intercessory prayer for the sins of others, Abraham decides to pray constantly for those he had observed sinning and had initially desired to be condemned.

Dale Allison notes that the literary representation of a flawed patriarch who simultaneously intercedes and repents is in keeping with the early spirit of this textual tradition. Allison claims that the Short Recension of the *Testament of Abraham*, by omitting this episode, conforms to early Christian views that the non-baptized dead entertain little to no hope for intercessory prayers on their behalf. Abraham’s act of intercession on behalf of the dead in the Long

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<sup>181</sup> *Test. Abr.*, I.7. *OTP 1*, trans. E.P. Sanders.

Recension is thus considered reflective of an earlier tradition of the Testament of Abraham, one generally free of later Christian omissions which are evidenced in the Short Recension of the work. The excerpt below would presumably conform to earlier Jewish views of intercession for post-mortem souls confronting their precarious position before the divine judge.<sup>182</sup>

Abraham said to the Commander-in-chief, "I beg you, archangel, heed my plea; and let us beseech the Lord yet (again) and let us prostrate ourselves for his compassion and beg his mercy on behalf of the souls of the sinners whom I previously, being evil-minded, cursed and destroyed, whom the earth swallowed up and whom the wild beasts rent asunder and whom the fire consumed because of my words. Now I have come to know that I sinned before the Lord our God. Come, Michael, Commander-in-chief of the powers above, come, let us beseech God with tears that he may foregive me (my) sinful act and grant them to me."<sup>183</sup>

Abraham concedes that his earlier wish for each sinner to suffer divine punishment was in itself a transgression, such that his intercessory prayers serve to both vindicate former sinners as well as atone for his own violations. Abraham even intercedes alongside the entity, Death, for his fallen servants.<sup>184</sup> The educating of biblical prophets regarding their zeal to condemn the people's sin takes place also in later midrashic literature, notably in Moses' inconsistent advocacy for and ill-will toward the golden calf worshipers in Exodus Rabbah.

### **3.6 Conclusion**

The current discussion has mined a number of pre-rabbinic texts for the performance of supporting speech, each dealing with a crisis of corrupted relationship between either the Jewish people and their sovereigns, or else the Jewish people and their God. The urgency of resolving these broken relationships is supported by the strong sense of eschatological anticipation

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<sup>182</sup> *Testament of Abraham*, Dale C. Allison ed., CEJL (Berlin/New York: Walter de Gruyter, 2003), 296-97.

<sup>183</sup> *Test. Abr. LR*, XIV.10-12.

<sup>184</sup> *Ibid.*, XVIII.11.

surrounding the texts. With judgment looming, the advocate must petition forcefully for those he defends. The task of resolving the conflict between the Jewish people and their earthly rulers normally results in an attempt to exonerate the former and condemn the latter. At the same time, reconciliation between God and his people works to facilitate both of these judicial outcomes. Several elements of Jewish salvation doctrine interact with the advocate's drive to reestablish the people's proper relationship to both God and humanity. These include covenant forfeiture and renewal, restoration eschatology, atonement, and renewed election.

The text traditions examined in this chapter occupy a broad range of theological views, where the boundaries between wisdom, apocalyptic, rewritten Bible, legal discourse, and other Jewish genres often intersect and express tension with one another. Often at issue is the dilemma of Israel's prolonged subjugation to sin and foreign powers, what I would identify as reflecting the state of broken relationship between Israel and her God. In order to achieve a positive soteriological outcome, the various texts offer different approaches for reconciling imminent expectations of deliverance with the long-term realities of sin and oppression. The strong eschatological currents operative within this dynamic often result in imaginative presentations of celestial courtrooms, where strict separations occur between the condemned and the redeemed. Those facing uncertain divine judgments may benefit, therefore, from the pleas of advocates, who often petition with a sense of urgency for those no longer capable of helping themselves. In such situations, advocacy inhabits an atmosphere of human limitation regarding the securing of salvation. In the presence of so many malevolent supernatural forces, human beings, already struggling with their own limitations, require direct divine intervention in order to be saved. The intercessory advocate participates in this theological arena, compensating for human limitations by placing the legal burden on God to remain faithful to covenantal obligations. This does not

imply that humanity was not perceived as wicked and weak in much of the earlier biblical literature; rather, the combination of human depravity and widespread supernatural evil intensifies the helplessness of God's people, who remain incapable of fulfilling their covenantal terms regardless of their intentions. They are doubly hamstrung by internal and external forces.

The diversity of intercessory spokespersons in the pre-rabbinic texts discussed above also demonstrates a tension between the immediate expectation of divine judgment and the advocate's yearning for clemency toward the congregation of Israel. Facilitating this process is the divine court setting of intercessory appeal, which shows significant innovations in comparison to Hebrew Bible precedents. One major development involves the expansion and diversification of the courtroom cast. Angels, for example, perform several essential functions, including the transporting of deceased souls, the tabulating of records concerning human deeds, and the performance of accusation and advocacy before the heavenly host. New orientations toward the state of the dead are also evident, as advocacy for the postmortem soul reflects new ways of reconciling the immediate judgment of the deceased with the final judgment of all humanity. Finally, the helplessness of God's people in the face of their corrupted condition, as well as the need for representation amidst supernatural enemies, warrants repeated petitions to the God of Israel for clemency toward his people.

By comparison, supporting speech within the texts comprising the next chapter is much less immersed in imminent expectations of deliverance. While eschatology will occupy a place in both Philo and the Gospel of John, a more careful balance is struck between the final outcomes of things and adapting positively to life in the here and now. The present world need not be perceived as intolerable and can in fact afford opportunities for profound salvation experiences and strong, secure relationships with the God of Israel. These pre-rabbinic texts understand the

believer's dual relationship to the world and God in far different terms than do texts characterized by an urgent eschatology. The mode of adaptation involves a project of moral improvement, as is the case with Philo, or a collective acceptance of a divine redeemer who leaves behind a spirit-advocate, as can be seen in the Gospel of John. The one response focuses strongly on the individual, while the other positions the divinely represented group in a state of conflict with the world. It is to these texts this study now turns.



## Chapter 4: Advocacy in the Writings of Philo and the Gospel of John

### 4.1 Introduction

While several degrees apart stylistically, theologically, and rhetorically, both Philo and the Johannine literature provide early Jewish occurrences of the Greek term, *paraclētos*, and in Philo's case other important Greek terms belonging to the practice of supporting speech. Both sets of writings, moreover, offer a window, with regard to advocacy, into soteriological orientations in pre-rabbinic Judaism that deviate from apocalyptic forms. The broader argument of this chapter, as a consequence, will claim that both writers, by diffusing the sense of urgency accompanying the seeking of salvation, could situate the act of advocacy within the daily life of the pious adherent to God. In the works of Philo, the daily walk with God is largely an individual project associated with the cultivation, nurturing, and maturation of the soul. In contrast, I will argue that John's Gospel retains an inaugurated eschatology tailored toward the collective, one that both cultivates the ongoing salvation of the Christ-believer yet does not lose sight of the ultimate consummation of time at the resurrection of the dead.

Because rabbinic literature provides ongoing guidelines for adapting to life in the here and now, both individually and collectively, while preserving a consistent focus on the world to come, it remains important to examine in more detail pre-rabbinic texts that also reconciled the prolonged state of Jewish exile and disappointment with a theology adjusted for the worldly life. The individual moral improvement related to the soul emphasized in Philo will occupy the first part of this chapter, where advocacy can take place in a variety of contexts. For Philo, the divine Paraclete functions as a patron and moral guide within larger exegetical arguments, normally aimed at convincing his audience of the excellence of Jewish religious-philosophical traditions. Philo's understanding of the Paraclete preserves the term's meaning as an intercessory,

supporting speaker, one often aiming to resolve immediate instances of crisis. While these crises generally pertain to individuals, the act of advocacy in Philo's works can manifest among both human and divine entities. The intersection between divine and human attributes of the Paraclete in Philo is of considerable interest moving forward; for the interpretation of later rabbinic advocacy passages must also negotiate the convergence of divine and human identities, both legal and theological, where the texts also serve a broader exegetical project.

#### 4.2 Divine and Human Advocates in Philo

Roughly four centuries following the heyday of classical Athens, where supporting speakers played an important role in several aspects of courtroom procedure, one observes in Philo of Alexandria an emergent Jewish-diasporic attitude, arguably elitist, toward advocacy for hire and other forms of speech-related intercession. The philosopher also presents us with some preserved occurrences of the Paraclete, whose meaning in Philo generally ranges from an intercessor to a spiritual aid for the soul. Philo's constructions of professional advocates and other spokespersons are especially helpful in that he remains one of the earliest Jewish sources to refer directly to the Roman institution of supporting speakers for hire. His comments anticipate by at least two centuries the attitude of the halakhic midrash, *Mekhilta d'Rabbi Yishmael*, which in its interpretation of Exodus 23:7a, includes a similar admonition against those tempted to allow a place for advocates (סניגורין) in the courtroom.<sup>185</sup> Both the tannaitic midrash and Philo locate legal advocacy within the larger project of scriptural exegesis, in each instance the interpretation of Torah passages pertaining to civil and criminal law. Both textual traditions also integrate legal

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<sup>185</sup> In the *Mekhilta* 23.7, סניגורין, the Hebrew rendering of the Greek nominative plural, σνήγοροι, most likely refers to professional advocates receiving income in exchange for arguing on behalf of a litigant. This text will be examined more fully in chapter 5 below.

and theological interpretations, with the focus targeted toward undesirable practices in the courtroom, those exhibiting the transgression of deceitful speech.

Philo's direct observations on supporting speakers, in many instances occurring within his complex exegetical discussions, are demonstrated in his treatment of Deuteronomy 20:20, where the Jewish Alexandrian philosopher poses an analogy between trees preserved in the besieging of a city and the human ability to reason, specifically in the realm of moral development. Philo compares the trees lacking edible fruit (καρπό-βρωτόν ἐστίν), which the Hebrew Bible reserves for producing siege-works (HB, רִצְרִצָּה), to the forms of logical reasoning obsessed with theoretical principles and spectacle.<sup>186</sup> Ever inclined to advancing allegorical keys to scripture, Philo interprets such modes of learning as follows:

ταῦτα δ' εἰκάζεται τὰ δένδρα ταῖς περὶ λόγους δυνάμεσι θεωρίαν ψιλὴν ἐχούσαις· ἐν αἷς θετέον ἰατρολογία ἀπεξευγμένην ἔργων, δι' ὧν τοὺς κάμνοντας εἰκός ἐστι σῶζεσθαι, καὶ ῥητορικῆς τὸ συνηγορικὸν καὶ ἔμμισθον εἶδος οὐ περὶ τὴν εὕρεσιν τοῦ δικαίου πραγματευόμενον, ἀλλὰ περὶ τὴν δι' ἀπάτης πειθῶ τῶν ἀκουόντων, . . .

These trees represent those faculties pertaining to reasoning, which deal with mere theoretical spectacle. Among these we must count the study of medicine when separated from [the actual] practice through which those who are sick are saved; also the class of rhetoric practiced by the advocate for hire, [which] is not concerned with the discovery of what is lawful, but rather with persuasion of those listening through deceit.<sup>187</sup>

Such modes of learning and praxis, Philo maintains, “assist us in no way in correcting moral character” (ἐπανόρθωσιν ἧθους οὐδὲν συνεργεῖ). In this passage, Philo allows for no ideal form of advocacy capable of contributing to the just and prudent ordering of a city's legal institutions. What is compelling about Philo's perspective is his merging of sacred religious traditions found

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<sup>186</sup> It is my contention that, in this passage, Philo employs a dual meaning for θεωρίαν ψιλὴν/*theōrian psilēn*), at once indicating an overreliance on “theory and spectacle.”

<sup>187</sup> Philo, *De Agricultura* III.12-13. Philo uses the term, συνηγορικός/*synēgorikos*, which I have translated as “advocacy for hire.” The Greek text is taken from *Philonis Alexandrini opera quae supersunt* (PCW), Vol. 2. The translation is my own. Citations of the Greek Septuagint are taken from *Septuaginta*, ed. Rahlfs-Hanhart, Editio altera (Deutsche Bibelgesellschaft, 2006).

in the Book of Deuteronomy with the contemporary climate of rhetorical strategizing in the courtroom. This application of Greek and Roman legal terminology and contexts to the weighty subjects of scriptural exegesis emerged as a signature approach of the rabbinic sages, who adapted the phenomenon of legal advocacy to some of their more urgent theological concerns. Similar to Philo, many of the rabbinic sages will scoff at the phenomenon of polished speakers wielding influence on judges, yet they will employ Greek or Roman terminology and contexts toward the advancement of essential exegetical principles.

Philo's writings contain references to both the traditional Greek *sunhēgoros* and the later Paraclete, each term referring to supporting speakers; and while his usage shows some variation in semantic range, these occurrences reveal something significant about Philo's understanding of patronage and counsel in both the earthly and heavenly regions, and how these might influence his discussions of both sacred scripture and Jewish life in the first century. The occurrences of the Paraclete demonstrate theological diversity as well, and perhaps these variations reflect the flexibility in Philo's own theological outlook. In *Creation*, for example, Philo uses the term as support for his argument that no preexistent divine force apart from God itself contributed to the shaping of both man and the cosmos.

οὐδενὶ δὲ παρακλήτω — τίς γὰρ ἦν ἕτερος; — μόνῳ δὲ αὐτῷ χρησάμενος ὁ θεὸς ἔγνω δεῖν εὐεργετῆν ἀταμιεύτοις καὶ πλουσίαις χάρισι τὴν ἄνευ δωρεᾶς θείας φύσιν οὐδενὸς ἀγαθοῦ δυναμένην ἐπιλαχεῖν ἐξ ἑαυτῆς. ἀλλ' οὐ πρὸς τὸ μέγεθος εὐεργετῆ τῶν ἑαυτοῦ χαρίτων — ἀπερίγραφοι γὰρ αὐταὶ γε καὶ ἀτελεύτητοι —, πρὸς δὲ τὰς τῶν εὐεργετουμένων δυνάμεις:

Now God, with no Paraclete consulting with him, for who else was there but him alone, determined that he should endow lavish and abundant goodwill on the nature, apart from divine beneficence, that is incapable of obtaining anything good through its own self. But not in proportion to his own greatness does he confer benefits, for these indeed are unlimited and without end, but in proportion to the capabilities of those who receive the benefits.<sup>188</sup>

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<sup>188</sup> Philo, *De opificio mundi*, 23. Taken from PCW 1.

Unlike other passages of Philo to be examined, this discussion identifies no preexistent divine substance beyond a single deity presiding over either creative or redemptive functions. God alone is emphasized as the agent of both creation and divine benevolence. Of interest, moreover, is Philo's claim that human nature cannot of its own accord confer genuine benefits upon itself (φύσιν οὐδενὸς ἀγαθοῦ δυναμένην ἐπιλαχεῖν ἐξ ἑαυτῆς); that same nature can only receive divine goodwill in the measure that its limited character is capable of assimilating. God therefore endows all creation with its benevolence apart from any preexistent advisory agent or spokesperson in the heavens. Like early Christian literature, apocalyptic, and some rabbinic traditions, humanity remains utterly dependent on its God, but Philo does not envision in this instance the type of divine mediator of blessings that one witnesses in the early Jesus traditions of John's Gospel.

In Philo's *On Special Laws*, one observes the intersection of legal and theological terminology concerning a divine Paraclete bearing some intrinsic relationship to the human soul. In this instance, the advanced moral aptitude that God has conferred upon humans can act as a divine spokesperson within the realm of one's higher self. Philo first establishes essential terms in his exegesis of unintentional sins, as he would understand them based on Leviticus 6. These terms include "conscience" (τὸ συνειδός), cross-examination or conviction (ἔλεγχος), and confession (ὁμολογέω). The legal and soteriological attributes of the advocate function in relation to these terms, which also perform an expiatory function that initially materializes apart from the priest. Their rhetorical function rests in a comparison between their relative powers in the human and divine court. Conscience cannot persuade and convict the defendant within a human trial; but the supernatural power to persuade embodied in the Paraclete manifests in the semi-divine court of the human soul.

With these principles in view, Philo develops a spiritual role for the invisible Paraclete that at once convicts, pardons, and vindicates. Drawing on Leviticus 6:2-7, Philo considers the plight of a man who has deceived his neighbor, having rendered false testimony regarding wealth either entrusted to his care or else stolen, extorted or found. According to the scripture, the guilty party must restore what was wrongfully taken up to one-fifth above its original value. Accompanying the redemption is the obligation to present a guilt-offering to Yahweh in the form of a non-defective ram. By this means of atonement, Yahweh granted pardon to the offender through the agency of the human priest. Philo rightfully classifies this phenomenon within the category of “voluntary offense” (περὶ τῶν ἐκουσίων).

Philo’s modifications of the Greek LXX text result in deeper interpretations of how the offender’s conscience becomes convicted by sin, along with the role the invisible Paraclete plays in this process. The ultimate outcomes of this phenomenon are forgiveness, restoration of health, and ultimately salvation, which Philo views as a form of restored relationship with God. Philo has amended the LXX passage, presumably his source for Lev. 6:2-7, by arguing that inner remorse eventually convicts the offending party. The central figure in this discussion is the lawgiver (νομοθέτης), who enacts legislation concerning both voluntary and involuntary offenses, in each case prescribing the rites and penalties through which restitution can be afforded to the victim and acquittal to the offender. There is a further determination that involuntary offenses concerning sacred rites and objects carry penalties similar to voluntary offenses committed within the human sphere. The offenses considered within Leviticus 6:2-7 pertain to forms of financial malfeasance, namely deception in transactions involving partnerships (LXX, κοινωσία), deposits, theft, or secret discoveries. The MT merely

acknowledges that the offender has committed sin and entered into a state of guilt (ἁμαρτία), while the LXX has the offending party both committing sin (ἁμαρτάνω) and an offense (πλημμελέω).

Philo, however, goes a step beyond the LXX by first having the offender swear a false oath and temporarily escape his human accusers (κατηγόρων), but then falling victim to the invisible convictions of his own soul, which leads him to publicly testify to the wrongs he has committed.

ὅταν δὲ ἰλάσῃται τὸν ἠδικημένον πρότερον, ἴτω, φησί, μετὰ ταῦτα καὶ εἰς τὸ ἱερόν αἰτησόμενος ὧν ἐξήμαρτεν ἄφεσιν, ἐπαγόμενος παράκλητον οὐ μεμπτὸν τὸν κατὰ ψυχὴν ἔλεγχον, ὃς ἀνιάτου συμφορᾶς αὐτὸν ἐρρύσατο τὴν θανατοῦσαν νόσον ἀνεῖς καὶ πρὸς ὑγίαν παντελεῖ μεταβαλὼν.

And when he has made propitiation for the injured party, let him, says [the Lawgiver], go afterwards to the Temple, pleading forgiveness for the sins he has committed, calling in as witness for himself his blameless Paraclete, the conviction of the soul, who has delivered him from an incurable disaster, has released him unpunished from a mortal illness and restored him to complete health.<sup>189</sup>

Although Philo's wording lacks precision, the Paraclete does exhibit divine attributes in the sense of being "blameless" (οὐ μεμπτὸν) and maintaining power over the soul to at once accuse, convict, and redeem during instances of voluntary offenses.<sup>190</sup> The soul also functions as a fixer, enabling the wayward individual to avert disaster and instead find both physical and spiritual security. Philo's larger motive centers on his sustained argument for the comparative superiority of Moses as the divinely appointed lawgiver, in as much as the system of conviction for voluntary offenses in the human sphere equals that pertaining to involuntary offenses in the divine sphere. The system is focused on redemption and forgiveness, relying on some divine capacity within the soul—whether external to it or internal being unclear—capable of both redeeming and reforming the offender in question. Moreover, the dual capacity of the Paraclete

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<sup>189</sup> Philo, *De specialibus legibus*, I.237 (PCW 5).

<sup>190</sup> αὐτὸς ἑαυτοῦ γένηται κατήγορος/"He himself becomes his own accuser." ἔνδον ὑπὸ τοῦ συνειδότος ἐλεγχθεῖς/"He is inwardly convicted by his own conscience."

to accuse and defend manifests as well in the Johannine advocate, although the latter's capacity to accuse expands to the universal project of condemning the entire world for its rebellion against the divine son of God.

Philo's Paraclete can also function as a human spokesperson performing an intercessory office, as attested in Philo's *Against Flaccus*, which condemns the early first-century Roman-appointed prefect of Alexandria for his role in anti-Jewish pogroms in that city. In the aftermath of Flaccus' spokesperson, Makros, being executed by Tiberius, Flaccus is said to have gathered his former enemies close to him, many of whom desired to incite trouble against the Jews. The troublemakers advise Flaccus that he needs a new paraclete (παράκλητον), such that the emperor Gaius might be propitiated (ἐξευμενισθήσεται). The alluring bait for such an advocate, according to Philo, was that the sought-out man would be especially motivated by the thought of persecuting the Jews.<sup>191</sup> That Paraclete, in fact, would be better constituted as a collective, namely the esteemed city of Alexandria, whose proposed persecution of the Jews would bestow favor on Flaccus with the Roman emperor. The context suggests that Flaccus required a supporting speaker in order to retain the good graces of the emperor, or at minimum to stave off his hatred, and with the prefect's former advocate having been executed, Flaccus could not achieve his goals until a replacement had been found. Here the Paraclete takes on a corporate identity, functioning as Flaccus' collective defenders before the emperor on the basis of their enmity toward the Jews.

Kenneth Grayston's essay on the Paraclete, frequently cited by New Testament scholars, limited the meaning of the entity, in this context, to one who helps "by giving support to

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<sup>191</sup> Philo, *In Flaccum*, 22-23 (PCW 6).



someone making a claim, or settling a dispute, or rebutting a charge.”<sup>192</sup> This interpretation does not do justice, however, to the gravity of Flaccus’ deteriorating relationship with the Roman imperial throne, with the conflicts clearly being political, and the prefect, Flaccus, requiring someone to speak on his behalf before the emperor. The supporting speakers whom the associates of Flaccus have in mind would surely act as advocates before the emperor. Peter Willem van der Horst, in a relatively recent commentary on Philo’s *Flaccus*, provides a sense of the Paraclete ranging from “helper” to “mediator” to “intercessor.”<sup>193</sup> This too is not especially helpful, given the three possibilities potentially carry vast differences in meaning. Since the citizenry were thought to have stood between Flaccus and the emperor Gaius through their ideology of anti-Judaism, which presumably the emperor would favor, they function at minimum as mediators and more likely as spokespersons for their prefect.<sup>194</sup> By presenting the Alexandrian polis as the new paraclete, however, it is unclear whether Philo is referring to the Alexandrian citizenry at large or is limiting the meaning to city officials occupying positions of power.

In a latter section of *Flaccus*, the former prefect of Alexandria has been banished to a “most miserable” (λυπροτάτην) Aegean island, a predicament which a Paraclete manages to swap out for a more tolerable island close by (151). The emperor would eventually express regret (μετάνοια εἰσήει, 181) that he did not have Flaccus executed along with his Paraclete, Lepidus. These individual functions of the Paraclete, by virtue of their association with a figure capable of pleading before the emperor for a prefect, and in this case a banished prefect, cannot be limited

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<sup>192</sup> Kenneth Grayston, “The Meaning of PARAKLETOS,” *JSNT* 4, is. 13 (1981): 72-73.

<sup>193</sup> *Philo's Flaccus: The First Pogrom: Introduction, Translation, and Commentary*, ed. and trans. Pieter Wilhelm van der Horst (Leiden; Boston: Brill, 2003), 112.

<sup>194</sup> Other English translations of the use of Paraclete in *Flaccus* 22-23 employ “intercessor” (Colson, in LCL 363; van der Horst) and “advocate” (Marti, C.D. Yonge), not helper or supporter.

in meaning to mere assistance or support, since the one pleading before the emperor must possess the rhetorical skill to persuade the most powerful figure in the Roman Empire. The importance of the imperial office would be vastly understated by restricting the role of the paraclete to that of an assistant.

Upon review of the Paraclete passages in Philo's *Flaccus*, Lochlan Shelfer agrees that the political and legal meanings of the terms are consistently operative.

These παράκλητοι each have several attributes in common. First, they all occupy a position which is elevated in relation to Flaccus. Second, each has the unique ability, as a function of that elevated status, to influence the decisions of the emperor. Finally, they all support a defendant before someone who judges his actions.<sup>195</sup>

Taken together, these three attributes have significant implications for the office of an advocate within both Jewish and Christian theological contexts. They generally hold a status considered superior to the one seeking representation, an arguably intrinsic meaning within the Latin *advocātus*, one reflecting the early merging of this function with the role of a *pātrōnus*.

Philo's exegetical work, *On Joseph*, (239), provides further evidence for this political-legal function of the Paraclete, in as much as he is characterized as a spokesperson willingly representing the rights and security of a weaker, guilty party. When Joseph, as the Hebrew second-in-command over Egypt, has revealed his identity to his brothers, he insists that he has forgiven them, and that they should not seek out any Paraclete other than himself, indicating that Joseph possesses the power and position to represent his brothers better than any figure in Egypt, barring the Pharaoh.

„μη καταφεΐτε“ | εἶπεν, „ἀμνηστίαν ἀπάντων παρέχω τῶν εἰς ἐμὲ πεπραγμένων, μηδενὸς ἑτέρου δεῖσθε παρακλήτου· αὐτοκελεύσω καὶ ἐκουσίῳ γνώμῃ πρὸς συμβάσεις ἐθελοντῆς ἀφῆγμαι συμβούλοις χρησάμενος δυσί, τῇ τε πρὸς τὸν πατέρα εὐσεβείᾳ, ᾧ τὸ πλεῖστον τῆς χάριτος ἀνατίθημι, καὶ τῇ φυσικῇ φιλανθρωπίᾳ, ἣ πρὸς ἅπαντας διαφερόντως δὲ πρὸς τοὺς ἀφ' αἵματος χρῶμαι. . . .

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<sup>195</sup> Lochlan Shelfer, “The Legal Precision of the Term παράκλητος,” *JSNT* 32, no. 2 (2009): 143.

“Do not be downcast,” he said, “I offer amnesty for all the things you have done to me. Do not make a request for any other Paraclete. By my own accord and voluntary judgment I have willingly come to an agreement with you, maintaining two counsellors: reverence toward our father, mainly by which I show favor to you, and the natural benevolence which I express to all people, and especially toward those related to me by blood.”<sup>197</sup>

Joseph, reinvented to some degree here as an educated Greek sovereign, functions as a political Paraclete, an executive acting as patron on behalf of a lesser party seeking pardon. He intends to speak favorably for his brothers in order to safeguard cordial relations between the Egyptian rulers and their Hebrew subjects. The position Philo’s Joseph occupies would likewise be understated by referring to it as that of a helper or supporter. The influence the advocate exerts on imperial figures, moreover, is arguably transferrable to the theological context of influencing the ultimate sovereign of the universe, the God of Israel. This act of representation before the divine throne normally involves an individual or a collective facing imminent judgment by God and in that sense demonstrates the ability of the supporting speaker to avert a crisis situation and looming disaster. This is generally what Joseph intends to do for his brothers in their current predicament, and it is telling that Philo, living in Roman controlled Alexandria, would have interpreted the plight of Joseph’s brothers within the context of a guilty group of foreigners in need of an advocate. Reconciling the relationship between himself and his brothers has the trigger effect of securing their likelihood of peace under the Pharaoh. On that note, the worldly occurrences of the Paraclete in *Flaccus* likewise pertain to situations of crisis, since the risk of both inciting or maintaining the disfavor of the emperor Caligula portends imminent disaster for the Alexandrian prefect. He only remains alive due to the Paraclete’s ability to intercede for him.

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<sup>197</sup> Philo, *De Iosepho*, 239 (PCW 4).

An intercessory passage in Philo’s *On the Life of Moses II* also deserves mention, again illustrating that Philo’s broader exegetical arguments largely inform how he understands the function of the Paraclete. In the first instance, beginning at II.127, Philo draws a philosophical association between a “clear manifestation (δήλωσίν) and truth (ἀλήθειαν), both considered divine virtues (ἀρήτη) when identifying the rational human faculties that belong to the incorporeal (ἀσώματος) world. That which embodies the truth establishes its residence within the human mind, such that pure, unadulterated thoughts can exist apart from falsehood. Here Philo appears to be explaining how humanity accesses divine awareness within a flawed corporeal world. The inward residence of pure thought is expressed by the term, ἐνδιαθέτω, woodenly translated as the act of taking up residence in the mind. The expression of clarity, on the other hand, manifests through “utterance” (προφορικώς). In simple terms, the mind houses excellence, and speech thereafter expresses it with the utmost clarity.

Philo then associates these faculties with the effective priest ministering on God’s behalf to all people, and the priestly vestments serve as further representations of the excellence endowed to the sacred office. In fact, the properly maintained office of the priest dictates that he both represent the perfection suggested by the earthly archetypes of the heavens, while at the same time speaking such clarity in the form of truth.

οὗ τὸ μίμημα ἐνδύομενος ὀφείλει τῇ διανοίᾳ τὸ παράδειγμα εὐθὺς ἀγαλματοφορῶν αὐτὸς τρόπον τινὰ πρὸς τὴν τοῦ κόσμου φύσιν ἐξ ἀνθρώπου μεθηρμόσθαι καί, εἰ θέμις εἰπεῖν θέμις δὲ ἀψευδεῖν περὶ ἀληθείας λέγοντα βραχὺς κόσμος εἶναι.

By putting on the representation [of the world], he is charged with carrying the pattern through his intelligence, and in a certain manner makes passage from a man into the nature of the world. Moreover, if one dares to say by custom, observing faithfully to speaking about the truth, he becomes a microcosm of the world at large.<sup>198</sup>

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<sup>198</sup> *De vita Mosis* II.135. “οὗ” here is referring to τοῦ γε κόσμου stated in the previous sentence; woodenly rendered as, “of the world, which he represents by wearing its representation . . .”).

The priestly office, for Philo, involves the embodiment of the incorporeal world through its most noble human expressions of Reason and truth, which are then conveyed through proper action, in turn represented by the symbolism belonging to the sacred vestments. Philo's ideal vision of the priestly office places the appointment under the authority of the Paraclete.

ἀναγκαῖον γὰρ ἦν τὸν ἱερωμένον τῷ τοῦ κόσμου πατρὶ παρακλήτῳ χρῆσθαι τελειοτάτῳ τὴν ἀρετὴν υἱῷ πρὸς τε ἀμνηστίαν ἀμαρτημάτων καὶ χορηγίαν ἀφθονωτάτων ἀγαθῶν.

For the one who is consecrated to the Father of the world must have access to his Son, altogether perfect in virtue, as his Paraclete for both amnesty for sins and the most bounteous supply of blessings.<sup>199</sup>

There has naturally been disagreement over the identity of this particular son, as represented by the Paraclete. Colson claimed that the son refers to “the World,”<sup>200</sup> while others have identified this son as the divine Logos itself.<sup>201</sup> Grayston understood the passage as follows: “This is good Jewish doctrine: when men ask God for forgiveness and benefits, they rely for support on God’s nature and their own repentance.”<sup>202</sup> Grayston may have overlooked the deeper literary contexts of the passage. Philo is at once a philosopher, theologian, and biblical exegete who is continuously advancing an argument. It would appear, if the world refers to the incorporeal universe, that the Logos in question would constitute the perfected forms of excellence and truth which God is entrusting to the priestly figure. Because the priest performs his office in a state of imperfection, it is the divine son functioning as Paraclete who ensures the removal of sins and in its place bestows the pure goodness of God. In this way the priest can

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<sup>199</sup> Ibid., 134.

<sup>200</sup> Philo, *On Abraham. On Joseph. On Moses*, trans. F. H. Colson, LCL 289 (Cambridge, MA: Harvard University Press, 1935), 515, n. b.

<sup>201</sup> Robert Peltier and Dan Liroy, “Is John’s Λόγος Christology a Polemical Response to Philo of Alexandria’s Logos Philosophy?” *Conspectus* 28 (2019): 100.

<sup>202</sup> Grayston, “The Meaning of PARAKLETOS,” 73-74.

better perform his expiatory functions for the people, since the Paraclete confers on him the divine powers that he would otherwise lack. This representation of the Paraclete, for Philo, cannot be considered apart from the intellectual and rhetorical functions of truth and utterance respectively. These divine attributes, when entrusted to the priest, require the mediation of the Paraclete in order to achieve their purpose, which is once again soteriological, given that the priest lacks the intrinsic attributes of pure truth and excellence. The expiatory role of the Paraclete here provides for the elimination of offenses and the receiving of God's blessings. Philo rarely engages in simplified discussions, and to reduce his arguments to proper Jewish procedure may do injustice to the complexity of his exegesis.

Even a brief inquiry into Philo's construction of the Paraclete, whether it be functioning on the divine or human playing field, demonstrates that supporting speech, intercession, and salvation are its most common senses of meaning, regardless of whether that salvation is secured before a worldly or divine sovereign. It is also clear that Philo, while distrustful of advocates for hire, has offered illuminating constructions of the Paraclete that reflect crisis situations in the human sphere and divine counsel in the spiritual. Philo's spiritual Paraclete performs both expiatory and soteriological functions in bringing the Jewish people into closer relationship with their God. This figure also compensates for human imperfection by working with the attributes that Philo considers closely aligned with the human soul. Philo's arguments, furthermore, do not limit God's benevolence to the Jews alone, since Philo is writing for a largely educated diasporic audience, whom he hopes to convince that Jewish legal and philosophical traditions are unmatched among their contemporary competitors. In that sense, Philo's use of the Paraclete appears much less sectarian than that of John's Gospel, whose soteriological perspective,

although inclusive of non-Jews, does not deliberately aim to persuade the various branches of the Gentile literati class.

### 4.3 The Johannine Paraclete

The Johannine corpus<sup>203</sup> of the New Testament marks, in addition to Philo, the other principal Jewish source for the divine Paraclete in pre-rabbinic Jewish literature. This discussion first argues that the fourth Gospel, reflecting a unique sectarian tradition with strong Jewish roots, appropriated a Greek forensic title for an advocate and associated it with a spirit-entity that would continue the work of the departed divine savior.<sup>204</sup> Furthermore, in comparison with much of the apocalyptic literature's use of intercessory spokespersons in the Second Temple period, the Johannine material dispenses with the ultra-urgent nature of advocacy before God on behalf of Israel; instead, John's Gospel takes the long-view of assigning this function to the authority of a spirit-successor charged with continuing the mission of Jesus. Whereas the apocalyptic approach considers the immediacy of divine judgment and the advocate's pleas for last-minute

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<sup>203</sup> On the development of a Johannine textual tradition in the early Christian church, Charles Evan Hill, *The Johannine Corpus in the Early Church* (Oxford: Oxford University Press, 2004); for Johannine as a specific Jewish sectarian identity marker, Urban C. Von Wahlde, "The Johannine 'Jews': A Critical Survey," *NTS* 28, no. 1 (1982): 33-60; on Johannine Christology, Wayne A Meeks, *The Prophet-King: Moses Traditions and the Johannine Christology* (EJ Brill, 1967); on a "Johannine community," Colleen M. Conway, "The Production of the Johannine Community: A New Historicist Perspective," *JBL* 121, no. 3 (2002): 479-495.

<sup>204</sup> This discussion will generally steer clear of Jewish versus non-Jewish identity issues in John, as will it avoid the question of anti-Judaism as opposed to Jewish sectarian in-fighting. The governing assumption will be that the narrative of John's Gospel, regardless of its specific religious identity at the moment of composition, has strong connections to late Second Temple Judaism in terms of scriptural references, representations of Jerusalem, festival mapping, and dualisms between those knowing the truth and those perpetuating error. For recent scholarship on Jewish identity and anti-Judaism in John, works which consider the major views which have held weight, R. Bieringer, D. Pollefeyt, and F. Vandecasteele-Vanneuville, eds., *Anti-Judaism and the Fourth Gospel* (Louisville & London: Westminster John Knox Press, 2001); Johannes Beutler, *Judaism and the Jews in the Gospel of John* (Rome: Pontificio istituto biblico, 2006); R. Alan Culpepper and Paul N. Anderson, eds., *John and Judaism: A Contested Relationship in Context* (Atlanta: SBL Press, 2017); Christopher M. Blumhofer, "The Gospel of John and the Future of Israel," (PhD Dissertation, Duke University, 2017); Adele Reinhartz, *Cast out of the Covenant: Jews and Anti-Judaism in the Gospel of John* (Lanham, MD: Lexington Books/Fortress Academic, 2018).

vindication, John's Gospel demonstrates a more balanced, inaugurated eschatology<sup>205</sup> that, while maintaining strict dualisms between the justified and the condemned according to unique sectarian criteria for salvation, nevertheless envisions advocacy and other services of the spirit enduring for an indefinite time period through a divine figure. This Paraclete, by taking over where Jesus left off, will help maintain the integrity of the Jesus-believing congregation. Later occurrences of the term in the rabbinic corpus, while not quite as monumental in soteriological scope, demonstrate an even greater movement toward a toned down eschatology, where the appropriation of the Greek forensic term for distinctly Jewish concerns shows the Jewish-Hellenistic cultural convergence of legal and religious traditions.

Within the limited scope of the current discussion, I will further argue that the Paraclete title in John signifies a forensic-soteriological framework within which several attributes of the Johannine Holy Spirit manifest. This is supported by the broad semantic range and diverse functions of the Johannine Paraclete, especially as they are related to John's understanding of the Holy Spirit. Through this approach, hopefully a fair and nuanced interpretation might emerge concerning the Paraclete in the New Testament, one that is not devotional yet acknowledges the strong legal-devotional character of the title. Argued another way, the Paraclete for John represents the forensic and salvific application of the conciliatory, intercessory, pedagogical, and testimonial functions of the spirit-advocate. This application fits the general climate of John's Gospel, which many scholars have interpreted as a trial pitting Jesus' testimony, that concerning the authenticity of his divine credentials, against his opponents, who at most acknowledge Jesus'

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<sup>205</sup> By "inaugurated," I am referring to an eschatology that balances both futuristic and realized aspects. For a detailed study applied to early Jewish and Christian literature, see Grant Macaskill, *Inaugurated Eschatology in Ancient Judaism and Early Christianity* (Leiden: Brill, 2007); on the question of which category fits the Gospel of John, Urban C. von Wahlde, "C.H. Dodd, the Historical Jesus, and Realized Eschatology," in *Engaging with C. H. Dodd on the Gospel of John: Sixty Years of Tradition and Interpretation*, ed. Tom Thatcher (Cambridge: Cambridge University Press, 2013), 149-162.



teachings as prophetic but staunchly oppose his claim to be the divine son of God.<sup>206</sup> Within this framework, the Paraclete represents post-resurrection participation in this trial, where its divine spirit both defends the community of faith and advocates for the salvific principles belonging to the Johannine Jesus.

Stark disagreements among scholars have persisted over the forensic, expiatory, conciliatory, educative, and pneumatological attributes of the Johannine Paraclete, differences which are often unnecessary in light of each of these properties having their rightful place in the divine nature of the entity, a spiritual successor to Jesus who inherits the controversy between the Christ-believers and their enemies, whom John refers to as “the world.” It would seem shortsighted, under these conditions, to disregard the forensic properties of the Paraclete, as even ostensibly non-forensic aspects of the figure still suggest a supporting speaker who has the power to either remit or convict all people of sins against God. The Paraclete’s capacity to speak through the apostle quite often demonstrates its dual association with the Holy Spirit and advocacy. Finally, the Paraclete’s ability to console the disciples, who are confronting the imminent departure of their savior, appears self-evident enough to not warrant any special argument. In summary, the Johannine use of the Paraclete embraces several soteriological categories of the spirit under the larger banner of a forensic title. As placeholder for the community of the redeemed until Jesus returns, it makes good sense that this spirit-figure would take on several soteriological functions.

The third century church father, Origen, understood that the multifaceted nature of the paraclete could not be reduced to one primary function.

Now, ‘paraclete,’ when spoken of the Saviour, seems to mean intercessor, for in Greek, ‘paraclete’ signifies both consoler and intercessor. Because, then, of the phrase which follows, where he says that *He is the expiation for our sins*, the name Paraclete seems to be understood of our Saviour as meaning rather intercessor; for He is said to intercede

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<sup>206</sup> The most notable of these works being Andrew T. Lincoln, *Truth on Trial: The Lawsuit Motif in the Fourth Gospel* (Peabody, MA: Hendrickson, 2000).

with the Father *for our sins*. Regarding the Holy Spirit, however, ‘paraclete’ must be understood as consoler, in the sense of comforter, because he provides consolation for the souls to whom he opens and reveals the sense of spiritual knowledge.<sup>207</sup>

While Origen has not exhausted the theological range of the title, he demonstrates how the Paraclete’s nature pertains to the expiatory, intercessory, pneumatological, and conciliatory dimensions of salvation. Yet even this passage overlooks the defender and educator roles. As Gary Burge’s well-argued study presents the problem, “The variety of traits given to the Paraclete defy any attempt to give him a comprehensive title.”<sup>208</sup> Burge recognizes how this diversity in meaning reflects a Johannine attempt to apply a singular title to the early Christian perception of the Holy Spirit, which performed a wide range of salvific offices.<sup>209</sup>

The issue of several Paraclete functions is especially compelling when attempting to differentiate between its roles as advocate and intercessor. Burge identifies the difference as one of either an advocate being called to defend, or else an intercessor standing in between two parties through prophetic prayer-utterances or some other form of supporting speech. Yet intercessory speech is often a form of defense, and an advocate-defender addressing a divine figure is by nature a supporting speaker who stands in the breach. To claim, for example, that the Paraclete in 1 John 2:1 is merely interceding between the sinner and the deity cannot be supported, since this function could very well involve supporting speech on behalf of the sinner, that is, advocacy. Craig Keener notes that “the line between the two senses is not easily drawn

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<sup>207</sup> Origen, *De Principiis*, II.7.4. Translation taken from *Origen, On First Principles*, ed and trans. John Behr, OECT (Oxford: Oxford University Press, 2017).

<sup>208</sup> Gary M. Burge, *The Anointed Community: The Holy Spirit in the Johannine Tradition* (Grand Rapids: W.B. Eerdmans Publishing Company, 1987), 3-45.

<sup>209</sup> Faced with this reality, Burge has suggested the feasibility of Jerome’s approach to the term in the Vulgate, which is simply to leave the term untranslated. This is likewise the approach of the current study.

once one allows metaphorical extensions;”<sup>210</sup> that is, in the case where the Paraclete assumes the responsibilities of the Holy Spirit, the boundaries between intercession and advocacy are hazy at best. Both functions have a firm grounding in soteriology, for it is the Paraclete’s substitutionary function as a redeemer in the absence of the physical presence of Jesus that dictates each unique function.

It is curious, in light of the diverse meanings and functions of the Paraclete in John’s Gospel, and when considering as well the prosecutorial language John regularly employs that many scholars have dismissed any significant forensic meaning associated with the Paraclete.<sup>211</sup> While comfort and consolation are undoubtedly important functions of the advocate in the Johannine Farewell Discourses, the forensic language of the divine courtroom, if not predominating, occupies a prominent part of the Paraclete’s office. Keener’s magisterial commentary acknowledges that “Although the proposed forensic background is not the only background for the Johannine Paraclete, (perhaps most essential is, of course, the spirit in early Judaism and Christianity), it is likely an important one.”<sup>212</sup> Raymond Brown’s well-regarded analysis, although stating that the Paraclete is not an intercessory figure in John, still maintains, “That the Paraclete has a forensic function is clear from John xv. 26 (bears witness) and xvi. 8-11 (proves the world wrong); yet there is not the slightest suggestion in any of the five Johannine passages

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<sup>210</sup> Craig S. Keener, *The Gospel of John: A Commentary* (Peabody, Mass.: Hendrickson, 2003), 956, n.237. Hence, Kensky’s use of the term, “intercessory advocate,” whether intentional or not, to characterize those who plead before the imaginary divine court in Jewish texts of the Second Temple period.

<sup>211</sup> Strongly representative beyond Grayston are George Johnston, *The Spirit-Paraclete in the Gospel of John* (Cambridge: Cambridge University Press, 1970); H. Riesenfeld, “A Probable Background to the Johannine Paraclete,” in *Ex Orbe Religionum: Studia Geo Widengren*, ed. C.J. Bleeker, S G F Brandon, and Marcel Simon (Leiden: Brill, 1972), 266-74; Margaret Davies, *Rhetoric and Reference in the Fourth Gospel* (Sheffield: Sheffield Academic Press, 1992), 145.

<sup>212</sup> Keener, *Gospel of John*, 955.

that he will protect the disciples when they are in difficulties.”<sup>213</sup> Brown further observes that “the Paraclete is hostile to the world and puts the world on trial.”<sup>214</sup> For Brown the forensic function of the paraclete is one of both a prosecutor and witness who proves the world wrong and vindicates Jesus. His identification is at once the “Spirit of Truth,” “another paraclete,” and the Holy Spirit.

Andrew T. Lincoln, like Keener, has considered the narrative framework for the Paraclete statements within the context of John’s Farewell discourses (13:31-17:26)<sup>215</sup> and Jesus’ prayer for his disciples. His observations on the relationship between the Paraclete and these Gospel sections indicate the crucial literary context surrounding the figure. First, the Paraclete inherits a key role in the continuation of the controversy between Jesus and his opponents, a controversy whose implications involve who receives either divine deliverance or condemnation.<sup>216</sup> Second, the Paraclete will continue the testimony already established by Jesus once he has passed from the world. As Jesus pleads the case of his heavenly father, so the Paraclete will plead the case of Jesus through his disciples. The narrative setting for introducing the Paraclete is, therefore, that of Jesus’ impending departure from the world, where he will no longer be seen in human form

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<sup>213</sup> Raymond E. Brown, “The Paraclete in the Fourth Gospel,” *NTS* 13, no. 2 (1967): 113, 116.

<sup>214</sup> *Ibid.*, 114.

<sup>215</sup> See also, for the place of the Paraclete within this discourse, Ulrich B. Müller, “Die Parakletenvorstellung im Johannesevangelium,” *Zeitschrift für Theologie und Kirche* 71, no. 1 (1974): 31-77; Keener, *Gospel of John*, 953 ff.

<sup>216</sup> Contrary to claims that the disagreement centers on Jesus’ messianic identity, it is evident that the crux of the controversy surrounds Jesus’ claim to divine status, namely his descent from and eventual return to God’s heavenly domain, which grants him the authority to both testify and judge on God’s behalf. Endowed with the authority to issue divine testimony and judgment, Jesus can now determine the salvation of the people. John 8:14: Ἀπεκρίθη Ἰησοῦς καὶ εἶπεν αὐτοῖς Κἂν ἐγὼ μαρτυρῶ περὶ ἑμαυτοῦ ἀληθῆς ἐστὶν ἡ μαρτυρία μου ὅτι οἶδα πόθεν ἦλθον καὶ ποῦ ὑπάγω ὑμεῖς δὲ οὐκ οἴδατε πόθεν ἔρχομαι ἢ ποῦ ὑπάγω/“Jesus answered them as follows: Even if I testify on my own behalf, my testimony is true, for I know from where I have come and to where I am about to go, but you do not know from where I have come or to where I am about to go.” Greek citations of the New Testament are taken from *Novum Testamentum Graece: Nestle-Aland*, 28th ed. (Stuttgart: Deutsche Bibelgesellschaft, 2012). Translations, unless otherwise indicated, are my own.

and will instead reside with the divine father who sent him. At issue is the disciples' level of preparedness for their master's departure, since they have not fully recognized that believing in Jesus is requisite for knowing the divine father (14:6-7). The inability to recognize the divine son indicates a fatal flaw attributed to the larger world in opposition to the Christ-believers. This forms the basis for the forensic indictment and the emergence of the Paraclete within this divine-human relationship.

Lincoln has further argued that John's Gospel differs from the Synoptics by virtue of its disproportionate use of juridical language and its overall thematic scheme situated in forensic categories. Here, Jesus' life and ministry function as a heavenly lawsuit conducted within a divine courtroom.<sup>217</sup> Lincoln supports this claim first through the more elaborate Roman trial, and more specifically by way of terminology, such as the disproportionate use of the terms "witness" (μαρτυρία), "testify" (μαρτυρέω), truth (ἀλήθεια), and their cognate terms. The sense of testimony occurs frequently and underscores a state of inaugurated eschatology manifesting through a heavenly trial on earth preceding the actual judgment of the world. The trial pits Christ-believers against both "the *Iudaioi*" and "the world" at large over the legitimacy of Jesus' credentials as the divine son charged with the redemption of all humanity. For Lincoln, "the Farewell Discourses become the appropriate place for treating Jesus' successors in the lawsuit as it continues in history after his departure."<sup>218</sup> The Paraclete joins Jesus' disciples in playing the role of successors, both convicting the world and advocating for the faithful. Carrying on the lawsuit suggests that Jesus had earlier acted both as his own advocate and as an advocate for God

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<sup>217</sup> Andrew T. Lincoln, "A Life of Jesus as Testimony: The Divine Courtroom and the Gospel of John," in *The Divine Courtroom in Comparative Perspective*, ed. Ari Mermelstein and Shalom E. Holtz (Leiden: Brill: 2015), 145.

<sup>218</sup> Lincoln, *Truth on Trial*, 110.

the father; and with Jesus' departure, the Paraclete will continue prosecuting the world and Jewish disbelievers while defending the cause of Jesus' identity as the divine son who is charged with saving all humanity.

Lincoln's work was anticipated by some of Burge's main arguments, which also insisted that the revelatory function of the Spirit-Paraclete should be viewed "through his own situation of trial and persecution."

When this motif is extended by John beyond the earthly life of Jesus into the era of the church, then we may have located the exact forensic context which gave rise to a juridical spirit (the Paraclete) whose evidence before the world consisted in unique revelations. As Christ was on trial and revealed the Father, so too the disciples (and the Paraclete) were on trial, and in their witness they glorified and revealed Christ.<sup>219</sup>

With Burge's and Lincoln's interpretations in mind, I would argue that the role of the Paraclete in John reinforces the stark dualism between the believing disciple and the unfaithful world by virtue of how this spirit-figure interacts with each party. On the one hand, the Paraclete acts as a salvific figure within the collective and preserves their divine favor until the eschaton. In this context, the Paraclete operates principally as an advocate for the vindicated group, reconciling them to their God and assuring their salvation. On the other hand, the Paraclete also works as a prosecutor confronting the hostile forces of the world assembled against Jesus. This dichotomy between the community of the redeemed and the world of the condemned is illustrated in John 14:15-17.

Ἐὰν ἀγαπᾶτέ με, τὰς ἐντολὰς τὰς ἐμὰς τηρήσετε· κἀγὼ ἐρωτήσω τὸν πατέρα καὶ ἄλλον παράκλητον δώσει ὑμῖν, ἵνα μεθ' ὑμῶν εἰς τὸν αἰῶνα ᾗ, τὸ πνεῦμα τῆς ἀληθείας, ὃ ὁ κόσμος οὐ δύναται λαβεῖν, ὅτι οὐ θεωρεῖ αὐτὸ οὐδὲ γινώσκει· ὑμεῖς γινώσχετε αὐτό, ὅτι παρ' ὑμῖν μένει καὶ ἐν ὑμῖν ἔσται.

If you love me, you will observe my commandments. Wherefore I will ask the Father, and He will grant you another Paraclete, that He may be with you forever. He is the Spirit of Truth, whom the world cannot receive, because it does not see Him; nor does it

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<sup>219</sup> Burge, *The Anointed Community*, 41.

recognize Him. You know Him because He abides among you and will be present among you.<sup>220</sup>

The distinction between how the Paraclete interacts with the disciples and the world, according to Jesus, is of the utmost gravity, as it maintains the strict separation between insider and outsider, those embracing truth as opposed to falsehood, ultimately the redeemed and the condemned.

In contrast to the current situation, where Jesus lives among the disciples and confronts the world directly, in the near future, the recognition of the spirit-form of the savior will be restricted to the believer and withheld from the world. This reinforces the distinction between acquittal and condemnation that is so essential to the Paraclete's purpose and mission. Referring to the advocate as "another Paraclete" is therefore telling, since it not only associates this figure with Jesus himself, but leaves little doubt that Jesus, prior to the need for a spirit-representative to assume his place, has been performing the office of a Paraclete. Heretofore Jesus had played the part of a consoler, teacher, advocate, and heavenly prosecutor. To this end, Jesus' ministry included the activity of a Paraclete in relation to both his disciples and the world. According to George Parsenius,

Although the place of the Paraclete in the history of ancient religious thought is hard to pinpoint precisely, the role of the Paraclete within the Gospel is relatively clear. He represents Jesus, after Jesus has departed. What is said of the Paraclete is modeled on what is said about Jesus, especially in the first Paraclete passage (14:15–17).<sup>221</sup>

Lincoln's monograph echoes essentially the same principle, viewing the Paraclete as a substitutionary manifestation of the underlying mission of Jesus.<sup>222</sup>

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<sup>220</sup> John 14:15-17.

<sup>221</sup> George L. Parsenius, *Departure and Consolation: The Johannine Farewell Discourses in Light of Greco-Roman Literature* (Leiden: Brill, 2005), 85.

<sup>222</sup> Lincoln, *Truth on Trial*, 111: "Since the Spirit of truth is described as another Paraclete, this underscores the narrative's presentation of Jesus. Both his earlier witness in the public ministry and his later witness before Pilate are

The second Paraclete passage in John is clearly oriented toward revealing the entity's more specific identity as the Holy Spirit, while also maintaining the training of the disciples in the wake of their master teacher's imminent departure. Jesus has assured his disciples that he will "not abandon them to be orphans" (Οὐκ ἀφήσω ὑμᾶς ὀρφανούς), which could represent a class of people lacking a voice under the law. Jesus has also prioritized the necessity of keeping all of his commandments and expressing love toward him, through which the divine son and father will establish a home with their followers. With these instructions given out, the Spirit-Paraclete emerges as the new master teacher.

Ταῦτα λελάληκα ὑμῖν παρ' ὑμῖν μένων· ὁ δὲ παράκλητος, τὸ πνεῦμα τὸ ἅγιον ὃ πέμψει ὁ πατήρ ἐν τῷ ὀνόματί μου, ἐκεῖνος ὑμᾶς διδάξει πάντα καὶ ὑπομνήσει ὑμᾶς πάντα ἃ εἶπον ὑμῖν.

"I have spoken these things to you while I remain among you; but the Paraclete, the Holy Spirit, whom the Father will send in my name, He shall teach you all things and will remind you of all things which I have spoken to you."<sup>223</sup>

As both teacher and Spirit of truth, the Paraclete ensures that the strict dualism between believer and non-believer can be confirmed through divine authority, an authority that issues directly from the highest authority, the divine father, and is further sanctioned through Jesus' direct act of commissioning the spirit-entity.

Ὅταν ἔλθῃ ὁ παράκλητος ὃν ἐγὼ πέμψω ὑμῖν παρὰ τοῦ πατρός, τὸ πνεῦμα τῆς ἀληθείας ὃ παρὰ τοῦ πατρὸς ἐκπορεύεται, ἐκεῖνος μαρτυρήσει περὶ ἐμοῦ· καὶ ὑμεῖς δὲ μαρτυρεῖτε, ὅτι ἀπ' ἀρχῆς μετ' ἐμοῦ ἐστε.

When the Paraclete comes, whom I shall send to you from the Father, the Spirit of Truth who goes out from the Father, He shall testify concerning me, and you also shall testify, because you have been with me since the beginning.<sup>224</sup>

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that of a Paraclete, advocating his own case, which is also the case of God, in the trial of truth within the world. Conversely, the Spirit is continuing the forensic role of Jesus in the continuing lawsuit after the glorification of Jesus."

<sup>223</sup> John 14:25-26.

<sup>224</sup> Ibid., 15:26-27.



The testimony concerning Jesus as divine savior cannot take place absent of a divine envoy bearing the approval of the highest authorities in the heavens. This power declares only what it has heard from above, which includes those things yet to take place (καὶ τὰ ἐρχόμενα ἀναγγελεῖ ὑμῖν, 16:13).

The Paraclete, while representing the mission of Jesus and the security of his disciples, does not merely act as an advocate, since he also plays the role of accuser on the large stage of human salvation, where the prosecution of the Satan takes place.

Καὶ ἔλθων ἐκεῖνος ἐλέγξει τὸν κόσμον περὶ ἁμαρτίας καὶ περὶ δικαιοσύνης καὶ περὶ κρίσεως· περὶ ἁμαρτίας μὲν, ὅτι οὐ πιστεύουσιν εἰς ἐμέ· περὶ δικαιοσύνης δέ, ὅτι πρὸς τὸν πατέρα ὑπάγω καὶ οὐκέτι θεωρεῖτέ με· περὶ δὲ κρίσεως, ὅτι ὁ ἄρχων τοῦ κόσμου τούτου κέκριται.

And when He comes, he shall convict the world concerning sin, and concerning righteousness and condemnation. Concerning sin indeed, because they do not believe in me. And concerning righteousness, because I am going back to the Father and you no longer see me. And concerning condemnation, because the ruler of this world has been condemned.<sup>225</sup>

This passage captures the Paraclete's power to condemn, yet likewise to preserve the sharp dualism between believers and non-believers, whose chief representative is "the ruler of this world" (ὁ ἄρχων τοῦ κόσμου τούτου). The archon is naturally the Satan, whose traditional Jewish role as accuser and judge has been superseded, whereby he incurs condemnation by the Paraclete, who now becomes both prosecutor of the world and defendant of the redeemed. These dual powers of the paraclete, to both prosecute the supernatural enemy of the world and to preserve God's redeemed community, form the basis of the entity's prolonged stay with this

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<sup>225</sup> Ibid., 16:8-11.

early community of Christ-believers.<sup>226</sup> Prosecuting the Satan ranks among the most powerful forms of defense available for a congregation confronting Jesus' prolonged absence.

#### 4.4 Conclusion

When observing, on the one hand, the many apocalyptic writings of early Judaism, and looking forward, on the other, toward the vast corpus of rabbinic literature, it is evident that the performative nature of the advocate shows a close relationship to the soteriological and eschatological orientations of the text tradition in question. Contrary to the urgency exhibited by several apocalyptic texts, where intercessory speech involves a desperate situation demanding an immediate divine response, Philo and John have generally scaled back the make-it-or-break-it nature of the moment and instead integrated advocacy within a broader scheme of salvation that emphasizes the ongoing nature of the divine-human relationship. Philo, however, may retain the urgency associated with advocacy when dealing with worldly situations, as is evidenced in the predicament of his adversary Flaccus.

Philo's soteriology leans heavily toward an individual consummation of things, where the release of the soul from its bodily tomb marks the apogee of spiritual ascension. Because the

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<sup>226</sup> This dual function has precedent in the Hebrew Bible. Consider Jeremiah 18:20b-21, where the prophet recalls his advocacy on behalf of Judah but now entreats Yahweh that the people be condemned:

זָכַר אֲנִי לְפָנֶיךָ לְדַבֵּר עֲלֵיכֶם טוֹבָה לְהָשִׁיב אֶת-חַמַּתְךָ מֵהֶם  
לְכֹל אֲשֶׁר בְּגִיְתָם לְרָעָב וְהַגֵּרָם עָלָיִךְ חָרֵב וְתִהְיֶינָה נְשֵׁיהֶם שְׂפֵלוֹת וְאַלְמָנוֹת וְהָיוּ תַרְגֵּי מָוֶת  
בְּתוֹרֵיהֶם מִכִּי חָרֵב בְּמַלְחָמָה

“Remember when I stood in your presence in order to speak well on their behalf, so as to turn back your wrath from them. On these grounds, give up your children to famine, deliver them over to the power of the sword; let their wives become childless and widows, their men victims of slaughter, their first-born smitten by the sword in battle.”

rewards and punishments associated with either obeying or disobeying one's divine nature normally refer to current conditions rather than permanent outcomes, it makes sense that advocacy before the divine derives from the awakened soul's ability to represent the individual pursuing passage from the carnal to a spiritual lifestyle. Thus emerges the largely expiatory function of the Paraclete, acting as a mediator between the human and divine.

John's Gospel also merits special consideration in anticipation of the early rabbinic theology which developed over the course of the first three centuries CE. First, the diverse functions of the Johannine Paraclete demonstrate the adoption of Greek forensic language to the theatre of early Jewish sectarian discourse. While the identity markers of the Christ-believers in this Gospel appear to drift in and out of an unstable and quite porous first-century environment of Jewish sectarian belief, the application of advocacy to a strong dualistic conception of believers confronting the world remains a signature attribute of the Johannine Paraclete. Its role is strongly oriented toward the collective, a community of the spirit whose survival and salvation depends on the defense and security the Paraclete affords.

This discussion has advanced the argument that, in John's Gospel, the Paraclete operates as a legal-soteriological placeholder for the community's salvation within an inaugurated eschatological setting. While the eschatology is largely in a realized state by virtue of the community having a divine figure reside within its midst, the focus on future, consummate restoration still remains operative. In consequence, despite the qualitative degrees of difference between this outlying Gospel and the early rabbinic writings, I will argue in the next chapter that the latter's inaugurated eschatology is manifest in its own advocacy episodes, and in that respect shares a common orientation with the one Gospel that sheds much of the apocalyptic theology of the Synoptics.

By virtue of the Johannine Paraclete's vital office, several supplementary claims have been made: (1) the multiple functions of the Paraclete belong to a broader forensic title now grafted onto the Holy Spirit, such that conviction and defense still represent a major responsibility of the Paraclete, but not its only one; (2) that the expiatory function of the Paraclete signals a shared feature common to much of the advocacy passages in Second Temple literature, that of converging atonement with supporting speech; (3) the Paraclete's ability to convict and defend marks a contrast with the apocalyptic divine court, which often assigns these functions to various angelic figures and prophets; and (4) the Paraclete's emanation from God makes it the ideal candidate for legitimizing a sectarian community positioning itself in stark opposition to both its religious siblings, represented by the *Iudaioi*, and the more numerous enemy represented by the world.

Beyond these comparative theological assessments regarding Philo and John, in broader terms it is clear that the soteriological function of the Paraclete—and in Philo's case other intercessory figures—constitutes an ongoing perspective through which to assess the role of advocacy in late ancient Jewish literature. In as much as crisis characterizes the backdrop of supporting speech before the deity, the eschatological orientation weighs heavier on the scale of urgency and futuristic considerations. To the extent, alternatively, that the eschatology is more realized, advocacy assumes a more expiatory function, atoning for sin in the here and now in order to further cultivate the community of the redeemed. Finally, Philo and John both indicate that, even in situations involving advocacy on behalf of the individual, the welfare of the collective is hardly an afterthought. Whether it is a community guided by the spirit, an awakening of the conscience through the Paraclete, or a national restoration, such advocacy episodes incorporate

the corporate welfare of the Jewish community in question. This tendency persists to even greater lengths in the rabbinic literature, to which the next section of this dissertation now turns.

## Chapter 5: Advocacy in Early Rabbinic Literature

### 5.1 Introduction

The current chapter examines evidence in early rabbinic writings for the convergence of Greek, Roman, and Jewish terminology pertaining to advocacy and accusation. The question is raised as to how brief, isolated occurrences of supporting speakers participated in the soteriological perspectives of the Tannaim, mainly in relation to legal discussions, expiatory phenomena, and the collective welfare of Israel. This chapter inquires further as to what extent advocacy language retained an eschatological orientation, whether that be in terms of national restoration, prophetic assurances, or an ongoing state of inaugurated eschatology. As with the preceding discussions of pre-rabbinic authors, the primary approach to these texts is soteriological, examining how both legal and devotional orientations toward salvation provide a context for evaluating the functions advocates and accusers occupy within early rabbinic texts. While instances of advocacy and the application of its terminology to new situations are sparse within the tannaitic corpus, it is still clear that the act of supporting speech has left its imprint in tannaitic literature by virtue of a few signature passages, two in particular from *Mishnah Abōt*. The analysis will further explore evidence as to whether any of these theological settings suggest tannaitic references to a strong Roman presence, along with the possible assimilation of Greek or Roman argumentative strategies.

This chapter will first argue for an early rabbinic emphasis on inaugurated eschatology, portraying a restored Israel both anticipated and in process, which in the arena of advocacy expresses a diminished state of urgency in comparison with Jewish apocalyptic. In tannaitic writings, intercessory speakers generally need not function within an atmosphere of imminent condemnation or acquittal. Nonetheless, the late Second Temple tendency to substantially

minimize human initiative within the salvation process is sometimes retained in tannaitic intercessory discourse. This is not to advocate that, broadly speaking, the tannaim are averse to human participation in the salvation process, a claim which would be errant on several grounds. Earned merit surely forms an essential component of rabbinic soteriology; yet episodes warranting advocacy present an uncomfortable reminder of occasions where earned merit cannot entirely remove the need for direct divine intervention in order to safeguard salvation. Texts revealing the presence of an intercessory advocate tend to gravitate toward the temporary helplessness of the human condition within such circumstances, thereby necessitating the intervention of some divinely empowered entity willing to speak on behalf of the afflicted.

This chapter will further argue for the unique positioning of the tannaitic rabbis within Greek and Roman intellectual and imperial culture, acting as both assimilators of and resisters to outside cultural forces. Such cultural adaptation helps explain the early rabbinic tendency to focus on daily rituals of salvation as opposed to eschatological urgency. Examining the cultural and religious identity of the tannaitic writings in relation to developments in Greek literary culture, especially the Second Sophistic, shows the rabbis both employing Classical legal categories while simultaneously resisting any encroachment on their juridical independence. The tension between Jewish assimilation of and resistance to Greek and Roman culture may have affected their legal, homiletical, and midrashic presentations of advocates. At once an enemy to the rabbinic courtroom and an atoning force for the people of Israel, the inconsistent approach to advocates reflects the larger assimilation-resistance paradigm of the early rabbis.

Advocacy passages in early rabbinic literature exhibit tension, therefore, between the tannaitic distrust of professional advocates practicing adversarial justice, on the one hand, and Israel's occasional need for intercessory speech, which signals a pushing back against strict inquisitorial

justice. An underlying motive, therefore, of either distrust or the encouragement of advocacy is an effort to ensure Israel's short and long-term salvation in exile. Discouraging the practice of adversarial justice gives legal priority to God's principles of judgment, seen as an immediate advantage to Israel's well-being. Alternatively, enlisting the help of a supernatural advocate could provide additional security for Israel if the scales of sin and righteousness were wavering in the balance.

Finally, this chapter's interpretation of the rainmaker narrative in *Mishnah Ta'anit* 3.8 will argue that advocacy occasionally participates in the reconciliation of imminent crisis with the orderly rabbinic universe. In this event, the halakhic procedure for attaining salvation through human merit falters, and an advocate must petition God to restore the balance; yet the overall atmosphere of salvation through the accumulation of divine merit is sustained, much like the restoration of a lapsed power grid or the containment of a wildfire restores human faith in the capacity of the social and economic infrastructure to ensure well-being.

## **5.2 Inaugurated and Restoration Eschatology in the Tannaitic Literature**

Unlike the highly charged eschatological environment characteristic of early Jewish apocalyptic, the contexts of supporting speech and intercessory media in the tannaitic period are generally situated within an idealized state of Israel functioning properly—in great measure a textual performance—which is reflective of an inaugurated eschatology that often exhibits a textual underselling of Jewish exile and Roman imperial sovereignty. In the aftermath of the First Jewish War and the vanquished Second Temple, teleological questions of salvation had



preoccupied apocalyptic Judaism and early Christianity.<sup>228</sup> Traditions of salvation developed in texts such as the Mishnah, by contrast, frequently present a virtual escape into an undisturbed, well-regulated Jewish existence within the land of Israel. Here the temple and priesthood, although occasionally mentioned in pejorative terms reflecting corruption and decay,<sup>229</sup> frequently function in a tranquil state of serenity, achieving in the romanticized, abstract world of the text what would have been difficult for many Jews to accomplish in the bitter trenches of reality. Despite two failed Jewish insurrections and the shameful expulsion from Jerusalem following the Bar Kokhba revolt, the Mishnah, and the tannaitic literature in general, makes little appeal to bleak events on the ground or any renewed hope of some imminent eschatological deliverance.<sup>230</sup> Referring to the Mishnah's relationship to historical events, Jacob Neusner states, "We find no tractate dedicated to the destruction of the Temple, no complete chapter detailing the events of Bar Kokhba nor even a sustained celebration of the events of the sages' own historical lives."<sup>231</sup>

The early rabbinic Judaism of the *Tannaim* is thought to have developed in great part out of the events leading up to and following the destruction of the Jerusalem Temple, where the city

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<sup>228</sup> See for example the selections of texts in John J. Collins, *The Apocalyptic Imagination: An Introduction to the Jewish Matrix of Christianity* (Grand Rapids, MI: Eerdmans, 1998), where salvation and ultimate outcomes for both individuals and groups are consistently stated in universal terms.

<sup>229</sup> *m. Sotah*, 9:13-15; *t. Sotah* 15.

<sup>230</sup> Lawrence H. Schiffman, "Messianism and Apocalypticism in Rabbinic Texts," in *The Cambridge History of Judaism, Volume 4: The Late Roman-Rabbinic Period*, ed. Steven T. Katz (Cambridge: Cambridge University Press, 2006), 1063-1064: "Tannaitic Judaism moves away from the utopian aspects of messianism, seeing these as having led to the terrible destructions Israel experienced. It continues to hope for restorative messianism, for the rebuilding of the Temple and Jerusalem, and for the Davidic king. For this reason, the system of sanctification of Israel which the Mishnah calls for, in a period when there is no king, there is no High Priest, and there is no Temple, is still one that assumes that these institutions constitute perfection."

<sup>231</sup> Jacob Neusner, *Messiah in Context: Israel's History and Destiny in Formative Judaism* (Philadelphia: Fortress Press, 1984), 20.

and its monumental architecture ceased to be major centers of Jewish identity and practice.<sup>232</sup> Yet within the Mishnah, the Temple retains its place in the daily affairs of an imaginary, sovereign Jewish state. Many scholars have argued that the rabbinic movement coalesced around extra-temple forms of piety that had been developing at least a century prior to the First Jewish War against Rome (66-74 C.E.).<sup>233</sup> Nevertheless, the Mishnah and Tosefta normally frame such ritual and practice within a reality which still presupposes the centrality of both Jerusalem and a functional temple. Extra-temple forms of piety sometimes even converge with either the tacit or explicit acknowledgment of the institution's demise, demonstrating the Mishnah's occasional tenuous boundaries between the ideal and reality:

To sum up: although mPe'ah 1:1 does not mention that the Temple is destroyed or that certain practices are not viable, in listing and elevating a particular set of biblical precepts it reminds people that extra-Temple or extrasacrificial rites exist, thereby responding to the needs of those shaken by the Temple's loss.<sup>234</sup>

The very existence of tractates devoted to both the "daily sacrifices" (*Tamid*) and temple dimensions (*Middot*) underscores a Judaism still heavily invested in the land of Israel and its Temple as central loci of a textually enduring Judaism.<sup>235</sup> Yet the mishnaic literature often appears more extreme in its retention of its idyllic Israel than comparative material from other tannaitic sources, evidenced in part by the retention of Temple-oriented forms of piety and the periodic ignoring of extra-Temple forms. Alexander Guttman suggested, for example, that

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<sup>232</sup> For the periodization of mishnaic traditions, see Jacob Neusner, "The Use of the Mishnah for the History of Judaism Prior to the Time of the Mishnah: A Methodological Note," *JSJ* 11, no. 2 (Dec 1980): 177-85.

<sup>233</sup> Lawrence H. Schiffman, "From Temple to Torah: Rabbinic Judaism in Light of the Dead Sea Scrolls," *Shofar* 10, no. 2, (Winter 1992): 9.

<sup>234</sup> Baruch M. Bokser, "Rabbinic Responses to Catastrophe: From Continuity to Discontinuity," *PAAJR* 50 (1983): 43-44.

<sup>235</sup> Yaron Z. Eliav, "The Temple Mount, the Rabbis, and the Poetics of Memory," *HUCA* 74 (2003), 53: "Time and again the sages of the Mishnah and the Talmud reilluminate various aspects of Jerusalem and the Temple, thus fixing them within the deepest layers of their consciousness and setting them as the perpetual background, if not the actual scenery, of their multifaceted literary enterprise."

several non-Mishnaic tannaitic laws specific to Jerusalem, found for example in *Avot de-Rabbi Natan* I.35 and *Tosefta Nega'im* 6, where the theoretical basis often presupposes the holy city under non-Jewish rule, were irrelevant to the final redaction of the Mishnah, since such laws would be unnecessary in a Jewish Jerusalem. Conversely, laws impossible to fulfill under Roman control, yet operative in a restored Jerusalem and Temple, receive extended treatment.<sup>236</sup>

In short, the physical absence of Jerusalem and the Second Temple as primary centers of Jewish identity, an indefinite period of imperial subjugation both within Palestine and the Diaspora, and the ongoing Greek and Roman cultural presence provided the backdrop for a salvation process that was surprisingly restorative and inaugurated in its eschatology. The irony of textual Israel redeemed, within a sociohistorical setting hardly suggesting Jewish restoration, signifies the soteriological context in tannaitic literature for passages presenting divine or human advocacy. Here the rabbis could scoff at the idea of a professionally paid advocate in the human court while accepting the efficacy of appeals within Greek and Roman rhetorical styles. Immersion in the divinely granted Torah, along with its application to civil and criminal law, made for a just society. Nonetheless, establishing a theological spectrum of intercessory substitutes going by the name of Paraclete, or some other closely related title, demonstrates an additional means by which a stable Israel conceived in the text could ensure salvation during moments of sin, crisis, or every day religious practice. Just as the Mishnah characterizes Israel as sovereign, retaining a functional temple and generally downplaying the presence of imperial hegemony and extra-Temple piety forms, so too the rabbinic legal and ritual system imagines a purely inquisitorial form of justice. This allows the rabbis to represent the legal values of the God of Israel. The presence of adversarial advocates was naturally understated, while an

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<sup>236</sup> See Alexander Guttman, "Jerusalem in Tannaitic Law," *HUCA* 40/41 (1969-1970): 256 ff.

expiatory advocate within ritual practice was better off being associated with the Temple and sacrificial system. Breaks in this neatly running system, like the Mishnah Taanit's recollections of Honi the Rainmaker advocating for Israel, are the exceptions that prove the restorative eschatological rule.

### 5.3 Greek and Roman Cultural Context

Scholars have disagreed as to the degree of rabbinic assimilation of imperial Roman culture, positions ranging somewhere from the rabbis as a countercultural religious force resisting Romanization, on the one hand, to a deeply integrated rabbinic class of provincial elites both participating and identifying with their imperial sovereigns. Therefore, the degree of Greek and Roman cultural markers within early rabbinic literary production merits some comment before proceeding.<sup>237</sup> Within the sphere of legal discussions, the boundaries between assimilation and resistance have implications for the discussion of advocates, in as much as the host imperial culture could conceivably be condemned for its practice of adversarial justice, while the very rabbinic texts denigrating such traditions may have assimilated legal settings and rhetorical devices from the Greeks and Romans and injected them into their writings. Tensions between assimilation and separatism suggest, therefore, that the examination of early rabbinic legal

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<sup>237</sup> On the general boundaries of interpretation, Nicole Belayche, *Judaea-Palaestina: The Pagan Cults in Roman Palestine (Second to Fourth Century)* (Tübingen: Mohr Siebeck, 2001), 293, which summarizes the relationship between assimilated Jews and polytheistic religions in Palestine as a separatist existence characterized by “benevolent neutrality”; Seth Schwartz, in *Imperialism and Jewish Society: 200 B. CE. to 640 CE.* (Princeton: Princeton University Press, 2001), has advanced the argument that the rabbis remained a marginal group during the tannaitic period, when most of Jewish life and ritual had been obliterated and overcome by imperial culture. Hayim Lapin, *Rabbis as Romans: The Rabbinic Movement in Palestine, 100-400 CE.* Oxford: Oxford University Press, 2012, presents the rabbis as a Romanized class of pietists, who patterned their social, educational, and ritual habits largely according to Roman models. For an engaging review of Lapin's thesis, see Ishay Rosen-Zvi, “Rabbis and Romanization: A Review Essay,” in *Jewish Cultural Encounters in the Ancient Mediterranean and near Eastern World*, ed. Mladen Popović, Myles Schoonover, and Marijn Vandenberghe (Leiden: Brill, 2017), 218-245.

language and courtroom scenarios should stay alert for cultural convergence.<sup>238</sup> With regard to accusers and defendants, the tension is quite real, as with the contrasts between adversarial and inquisitorial justice or the transfer of intercessory speech to the non-professional sphere of holy men. This discussion attempts to provide a basis for how this tension may have impacted tannaitic episodes of accusers and advocates, the employment of advocacy terms in the articulation of Jewish theological principles, and texts that consider advocacy within Greek or Roman cultural or rhetorical settings. In keeping with the broader theme of this study, questions related to soteriological claims remain in the forefront; that is, when advocacy is referenced, how do the tensions between cultural immersion and confrontation impact important components of rabbinic salvation doctrine?

How strongly sociocultural convergence and resistance affect the early rabbinic construction of advocacy is especially relevant when considering the commonly quoted advocacy statements in *Mišnāh Abōt* (1:8; 4:11). Amram Tropper has offered, regarding cultural borrowing in *Abōt*, an important perspective on tannaitic literary works in general.

In analysing the broad context for *Avot*, one discovers that many features of the gentile Near East resemble aspects of the rabbinic world portrayed in *Avot*. On the one hand, it is possible that unrelated historical processes led two distinct cultures to converge upon these shared features. On the other hand, the geographical and temporal proximity of these cultural spheres suggests that the underlying forces were linked by more than incidental convergence.<sup>239</sup>

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<sup>238</sup> On examples of specific rhetorical devices employed toward rabbinic legal argumentation, Henry A. Fischel, “The Uses of Sorites (Climax, Gradatio) in the Tannaitic Period,” *HUCA* 44 (1973): 119-151; on qualifications for legal witnesses, Orit Malka, “Disqualified Witnesses between Tannaitic Halakha and Roman Law: The Archeology of a Legal Institution,” *Law and History Review* 37, no. 4 (Nov 2019): 903-936; on personal injury, Jonathan A. Pomeranz, “The Rabbinic and Roman Laws of Personal Injury,” *AJS Review* 39, no. 2 (Nov 2015): 303-331.

<sup>239</sup> Amram Tropper, *Wisdom, Politics, and Historiography: Tractate Avot in the Context of the Graeco-Roman Near East* (New York: Oxford University Press, 2004), 136.

Rather than consider this intersection as deliberate, Tropper frames it within an environment of “adaptation and assimilation, a process in which the rabbis inhabited the ‘discursive space’ of the period.”<sup>240</sup> Such adaptation, I would argue, points toward a complex presence of cultural compromise present in the tannaitic corpus. On the one hand, the rabbis have absorbed a great deal of Greek and Roman rhetorical technique into their argumentation process; on the other hand, their struggle to maintain the image, deserved or not, of legal independence helps explain their nuanced attitude toward advocacy.

It is thought-provoking, in this regard, that the Second Sophistic, emerging within the apex of the Roman Empire, ran its course along the approximate timeline for the emergence and development of tannaitic oral tradition until the redaction of the Mishnah and the period shortly thereafter. Tropper comments that “both *Avot* and *Lives of the Sophists* review the history of a movement in the East that thrived from the mid-first century until, at least, the early third century.”<sup>241</sup>

Martin Goodman has observed the “selective adaptation” of Greek learning modes by early rabbinic sages as follows:

On the highest level of culture, then, Galilean Jews possessed educational institutions not dissimilar in method to the Greek sophistic ones but quite different in content. Whereas the Greek system concentrated on the perfection of rhetorical style, the Jewish equivalent was the perfection of acute insight into problems in the law, but just as the Greek academies developed from the private audience of the individual teacher described in Philostratus to the great schools with their enthusiastic student traditions described by Eunapius, so the Jerusalem Talmud reflects the complete institutionalization of the *beit hamidrash* with the great building at fourth century Tiberias and the excessive zeal of masses of students.<sup>242</sup>

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<sup>240</sup> Ibid.

<sup>241</sup> Tropper, *Wisdom, Politics, and Historiography*, 147; For the dating of the Second Sophistic, S. Swain, *Hellenism and Empire: Language, Classicism and Power in the Greek World AD 50–250* (Oxford, Clarendon Press, 1996), 2–3; Timothy Whitmarsh, *The Second Sophistic* (Oxford: Oxford University Press, 2005), 3–22.

<sup>242</sup> Martin Goodman, *State and Society in Roman Galilee, AD 132–212* (Totowa, NJ: Rowman and Allanheld, 1983), 80–81.

While the teaching, study, performance, and advancement of rhetoric had continued uninterrupted through the Attic and Hellenistic period eras, what distinguished the Second Sophistic from its predecessors was its popularity, polish, and new connections to Greek civic and political life under the hegemony of the Roman Empire.<sup>243</sup> While this educational movement demonstrated aspirations to power through the formation of an elite class, one distinguished by superior privilege to education, Attic language, and classical history,<sup>244</sup> its reverberations extended well beyond the eastern Greek cities from which it spawned. Shared Greek and Jewish elements of this cultural phenomenon, therefore, are worth noting: the rewriting and romanticization of the classical Greek or Israelite past; the celebration and preservation of the earlier Attic or Hebrew language; reflections on revered intellectual traditions; attributions to an esteemed founder; the teacher-disciple relationship as the vehicle for preserving sacred traditions; and the ascendancy of both rhetoric and halakhah as sacred scholarly identity markers within a spirit of reflection upon the distant, romanticized past.<sup>245</sup> What is striking, moreover, regarding these parallels, is the Roman imperial environment within which both traditions honed their craft. Both educated Jews and Greeks, permitted by their imperial sovereigns to pursue the finer depths of their religious and philosophical traditions, seized this opportunity to represent such traditions as flourishing within a microcosmic enclave, textually isolated from the harsh realities of imperial encroachment on their most sacred lands and institutions.

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<sup>243</sup> Regarding the finer distinctions between a rhetor and a sophist, see G. W. Bowersock, *Greek Sophists in the Roman Empire* (Oxford: Clarendon Press, 1969), 12-15.

<sup>244</sup> Swain, *Hellenism and Empire*, 421.

<sup>245</sup> Tropper, *Wisdom, Politics, and Historiography*; See further, with emphasis on the amoraic period but offering initial focus on tannaitic antecedents, Martin S. Jaffee, *Torah in the Mouth: Writing and Oral Tradition in Palestinian Judaism, 200 BCE - 400 CE* (Oxford: Oxford University Press, 2001), 128-140.

Phillip Alexander has categorized his comparisons between early rabbinic midrash and Classical learning according to (1) exegesis of foundational texts such as Homer; (2) law and jurisprudence; (3) rhetorical lines of argument; (4) and dream interpretation.<sup>246</sup> In terms of legal interpretation (*interpretatio*), toward the turn of the fourth century BCE, men of elevated social rank in Rome began undertaking the ongoing project, as jurists, of interpreting legal procedure and rulings. They emerged as legal authorities from whom judges and advocates might solicit advice. While beginning as a non-bureaucratized position, the reign of Hadrian had already seen these jurists becoming institutionalized to the point of advising all magistrates as to the proper application of the law. Alexander sees in the Rabbis a correlation through their opportunity of inheriting the role of the scribes who had interpreted laws after the Babylonian exile. The rabbis, like the Roman jurists, experienced a gradual ascendancy in their vocation as legal advisers and interpreters, until they regularly advised judges and litigants, composed responsa, and became increasingly institutionalized as a professional class.<sup>247</sup> While acknowledging that such comparison applies to the broad playing fields of both the ancient Roman and rabbinic legal systems, Alexander still summarizes his findings as follows:

The function of interpretation in the development of the law, the role of the jurists, the literary forms of commentary and their Sitz im Leben, and the techniques and methods of interpretation, all appear to be broadly the same in both systems.<sup>248</sup>

Alexander has also addressed the parallels between rabbinic and Roman rhetorical techniques in the formation, development, and execution of an argument. Perhaps the most obvious parallels

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<sup>246</sup> Philip S. Alexander, "Quid Athens et Hierosolymis? Rabbinic Midrash and Hermeneutics in the Greco-Roman World," in *A Tribute to Geza Vermes: Essays on Jewish and Christian Literature and History*, ed. Philip R. Davies and R. T. White, JSOT 100 (Sheffield: JSOT Press, 1990), 105.

<sup>247</sup> Alternatively, arguing against rabbinic institutionalization in Roman Palestine is Catherine Hezser, *The Social Structure of the Rabbinic Movement in Roman Palestine* (Tübingen: Mohr Siebeck, 1997), 185-227.

<sup>248</sup> Alexander, "Quid Athenis et Hierosolymis?" 115.



exist between the rabbinic *mīddōt*—Hillel’s renowned seven immediately coming to mind—and the Greek and Latin rhetorical handbooks such as the *Institutio Oratoria* and the *Ars Rhetorica*. One should also acknowledge the pervasiveness of Roman lawcourts and lawyer-advocates throughout the Greek-speaking Near East during the development of tannaitic literature and rabbinic study circles.<sup>249</sup> As Tropper states,

“In short, the presence of Roman legal jurisdiction and Greek-speaking lawyers in the Near East indicates that the fundamentals of Roman law were probably well known throughout the Graeco-Roman environment in Palestine.”<sup>250</sup>

Of further importance was the decline in the role of lawyers as advocates in assemblies by the close of Claudius’ emperorship, with the edicts and enactments of emperors within the rescript system often relegating lawyers to the role of jurist legal interpreters.<sup>251</sup>

The question of legal jurisdiction among Jews living as provincial subjects under Rome poses an interesting possibility regarding the distaste for Roman-style professional advocates. Both tannaitic and amoraic sources demonstrate a genuine concern that strict Jewish laws not only be applied independently of Roman law, but also that they be adjudicated exclusively by members of Israel themselves.<sup>252</sup> This concern for the authentic preservation of local law was not restricted to Jews but extended also to Greek subjects, who had maintained in their many provinces a complicated give-and-take regarding autonomy and assimilation with the imperial Roman

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<sup>249</sup> Crook, *Legal Advocacy*, 58-112.

<sup>250</sup> Tropper, *Wisdom, Politics, and Historiography*, 191.

<sup>251</sup> Tony Honoré, “Imperial’ Rescripts A.D. 193-305: *Journal of Roman Studies* 69 (1979): 51-64; By the same author, *Emperors and Lawyers*, 2nd ed. (Oxford: Clarendon Press, 1994).

<sup>252</sup> Natalie B. Dohrmann, “The Boundaries of the Law and the Problem of Jurisdiction in an Early Palestinian Midrash,” in *Rabbinic Law in Its Roman and Near Eastern Context*, ed. C. Hezser (Tübingen: Mohr Siebeck, 2003): 83-103.

culture.<sup>253</sup> The zealous concern for unhindered Jewish administration of Jewish law, whether occurring in the domain of performative theory or fact, would arguably rule out the professional advocate as a proper participant in litigation. The question of legal jurisdiction also raises the question of the authenticity of tannaitic sources with respect to not only the application of accepted legal principles but more specifically the place of an intercessory voice among such practice. Dohrmann, when analyzing early midrashic texts from this period, states that

“*literariness* (that is, as a source for the history of ideas, rather than a repository of more or less viable data for reporting history on the ground) is a valuable site for mining the *mentalité* of tannaitic culture (to the extent that we can posit such a thing), and specifically of tannaitic constructions of the *idea of the law* from the perspective of the subaltern.”<sup>254</sup>

The current discussion adopts a similar approach, one less concerned with historical veracity and more focused on literary representations that, while at times influenced by historical contexts rooted in reality, are more often concerned with performative law and theology, an idealized construction of the intersection between law and divine sovereignty which addresses humanity’s prospects for worldly order and spiritual salvation in the face of imperial rule.

The environment of the tannaim reflects a sophisticated literary-religious culture focused on the preservation of Hebrew language, celebration and reinterpretation of the past, teacher-disciple relationships, and sophisticated discussions of religion and law. Adapting these cultural expressions under Roman imperial authority further explains the theological underpinnings of early rabbinic soteriology. If the Tannaim had largely adapted to Roman social, political, legal, and educational institutions during the early centuries of the Common Era, it follows that their theological outlook would trend more toward the sanctification of life in the here and now.

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<sup>253</sup> See, for example, Jesper Majbom Madsen, *Eager to be Roman: Greek Response to Roman Rule in Pontus and Bithynia* (London: Duckworth, 2009), 53-59; 81.

<sup>254</sup> Dohrmann, “The Boundaries of the Law,” 83-4.

Rabbinic legal discussion would reflect a means of determining the various paths toward daily sanctification and righteous living, not so much in anticipation of imminent divine judgment, but as a means of both maintaining religious independence and safety in view of the formidable power wielded by Roman imperium. It is within these largely interconnected spheres of theology and culture that the literary expression of advocacy in tannaitic literature is better understood.

#### **5.4 Text Analysis 1: Advocates for Hire and Divine Paracletes**

With the above theological, legal, and rhetorical factors in view, in terms especially of how they inform rabbinic soteriology, a close reading can begin of selected tannaitic texts communicating advocacy, be it within worldly or divine courtroom settings. One may recall that Philo's attitude toward courtroom defenders remains one of the earliest Jewish criticisms of the Roman institution of advocates for hire. His perspective anticipates by at least two centuries the position of the halakhic midrash, *Mekhilta d'Rabbi Yishmael*, which in its interpretation of Exodus 23:7a, issues a stern admonition against judges tempted to allow a place for advocates in the courtroom. The suspicion surrounding dishonest speech, as with Philo, constitutes the main objection against advocates in worldly trials. Isolating the text's admonition apart from its larger literary context, however, limits the possibility of a more nuanced interpretation. Warnings against advocacy for hire form part of a broader rabbinic argument against judicial corruption in general. This text, therefore, remains more focused on the integrity of the judges than on the categorical rejection of professional advocacy.

The content and rabbinic exegesis of MRI *Kaspa* deal with the statutes found in the biblical book of Exodus 22:24-23:19. Book 23 of the *Mekhilta* contains commentary applying many

sections of the Exodus Covenant Code to how the rabbis should better serve as judges in civil and criminal settings. Such situations include when and when not to side with the majority of the other judges (MRI 23:2), the inadvisability of favoring either the rich or poor litigant (23:3), not favoring one who is deficient in fulfilling Torah commandments (6), the meaning of a “clean” or “righteous” individual (וצדיק נקי) in relation to capital punishment (7), and prohibitions on judges receiving bribes (שחד, 8). Situated within these biblical ordinances is the command to distance oneself from falsehood, which in this case probably centers on the judge either heeding or giving voice to a false testimony. The midrash interprets Exodus 23:7a as follows:

מדבר שקר תרחק (וגו') הרי זה אזהרה למדבר לשון הרע. דבר אחר, הרי זה אזהרה לדיין שלא יושיב אצלו דיין בור. ד"א, שלא יעמיד אצלו סניגורין שנאמר עד האלהים יבא דבר שניהם. ר' נתן אומר, מדבר שקר תרחק, אזהרה לפרוש מן המינות. וכן הוא אומר, ומוצא אני מר ממות וגו'

“Keep far away from speaking falsehood” (Ex. 23:7). Behold, this is a warning against engaging in evil speech. Another opinion [argues that] this is a warning to the judge that he not appoint alongside him an uncultivated judge. Another opinion [argues] that he (the judge) does not place before him advocates for hire, As the Scripture says, “The case of both litigants shall come before God.” Rabbi Nathan says, “‘Keep far away from speaking falsehood’ is a warning to separate oneself from the heretics.” And likewise he says, “I find more bitter than death [the woman who is a snare]” (Eccl. 7:26).<sup>255</sup>

The midrash is attending to undesirable practices among the judges, with each instance of corruption sharing the crime of deceitful speech, which compromises a properly functioning courtroom. Professional advocates fall in with uncultured judges, heretics, and the traditional, misogynistic construction of the vilified temptress. Hired advocates, like these other objects of scorn, allegedly engage in dishonest speech.

When assessing judicial responsibilities in these passages, the defense of a litigant through persuasion meets resistance among the rabbis, most likely due to their perceived sense of

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<sup>255</sup> Hebrew text of the Mekhilta is taken from *Mekhilta de-Rabi Yishma'el* / עם חלופי גרסאות / eds. S. Horowitz and I.A. Rabin, reprint ed. (Yerushalayim: Shalem, 1997). Translations of tannaitic texts, unless stated otherwise, are my own.

responsibility to the God of Israel in the administration of justice. Given several passages in the surrounding text concerning siding with the majority, erring on the side of innocence, pronouncing one guilty without sufficient evidence, receiving of bribes, and speaking falsely as either judge or witness, the tendency in *MRI Kaspā* appears one of constructing a biblically based courtroom free from both the rhetoric of adversarial justice and the risks of strictly applied inquisitorial justice. An advocate for hire participates in deceitful persuasion and the perversion of truth, while the temptation to deal out a strict verdict, based on concrete yet insufficient evidence and testimony, negates the human side of a judge, who should appeal to God's mercy and forbearance as models for how to try criminal cases. *MRI*, while dissimilar to the Mishnah in its exegetical and rhetorical strategies, shares the same propensity to construct a courtroom existing as textual performance rather than pure, everyday reality. The rabbinic courtroom invokes the intimate presence of God, mediated through the Torah-observant ethical awareness of the judges.

While the admonition of *Mekhilta d'Rabbi Yishmael* is similarly attested in *Bavli Shevuot*,<sup>256</sup> other texts associate the practice of either legal or patron-related forms of advocacy with divine and human appeals before God, such that the appeal to an earthly judge provides some degree of perspective on how the advocate attempts to appease the divine sovereign. The tannaitic midrash *Sifre Deuteronomy*, for example, places Moses's blessing of the Israelites in Deuteronomy 33 within the setting of an advocate hired to represent a certain defendant.

ויאמר ה' מסיני בא וזרח משעיר - מגיד הכתוב שכשפתח משה - לא פתח לצרכם של ישראל תחילה, עד שפתח בשבחו של מקום. משל למה הדבר דומה? ללאיטור שהיה עומד על הבמה, ונשכר לו לאחר לדבר על ידי; ולא פתח בצרכי אותו האיש תחילה - עד שפתח בשבחו של מלך תחילה: אשרי עולה אמלכו, אשרי עולה מראיני, עלינו זרחה חמה, עלינו זרחה לבנה. והיו הכל מקלסים עמו - ואח"כ פתח בצרכי אותו האיש, וחזר

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<sup>256</sup> *b. Shevuot* 30b: ת"ר מנין לדיין שלא יעשה סניגרון לדבריו תלמוד לומר (שמות כג, ז) מדבר שקר תרחק / The Rabbis taught: 'From where do we learn that a judge should not practice advocacy regarding his counsel? The teaching states, "Keep far from speaking falsehood" (Ex. 23:7).

והתם בשבחו של מלך. אף משה רבינו לא פתח בצרכם של ישראל - עד שפתח בשבחו של מקום, שנ' ויאמר  
ה' מסיני בא וזרח, ואח"כ פתח בצרכם של ישראל - שנ' ויהי בישורון מלך, וחזר והתם בשבחו של מקום, שנא  
אין כאל ישורון

He (Moses) said, “The Lord came from Sinai and rose up [to them] from Sheir.” The Scripture informs [us] that when Moses began [the final blessing of Israel], he did not open [his speech] with the needs of Israel, [not] until he had first opened with the praise of the Holy One. A Parable: to what may this be compared? To an advocate who is standing at the tribunal, having been hired by another man to plead on his behalf. Now he does not open with the needs of that man first; [not] until he has first opened with praise of the king: ‘Exalted be our king, Exalted be our Lord. The sun has shined upon us; the moon has shined upon us; let all praising be with Him.’ Afterwards, [the advocate] opens with the needs of that man [whom he is defending]. Then he resumes and closes [his case] with praise of the king. Moses our teacher also did not open with praise of Israel, [not] until he had opened with praise of the Holy One, as the Scripture states, ‘The Lord has come from Sinai and rose up from Sheir.’ After this he opened with the needs of Israel. As the Scripture states, ‘He was king in Yeshurun,’ and then he returned and closed with praise of the Holy One, as the Scripture states, ‘There is none like the God of Yeshurun’.<sup>257</sup>

The midrash argues that, just as the advocate proclaims high honors to the king, likewise Moses praised the God of Israel before speaking on behalf of the Israelites. Such an analogy obscures the lines between human intercessors like Moses, pleading before the divine judge, and professional advocates pleading before imperial lawcourts. It is unclear why the writer sees no problem with comparing Moses’ type of defense with that of an advocate for hire. Perhaps this portion of the midrash was composed simply to present an analogy and took little interest in the distinctions between worldly litigation targeting an imperial sovereign, on the one hand, and human intercessory speech before the God of Israel, on the other.

The imperial lawcourt reference, however, where praise of the judge precedes argumentation, may reflect an actual historical process developing from the Augustan period forward, where advocates are believed by many legal historians to have secured qualifications increasingly

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<sup>257</sup> *Sifrei D'varim*, 343. Hebrew Text of *Sifre D'varim* taken from *Siphre ad Deuteronomium*, ed. Louis Finkelstein (New York: Jewish Theological Seminary of America, 1969).

derived from the authority of the Principate (*ex auctoritate principis*),<sup>258</sup> while the advocate's legal responsibility as a trained orator entailed official speeches of praise for the emperor.<sup>259</sup> The phenomenon may point to the broader development of Roman emperors functioning as supreme lawgivers, who from the time of Hadrian forward are increasingly characterized as representatives of weaker parties in the mediation of exemplary justice. Kaius Tuori's study on the expanding judicial functions of the Roman emperor, a process spanning from the Late Republic to the Severan emperors, notes the strong textual representation of the rescript system.

The process of petitioning and appealing to the emperor, both in lawsuits pending or finished, and seeking rescripts and other help from the emperor became a central feature of the interaction between the emperor and the people during the Antonine period, a development that even left its mark on the narratives about imperial jurisdiction. While much of the earlier narrative tradition had focused on gaining access to the emperor and having his ruling, the *libellus* procedure where one could write to the emperor and the emperor would answer changed the dynamics of petitioning considerably.<sup>260</sup>

Citing developments within the larger legal system of imperial Rome does not, of course, suggest a direct correspondence between tannaitic courtroom performances and those of the Romans. More to the point is the willingness of the rabbis to acknowledge the customary procedures of professional advocates as worthy of comparison with the formal speech adopted by Israel's apex prophet.

Other core texts containing tannaitic advocacy statements exist in two brief passages of *Mishnah Abōt*, which have acquired a considerable degree of currency as the default source for interpreting the rabbinic attitude toward advocacy. The following passages capture the tension

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<sup>258</sup> Anton-Hermann Chroust, "Legal Profession in Ancient Imperial Rome," *Notre Dame Law Review* 30, no. 4 (1955): 542-544.

<sup>259</sup> Caroline Humfress, "Laws' Empire: Roman Universalism and Legal Practice," in Paul J. du Plessis, ed., *New Frontiers: Law and Society in the Roman World* (Edinburgh University Press, 2013), 74.

<sup>260</sup> Kaius Tuori, *The Emperor of Law: The Emergence of Roman Imperial Adjudication* (Oxford: Oxford University Press, 2016), 239.

expressed between advocates-for-hire and supernatural spokespersons who contribute toward their client's likelihood of salvation. The first comes from *Aḥōt* 1.8.

יהודה בן טבאי ושמעון בן שטח קבלו מהם. יהודה בן טבאי אומר, אל תעש עצמך. וכשיהיו בעלי  
דינין עומדים לפניך, יהיו בעיניך כרשעים. וכשנפטרים מלפניך, יהיו בעיניך כזכאין, כשקבלו עליהם  
את הדין

Yehudah ben Tabai and Shimon ben Shetach received [the oral tradition] from them. Yehudah ben Tabbai used to say: “Do not conduct yourselves as advocates for hire, and when the litigants stand before you, they should appear equally as wrongful parties to a claim, but when they are dismissed from your presence, they should appear acquitted, since they have accepted the judgment upon themselves.”<sup>261</sup>

The Hebrew, עוֹרְכֵי הַדִּינִין, pertains to a professional title, signifying a courtroom advocate who is paid to plead in defense of a party facing prosecution. They are employed, interpreted hyperliterally, as “arrangers of legal arguments” to present before judges, and they may also function as advisers to either the judges or the defendants themselves.<sup>262</sup> Judah ben Tabbai and Shimon ben Shetach, in *Aḥōt* 1.8-9, are directing their counsel specifically to judges. The first statement argues for a non-partisan form of interrogation, treating the witnesses as equals in their potential for demonstrating guilt or innocence. This counsel pertains to how the judge's state of mind and method informs his ascertaining of the facts and ultimately his verdict. Verse 9 relates to the proper articulation of the judge's words, which can exert a profound influence on their audience. A judge, therefore, should conduct himself in a manner above the rhetorical strategies and oratory flourishes of the professional advocate. Similar to the admonitions in MRI, an exemplary courtroom on earth models the divine judge above, who exhibits no partiality among the Israelites and errs on the side of clemency.

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<sup>261</sup> *m. Avot*, 1.8.

<sup>262</sup> Jastrow, 1118.



Within the same text, on the opposite side of the advocacy spectrum, where divine attributes are willing to represent anyone belonging to the congregation of Israel, *Abōt* 4.11 promotes human appeal to heavenly advocates by those seeking expiation of and exemption from wrongdoings. The perspective is clearly soteriological.

רבי אליעזר בן יעקב אומר העושה מצוה אחת, קונה לו פרקליט אחד והעובר עברה אחת קונה לו קטגור אחד  
תשובה ומעשים טובים כתריס בפני הפרענות

Rabbi Eliezer ben Yaakov said, “The one who performs a single commandment acquires one Paraclete, while the one who transgresses a single commandment acquires one Accuser. Repentance and good deeds [serve] as shields in the face of punishment.”<sup>263</sup>

Richard Hidary briefly mentions this passage as evidence that the divine court is filled with prosecutors and advocates,<sup>264</sup> which on the surface appears to be true; but the surrounding literary context of the passage indicates the necessity for people to have representation before God, given that superhuman forces exist for the purpose of barring humanity’s entry into heaven. This notion that supernatural entities labor toward the condemnation of God’s people, evidenced in the abovementioned Second Temple literature such as Jubilees 1, predates early rabbinic theology; yet the rabbis offer their own unique perspective on the human condition before the heavenly court. As with the earlier counsel in *Abōt*. 1.8, the passage belongs to a litany of life-principles directed at the elite class of rabbinic scholars, sages, and judges. Many of the directives pertain to Torah study and practice (9-10), judgement (7-8), ethical behavior (1, 3), and salvation (2, 11). Verse 4.2 shows a similar principle, in this case the stockpiling of fulfilled commandments rather than transgressions, as each action results in the likelihood of a similar action to follow.

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<sup>263</sup> *m. Avot*, 4.11.

<sup>264</sup> Richard Hidary, *Rabbis and Classical Rhetoric: Sophistic Education and Oratory in the Talmud and Midrash* (Cambridge: Cambridge University Press, 2017), 240.

The sense of advocates being embodied in inanimate phenomena is quite common in rabbinic writings, with repentance and righteous deeds providing the same protection that a spokesperson would offer one in the face of an accuser. The eschatological setting is likely discoverable in light of general theological statements found elsewhere in *Abōt*, as in the claim that the world can be compared to a portico or doorway (פרוודור/πρόθυρον) to the world to come, a place of training and preparation (4:16).

רבי יעקב אומר, העולם הזה דומה לפרוודור בפני העולם הבא. התקן עצמך בפרוודור, כדי שתכנס לטרקלין

Rabbi Jacob said, “This World is similar to a portico facing toward the World to Come. Prepare yourself at the portico in order that you may enter the Triclinium.”<sup>265</sup>

In order to increase the odds of proper preparation, the advocacy provided by the Paraclete stores up merit in one’s account. The long-term vision pertains to safe passage into the world to come.

The contrast between *Mishnah Avot* 1:8 and 4:11 reveals that courtroom advocacy falls in with certain behaviors and utterances which are prohibited among men presiding as judges, while the principle of representing an individual for the purpose of acquitting him in the face of divine judgment, as does the heavenly advocate for the performer of Torah commandments, reflects normal heavenly procedure and builds a case for the current world functioning as a gateway to the world to come. The differences between the admonitions in 1.8 and 4.11 also pertain to a divine purification of the advocacy office. A spiritual medium advocating on the part of a righteous person requires a concerted act of divine-human cooperation, where repentance and righteous deeds ensure representation in the current and future divine courts of judgment. The exchange is transactional, whereby for each observance of a Torah commandment one receives a portion of representation to be used when judgment ensues. Yet in the human courtroom, for a

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<sup>265</sup> *m. Abōt*, 4.16. טרקלין, from Greek, τρικλίνιον/*triclinium*, a dining room consisting of three couches, possibly chosen to allude to the Jewish notion of reclining with Abraham when entering the world to come.

polished orator, presiding as a judge, to speak eloquently on behalf of a defendant signals not only an overt display of favoritism but also a disregard for the divine-human partnership involved in the world of the here and now, where training for the judgment day cannot be facilitated apart from divine guidance and representation. Stated another way, the construction of advocacy in *Mishnah Abōt* is inseparable from rabbinic eschatology, both post-mortem and in the eschaton, which views the current world as a training ground for eternity.

A few occurrences of the Paraclete in the Tosefta further expand our awareness of the importation and adaptation of Greek terms for advocate already operative within Jewish thought since the Late Second Temple period. *Tosefta Parah* 1.1-5, for example, seeks clarity in the identification of the sacrificial bullock in Numbers 8. The discussion grapples with the specific age of the bullock, its status as a sin offering, and the apparent contradiction between Numbers 8:8 and 8:12 regarding the pairings of the bull-offerings. Verse 8 sequences a gift and sin offering, while verse 12 orders a sin and burnt offering. In the midst of this attempt to achieve precision, Rabbi Shimon compares the sacrificial bull's status as a sin-offering to a Paraclete, which seems strangely out of place, given the technical nature thus far of the questions and their interpretations. It is in fact the only statement in *t. Parah* 1 that is less concerned with exegetical precision and more focused on an analogy that illuminates the sequencing of the sin (חטאת) and gift (מנחה) offerings. The degree of detail leading up to and following this statement sets it apart as a brief aggadic moment in an otherwise straightforward halakhic discussion.

פר בן עשרים וארבעה חודש ויום אחד הרי זה פר שלם ור' אליעזר אומר נותנים לו שלשים יום אחר עשרים וארבעה חודש שכל מקום שנאמר פר בן בקר בן שתי שנים פר סתם בן שלש שנים ועד בן חמש שנים ר' יוסי הגלילי אומר פרים בני שתיים שנאמר (במדבר ה) ופר שני בן בקר תקח לחטאת. אמרו לו אינו אומר שני אלא שני לראשון מה הראשון לא נאכל אף שני לא נאכל. אמר ר' שמעון חטאת למה הוא דומה לפרקליט שנכנס לרצות רצה פרקליט ונכנס הדורון

As for a bullock twenty-four months and one day of age: behold, this is a full-grown bullock. Rabbi Eliezer says, "It is given thirty days after twenty-four months. For every

place where it is stated, ‘A bullock of the herd, [it refers] to one that is two years of age. [Where it is stated] ‘bullock’ without specification, [it refers] to one between three to five years of age. Rabbi Yosi the Galilean says, “[This refers to] Bullocks two years of age, as the Scripture states, ‘A bullock two [years of age] from the herd you will take for the sin-offering’” (Num. 8:8). They said to him, “‘Two’ can only mean ‘second,’ in reference to the first. Just as the first is not consumed, so the second is not consumed.” Rabbi Shimon said, “The sin offering: to what can this be compared? To the Paraclete that enters [the courtroom] in order to procure a pardon. When the Paraclete has procured pardon, the gift-offering is brought in.”<sup>266</sup>

The juridical language suggests that the Paraclete is pleading before a judge to pardon a particular defendant, and that subsequently some form of gift (תרומה/δῶρον)—could the Tosefta be suggesting a bribe?—will then be granted to the judge.

Rabbi Shimon clearly believes that the sin-offering precedes the guilt offering, only in this case, God presides as the judge, who first will receive the sin-offering as a form of petition for clemency, and subsequently will accept a gift-offering as a show of gratitude. The analogy, as some of the later midrashim will attest, offers no value-judgment concerning the function of a Paraclete to effect clemency in a court of law, even if this was not standard practice in the ideally constructed rabbinic courtroom. Rather, the process of presenting a sin-offering prior to a gift offering is clarified through analogy to a worldly court, and if anything, proper procedure and behavior before the deity are deemed consistent with worldly legal procedure. The expiatory function of the sin offering thus converges with the advocacy function of a worldly Paraclete. Alternatively, could the Tosefta have a heavenly Paraclete in view, since the notion of offering gifts to a judge marks a perversion of justice in several rabbinic passages.<sup>267</sup> In this case, the Tosefta would be referring to one pleading before the court of God, and after securing pardon,

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<sup>266</sup> *t. Parah* 1.1.

<sup>267</sup> *m. Peah*, 8.8: וכל דין שלוקח שחד ומטה את הדין, אינו מת מן הזקנה עד שעיניו כהות, שנאמר (שמות כג) ושחד לא תקח כי השחד יעור פקחים וגו'

“As for any judge who receives a bribe and altars his judgment, he shall die from old age until his eyes have grown dim, as the scripture states, ‘You shall not receive a bribe, for a bribe blinds those who have sight’ (Ex. 23:8).

they would offer the customary gift of gratitude. More likely the passage reminds the audience of a culturally familiar judicial practice, even if accepting gifts violates the halakhic standards of the textually conceived rabbinic court. If this were the case, would the custom only be applicable to Gentile courts? Does *Tosefta Parah* reveal the possibility of advocacy and bribery existing within Jewish courts themselves? Unfortunately the Tosefta is quick to depart from the discussion and leaves the audience uncertain as to the precise meaning of the Paraclete analogy.

In a verse directly related to charity, acts of kindness, and the plight of the poor, *Tosefta Peah* 4.20 argues that acts of benevolence (גמילות חסדים) occupy a privileged place in the economy of charitable behavior. The references to the Paraclete-intercessor, as with other occurrences in the early rabbinic literature, are brief, yet in this instance they appear on the heels of an extended narrative concerning an ancient Mesopotamian king who demonstrated the high virtues associated with faithful obedience to Torah and its consequent rewards. The theological significance of this narrative cannot be understated, for it embraces a broad spectrum of rabbinic virtues, such as charity, righteousness, *hesed*, and mercy. The passage also underscores the importance of action in tandem with strong faithfulness, demonstrating the rabbinic tension between intercession as a necessary fix for inadequate righteousness, on the one hand, and intercession as a direct function of human initiative. In the midst of this theological compromise, the scales appear tipped in favor of human action, although it remains uncertain whether this suggests that most people are capable of such righteousness. More likely, the Tosefta indicates that exceptional individuals enable such righteousness to benefit both the living and the dead in both this world and in eternity. As such, *Tosefta Peah* 4 captures an important occurrence of the Paraclete in relation to salvation. The extended narrative in question begins at 4.18.

An event took place concerning Monobasis, the king who ruled and gave away as charity all his stored treasures during the years of famine.<sup>268</sup> His kinsmen said to him, “Your ancestors saved these treasures and added to the [wealth] of their own ancestors, yet you went and doled out all your storehouses, both your own and those of your ancestors.” [The king] said to them, “My ancestors saved treasures for the world below, but I have stored up [treasures] for the world above, as it is written, “Truth shall sprout forth from the land [and righteousness shall look down from the heavens]’ (Ps. 85:12). My ancestors saved [treasures] in a place that the hand could have power over, but I have stored up treasures in a place that the hand cannot extend its reach, as the Scripture says, “Righteousness and justice are the foundations(s) of your throne, [Hesed and truth go before you]’ (Ps. 89:15). My ancestors stored up treasures that do not bear fruit, but I have stored up treasure that bear fruit, as the Scripture says, ‘Say to the righteous that it will go well with them [that they shall eat the fruits of their labors]’ (Is. 3:10). My ancestors stored up treasures of wealth, but I have stored up treasures of the spirit, as the Scripture says, ‘The fruit of the righteous is the tree of life, and the one who receives souls is wise’ (Prov. 11:30). My ancestors stored up treasure for others, but I have stored up treasures for my own [reward], as the Scripture says, ‘And to you it shall be [reckoned] as righteousness before the Lord your God’ (Duet. 24:13). My ancestors stored up treasures for this world, but I have stored up treasures for the world to come, as the Scripture says, ‘Your righteousness shall go before you’” (Is. 58:8).<sup>269</sup>

The narrative argues through, the king’s proclamations, that acts of large-scale charity secure the reward of heaven and the world to come, while worldly acts of thrift yield no tangible benefits either in this world or the world to come. The lines of contrast are as follows: world below/world above, treasures subject to human authority/treasures beyond human authority, treasure that bears no fruit/treasure that bears fruit, material treasure/spiritual treasure, treasures for the powerful/treasures for all, and treasures in this world/treasure in the world to come. These lines of opposition share a common claim that assisting the poor in large measure secures the people

<sup>268</sup> Jastrow defines בצורת as a particular type of famine resulting from political-economic consequences, where the different outcomes between the rich and poor are quite pronounced. This possibility potentially heightens the significance of the king’s decision to open up his multi-generational reserves to the poor.

<sup>269</sup> *t. Peah*, 4:18.

מעשה במונבז המלך שעמד ובזבו את כל אוצרותיו בשני בצורת אמרו לו אחיו אבותיך גנזו אוצרות והוסיפו על [של] אבותם ואתה עמדת ובזבות את כל אוצרותיך שלך ושל אבותיך אמר להם אבותי גנזו אוצרות למטה ואני גנזתי למעלה שנא' (תהילים פ"ה:י"ב) אמת מארץ תצמח וגו' אבותי גנזו [אוצרות] במקום שהיד שולטת בו ואני גנזתי אוצרות במקום שאין היד שולטת בו שנאמר (תהילים פ"ט:ט"ו) צדק ומשפט מכון כסאך וגו' אבותי גנזו אוצרות שאין עושיין פירות ואני גנזתי אוצרות שעושיין פירות שנאמר (ישעיהו ג"י) אמרו צדיק כי טוב [וגו'] אבותי גנזו אוצרות של ממון ואני גנזתי אוצרות של נפשות שנא' (משלי י"א:ל') פרי צדיק עץ חיים ולוקח נפשות חכם אבותי גנזו אוצרות לאחרים ואני גנזתי לעצמי שנא' (דברים כ"ד:י"ג) ולך תהיה צדקה לפני ה' אלהיך אבותי גנזו אוצרות בעוה"ז ואני גנזתי לעוה"ב שנא' (ישעיהו נ"ח:ח) לפניך צדקך והלך

salvation in the world to come. Such salvation reflects divine authority over a harvest that pertains to both the earth's bounty and a favorable long-term outcome for humanity, indicating a merger between biblically based land restoration and rabbinically-oriented post-this-world eschatology. Regal opposition to the values of those in power results in a salvation marked by the salvation and security of those lacking sufficient wealth.

Imparting such esteemed values to a legendary Gentile king who converted to Judaism helps to universalize the virtues of benevolence. As an early king parable, the narrative also imparts the character of the divine monarch to the earthly, thereby representing the ideal form of rule in anticipation of the world to come. Does the subsequent reference to the Paraclete, however, in this closing pericope of *Tosefta Peah* further illuminate the text's argument for helping the poor in large measure? A partial answer to the question emerges from the text's distinction between charity and acts of kindness.

צדקה וגמילת חסדים שקולין כנגד כל מצות שבתורה אלא שהצדקה בחיים וגמ"ח בחיים ובמתים צדקה בעניים  
גמילות חסדים בעניים ובעשירים צדקה בממונו גמילות חסדים בממונו ובגופו

Charity and acts of benevolence are equal [in merit] with all the commandments found in the Torah, but charity [pertains to] the living, while acts of benevolence [pertain to] the living and the dead. Charity [pertains] to the poor, but acts of benevolence to the poor and the wealthy. Charity [pertains] to one's wealth, while acts of love and kindness to one's wealth and one's body.<sup>270</sup>

In light of these contrasts appearing immediately after the king's discourse on charity, I would argue that the king's opening of the transgenerational storehouses represents a grand act of benevolence, as it transcends the traditional allotments of charity as mitigation strategies for poverty and aims at its outright elimination. The elimination strategy does not nullify the

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<sup>270</sup> Ibid., 4.19. I have translated גמילת חסדים as "acts of benevolence" rather than "acts of kindness" to better fit the context of the king's project. The English sense of kindness would understate the magnitude of the ruler's generosity.

importance of charity but only considers it inseparable from greater acts of love and righteousness. Charity in and of itself is esteemed as divine service, but acts of benevolence rank higher on account of their more closely manifesting the character and activity of God itself.

א"ר יהושע בן קרחה מנין שכל המעלים [את] עיניו מן הצדקה כאילו עובד ע"ז שנאמר (דברים ט"ו:ט) השמר לך פן יהיה דבר עם לבבך בליעל לאמר ולהלן הוא אומר (דברים י"ג:י"ד) יצאו אנשים בני בליעל מקרבך מה בליעל האמור להלן ע"ז אף בליעל האמור כאן ע"ז

Rabbi Joshua ben Korḥa said, "From where do we learn that, for all who overlook [the giving of] charity, it is as if they serve idolatry? As it is written, "Guard yourselves, lest there be a wicked thought in your heart, saying, ["The seventh year is at hand, the *shmitah*, and your eyes regard your kinsman wickedly as an enemy, and you do not give to him, and he cries out against you to the Lord, and you accrue sin onto yourself."] (Deut. 15:9). And elsewhere the Scripture says, "Men have gone out, worthless men among you, and they have enticed the inhabitants of their city, saying, "Let us go and serve other gods whom you have known" (Deut. 13:13-14). And just as בליעל means in the latter case, idolatry, so it means idolatry in the former case.<sup>271</sup>

While this celebration of charity unequivocally associates giving with service to God, the fact that the Scripture cited refers to the year of debt release (*shmitah*) again represents a significant act of giving beyond the mere mitigation of poverty. If one does not honor the *shmitah*, they run risk of incurring divine wrath and sin, which run counter to the intentions of salvation. The disassociation, therefore, of charity from idolatry and violation of debt remission provides the context for understanding the intercessory and salvific nature of the subsequent Paraclete passage.

א"ר אלעזר בר יוסי מנין שהצדקה וגמילות חסדים שלום גדול ופרקליט גדול בין ישראל לאביהם שבשמים שנאמר (ירמיהו טז) כה אמר ה' אל תבא בית מרוח וגו' חסד זו גמילות חסדים ורחמים זו צדקה מלמד שהצדקה וגמילות חסדים שלום ופרקליט גדול בין ישראל לאביהם שבשמים

Rabbi Eliezer bar Yosi says, "From where do we learn that charity and acts of benevolence [are agents of] great peace and a great Paraclete between Israel and their father who is in heaven? As the Scripture states, "Thus says the Lord, "Do not enter the house of mourning, [and do not go to lament or show grief for them, for I will have removed my peace from this people, says the oracle of Yahweh, as well as my *hesed* and mercy."] (Jer. 16:5).' *Hesed* means acts of benevolence, while mercy means charity. This

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<sup>271</sup> Ibid., 4.20.



teaches that charity and acts of benevolence are the peace and great Paraclete between Israel and their father who is in heaven.<sup>272</sup>

The scriptural example of mercy and *hesed* being removed from Israel refers to the exilic generation, which lacks both charity and benevolence. To withhold these acts poses a distinction between pre-exilic Israel and the above-mentioned Mesopotamian king, a convert, whose merging of the two virtues produces peace between God and Israel, for it acts as a Paraclete-intercessor for the entire people, not simply one individual or a select group of indigent individuals, as is the case with charity. The allusion to the exilic generation marks no coincidence in another sense that it references one of Israel's harshest moments of divine judgment, comparable with the Assyrian exile and the destruction of the Second Temple. If the absence of divine peace results in exile, it follows that the presence of divine peace and a Paraclete offers an exemption from divine judgment and preserves Israel's possession of their land. As the release from debt acts as a condition both in the scripture and the tannaitic midrash for divine favor, it follows that the true consequence of debt release is a corresponding release from divine condemnation. The eschatological import of the passage, its integration of charity with acts of love and benevolence, suggests a worldly state of peace, a rabbinic understanding of the benefits brought forth by a heavenly advocate embodied in divine virtues. Again this demonstrates the reconciliation between God and humanity created by an advocate functioning in an expiatory capacity.

## **5.5 Text Analysis 2: Tannaitic Rain Making as Crisis Intervention**

Because the boundaries between legal and soteriological topics prove quite porous in rabbinic literature, as were they in biblical and Second Temple writings, ancient rabbinic advocacy with

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<sup>272</sup> Ibid., 4.21.

an eye toward vindicating the condemned commonly exists outside formal courtroom settings. One compelling example emerges in the figure who, by virtue of commanding a prominent social, religious, or charismatic position in society, acts as representative for a less capable individual or collective under threat of disaster or divine condemnation. Such individuals include, but are not limited to, renowned teachers, holy men, and departed biblical heroes; and their efforts often target the averting of an imminent crisis. Where advocacy occurs through such figures in rabbinic writings, the gap between divine and human legal settings decreases significantly. An urgent matter of crisis intervention, in other words, draws the divine courtroom into the immediate circumstances of worldly affairs.<sup>273</sup> Within the tannaitic corpus, however, lies a conspicuous absence of pietistic wonder workers, as opposed to the multiple occurrences within the amoraic literature.<sup>274</sup> One preserved occurrence requiring immediate intercessory action, reflecting the form of a lawcourt prayer pattern, is that of summoning the rainmaker for the purpose of ending the curse of prolonged drought. The brief appearance, therefore, of Honi the Circle-Drawer in *Mishnah Ta'anit* 3.8, acting as a divinely favored interventionist charged with restoring the rains, offers a narrative in early rabbinic literature demonstrating the advocate as an option of last resort in times of crisis.

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<sup>273</sup> For a discussion of rabbinic holy men represented as existing both inside and outside the rabbinic tradition, see Chana Safrai and Zeev Safrai, "Rabbinic Holy Men," in *Saints and Role Models in Judaism and Christianity*, ed. Marcel Poorthuis and Joshua J. Schwartz (Leiden: Brill, 2004), 59-78.

<sup>274</sup> Baruch M. Bokser, "Wonder-working and the Rabbinic Tradition: The case of Ḥanina Ben Dosa," *Journal for the Study of Judaism in the Persian, Hellenistic, and Roman Period* 16, no. 1 (1985): 79-83; William S. Green, "Palestinian Holy Men: Charismatic Leadership and Rabbinic Tradition," in *Aufstieg und Niedergang der römischen Welt/ Rise and Decline of the Roman World, Band 19/2. Halbband Religion (Judentum: Palästinisches Judentum [Forts.])*, ed. Wolfgang Haase (Berlin/Boston: De Gruyter, 2016), 624-25; David Levine, "Holy Men and Rabbis in Talmudic Antiquity," in *Saints and Role Models*, ed. Poorthuis and Schwartz, 47-48. Levine agrees that the tannaitic literature places much more focus on the undisturbed ideal of a functioning temple in a sovereign Israel, despite the emergence of extra-temple forms of piety.

The following analysis will argue that Honi's Circle, as presented in *Mishnah Ta'anit* 3.8, demonstrates an early rabbinic attempt to reconcile the orderly Mishnaic universe—predicated upon human agency and earning salvation through the halakhically observant life—with the chaotic realities of imminent crisis, where human agency proves insufficient, and a spiritually advanced individual must advocate for the community's restoration. By adapting Honi's juridical pleading for Israel to an aforementioned principle of halakhah, that of not praying for the removal of excess rain, the rabbis have reconciled the textually ordered universe of the Mishnah with the disturbing and ever-present possibilities of breakdown within that halakhic universe. That Honi exists outside the rabbinic circles, yet confirms the halakhah in question, enables the rabbis to acknowledge the occasional need for an advocate while maintaining the general atmosphere of human agency and acquired merit conducing to salvation.

The prayer-petition for rain marks a plea to God for what is most essential to the sustaining of human life, and both the biblical and rabbinic record indicate the urgent intercessory properties associated with this form of petition. The general tenor of the rain-petition ranges from a steady series of preventive prayers, so as to encourage rainfall during its due season, to fasting and prayer when drought becomes evident, to last-resort pleas of desperation during periods of prolonged drought. Lack of water poses an immediate threat to life and thus demands the most qualified intercessor capable of staving off the crisis. Anu Põldsam assesses the predicament as follows:

The object of prayer should be others and ultimately God himself. Therefore, the Jewish prayer is mostly an intercessory prayer, a plea for others. This kind of the essence of the prayer and its charisma emerge clearly in the Jewish prayer for rain, that in its origins was a freely spoken (and often public) prayer offered in times of distress (drought) in the Land of Israel and that later acquired a wording that became part of the Amidah prayer.<sup>275</sup>

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<sup>275</sup> Anu Põldsam, "Prayer for Rain by Elijah and by Honi the Circle-Maker. Two Ends of the Same Concept in the Light of Lazar Gulkowitsch' Ideas, *Usuteaduslik Ajakiri* 72, no. 1: 61.

As Pöldsam further observes, in a land lacking the gift of well-situated rivers and reliable rainfall, the absolute necessity of divine provision for rain seems to have captured the thinking of Israel's ancient religious mindset, in large measure informing their piety, prayer liturgy, and perception of divine benevolence.<sup>276</sup> The threat of insufficient rain would also have informed the ancient Israelite view of God withholding the water supply as retribution for Israel's disobedience.<sup>277</sup>

Rabbinic traditions largely preserved this theological perspective, being ever mindful of the close correspondence between the vicissitudes of both rainfall and Israel's covenant faithfulness. Consider, for instance, the Babylonian Talmud's perspective on erratic rainfall, whereby a repentant Israel could stir the deity to produce timely rains, even if in short supply. On the other hand, an obedient Israel guilty of backsliding could trigger God to send promised rains both erratically and to all the inappropriate locations.

הרי שהיו ישראל צדיקים גמורין בראש השנה ופסקו עליהן גשמים מרובין, לסוף חזרו בהן. לפחות מהן אי אפשר שכבר נגזרה גזרה, אלא הקדוש ברוך הוא מורידן שלא בזמנן, על הארץ שאינה צריכה להן

Suppose that Israel were altogether righteous on the New Year, such that abundant rains were promised to them, yet ultimately [Israel] backslid. It is impossible to decrease [the rains], since the decree [for abundant rain] has already been passed. Instead, the Holy One, blessed be He, causes [rain] to fall that is not timely, and upon that land which has no need for it.<sup>278</sup>

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<sup>276</sup> Deut. 11:13-14 provides an essential scriptural blueprint for abundant rainfall being contingent upon covenantal faithfulness: וְהָיָה אִם-שָׁמַעְתֶּם תְּשִׁמְעוּ אֵלַי מִצְוֹתַי אֲשֶׁר אֲנִי מֵצַוְנָה אִתְּכֶם הַיּוֹם לְאַהֲבָה אֶת-יְהוָה אֱלֹהֵיכֶם וְלַעֲבֹדוֹ כְּכֹל-לְבַבְכֶם וְכָכֹל-נַפְשְׁכֶם: וְנִמְתִּי מִטֶּרֶם-אֶרְצְכֶם בְּעֵתוֹ יוֹרֵה וּמִלְקוֹשׁ וְאִסְפַּת דְגָנוֹ וְתִירֹשֶׁי וְיִצְהָרָהּ  
 “If you completely obey my commandments with which I have enjoined you today, to love the Lord your God and to serve him with all your heart and all your spirit, then I shall provide the rain of your land at its appointed time, both the early and the latter rains, that you may gather your grain, your new wine, and your oil.”

<sup>277</sup> 1 Kgs. 17:2; Jer. 50:12-13; Amos 4:7.

<sup>278</sup> *b. R. Hashanah*, 17b.

The Talmud argues that, even when God has sworn to supply rain in return for past obedience, even a recent display of disobedience might cause the redirecting of rain to where it is least required. The argument demonstrates how mindful the community of Israel continued to be of its tenuous water supply and ultimate dependence on God for its provision. Jonathan Wyn Schofer, in his analysis of Genesis Rabbah 13.3-6, further elucidates the intersection of ecology and theology in the rabbinic perspectives on rain, as well as the implications of both abundance and acute shortage.

Rain gathers exiles, unites peoples of different cultures, and, is valued with the future messianic resurrection of the dead (*Gen. R. 13: 5-6*). Why this concern? Particularly in Roman Palestine, rain is essential for agriculture, being the source of fertility, growth, nourishment, and wealth. Drought, by contrast, brings barrenness, death, weakness, and poverty.<sup>279</sup>

When using terms such as “environment” or “ecology,” however, Schofer adds the qualification that

“These terms obscure the dimensions of rabbinic accounts of the world that emphasize God’s animation of worldly forces and that have been described as mythic (the ways that waters, the Deep, and human ritual action are intertwined), so I use them with the qualification that they have to be expanded to include such elements.”<sup>280</sup>

The rabbinic continuation of attributing rainfall outcomes to God’s conditional providence and potential retribution demonstrates the ongoing Jewish perception in Late Antiquity that their God was consistently animating, as Schofer puts it, the essential element of water required for the sustaining of life.

The vital necessity of water, while universally applicable to all cultures in both meaning, symbolism, and religious application, assumed its own particular expressions in relation to the

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<sup>279</sup> Jonathan Wyn Schofer, “Theology and Cosmology in Rabbinic Ethics: The Pedagogical Significance of Rainmaking Narratives,” *JSQ* 12, no. 3 (2005): 235. See further, on rabbinic constructions of rainfall, Jeffrey Rubenstein, *The History of Sukkot in the Second Temple and Rabbinic Periods* (Atlanta: Scholars Press, 1995).

<sup>280</sup> Schofer, “Theology and Cosmology,” 238.

rabbis' theological conceptions of ancient Israel. In biblical and rabbinic theology, water acts to purify, functioning as a barometer of the state of covenant fidelity, and expresses the benevolence of the God of Israel. Additionally, the divine allocation of rain positions Israel first among the hierarchy of nations.

ארץ ישראל משקה אותה הקדוש ברוך הוא בעצמו, וכל העולם כולו על ידי שליח, שנאמר הנתן מטר על פני ארץ ושלה מים על פני חוצות  
ארץ ישראל שותה מי גשמים, וכל העולם כולו מתמצית, שנאמר: הנתן מטר על פני ארץ וגו'. ארץ ישראל שותה תחילה, וכל העולם כולו לבסוף, שנאמר: "הנתן מטר על פני ארץ וגו'

The Holy one, blessed be He, exclusively provides rain for the Land of Israel, while the rest of the world [receives rain] through the authority of a [divinely appointed] delegate, as the Scripture states, "He who gives rain upon the face of the earth, and dispatches water upon the surface of the open country" [Job 5:10]. The Land of Israel drinks the rainwater, while the all the rest of the world [drinks] from the leftovers, as the Scripture states, "He who gives rain upon the face of the Land," etc. The Land of Israel drinks first, and all the rest of the world afterwards, as the Scripture states, "He who provides rain upon the surface of the Land," etc.<sup>281</sup>

In light of this theological perspective, namely that the God of Israel affords a special bounty of rain to his covenant people, it is no far leap to suggest that the withdrawal of the rains from Israel marked an especially urgent crisis perceived as stemming from breaches of the covenant agreement.<sup>282</sup>

As Schofer correctly observes, an intimate relationship exists between rainfall and divine justice in rabbinic theology: "In materials describing rainfall in rabbinic times, however, the process by which rain does or does not fall is understood primarily through the theology of divine justice, and here theological dynamics and cosmological events meet."<sup>283</sup> In what is by now a familiar state of affairs, an exceptionally capable intermediary must emerge who proves

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<sup>281</sup> *b. Ta'anit* 10a. The translation above attempts to highlight the distinction, when citing Job 5:10, between the God who provides rain for Israel and the agent who sends rain to the rest of the world.

<sup>282</sup> See, for example, *b. R. Hashanah*, 17b, cited above, which discusses the consequences, in terms of holding back rainfall, when God's people are behaving wickedly.

<sup>283</sup> Schofer, "Theology and Cosmology," 236.

worthy of persuading God to alter the natural course of the rain supply, which is traditionally viewed as a function of Israel's adherence to covenant protocol. Whereas many aforementioned acts of intervention have been accomplished by prophets, the rainmaker occupies a privileged place in rabbinic literature by virtue of his exceptional status as neither prophet, traditional rabbi, nor deliverer. Yet the early pietistic rainmaker, as presented in *Mishnah Ta'anit*, retains a prophetic lineage, however uncertain, that places him far more in the category of wonderworker than advanced halakhic interpreter.

The Mishnah's case of Honi the Circle-Drawer underscores the unique status of the rainmaker figure, who stands somewhat outside of the inner-rabbinic circles and remains an opportunity of last resort for those caught up in crisis. Moshe Simon-Soshan's study of Mishnaic narrative discourse understands Honi as belonging to those charismatic holy men gifted with a prophetic lineage and wonderworking capabilities.

These individuals were not known for their knowledge of rabbinic law; tracing their spiritual lineage back to the biblical prophets, they claimed a special, personal relationship with God based on the wondrous efficacy of their prayers and other miraculous abilities. These *hasidim* are widely viewed as the Jewish expression of the phenomena of charismatic pagan and Christian miracle workers mentioned earlier in this chapter.<sup>284</sup>

Soshan notes that, by virtue of their more intimate relationship with the God of Israel, such holy men receive a disproportionate degree of mishnaic discussion within tractates *Berahot* and *Ta'anit*, given the direct divine-human relationship embodied in humanity's endeavor to commune with God through prayer and supplicating petitions. Yet while existing outside the standard matrix of rabbinic halakhah, Soshan accepts already that the Mishnah has made some effort to adapt Honi to the proper setting of rabbinic behavior, observance, and belief, even if the

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<sup>284</sup> Moshe Simon-Soshan, *Stories of the Law: Narrative Discourse and the Construction of Authority in the Mishnah* (New York: Oxford University Press, 2012), 151-152.

hypothetical *urtext* underlying the Honi tradition likely existed outside the borders of early rabbinic discourse:

“Given its parenthetical halakhic content, this narrative was likely appropriated from a non-halakhic context. Originally this story was likely meant to celebrate the deeds of this great holy man, and was only later used to teach the law prohibiting prayer for excessive rain.”<sup>285</sup>

Just as the later midrashic Abraham and Moses will emerge at times as proficient in matters of Torah interpretation, so too the obscure rainmaker preserved in the Mishnah is adapted to an important principle of the Halakhah, where his actions conform to the opinion deemed most authentic in the mishnaic discussion.

Arguably the earliest rabbinic tradition involving Honi derives from *Mishnah Ta’anit* 3, where an illustration appears of the principle that one should not cry out to God concerning a surplus of rain.<sup>286</sup> Worthy of consideration in this rather unusual Mishnaic narrative are both the speech-performance of Honi himself, functioning very much as a supporting speaker on behalf of Israel in a period of crisis, as well as his identity as one outside the rabbinic mainstream and only commanding respect due to his ability to consistently elicit a favorable divine response. An unspecified group of people petition Honi that he appeal to God for badly needed rain. After an initial attempt yielding no divine response, Honi draws a circle on the ground in an unspecified location and then performs his petition on behalf of the community.

רבנו של עולם, בניך שמו פניהם עלי, שאני כבן בית לפניך. נשבע אני בשמך הגדול שאיני זו מכאן, עד שתרדם על בניך

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<sup>285</sup> Ibid., 152.

<sup>286</sup> As opposed to the likely earlier written account provided by Josephus, however brief, in *Jewish Antiquities* XIX.22-24.



“Lord of the universe, your children have entrusted their welfare upon me, since I am like a household member in your presence. I hereby swear by your great name that I shall not move away from here until you show mercy upon your children.”<sup>287</sup>

Honi distinguishes himself as a privileged member of God’s household, one to whom the people are willing to entrust their security. Moreover, unlike Moses, Honi does not begin his prayer-petition by praising the God of Israel but rather verifies his own credentials and then, establishing the urgency of his appeal, refuses to move from his designated prayer location until God has extended clemency to his people. When only a small amount of rain trickles down, but then afterward a furious amount, Honi makes it clear that he has requested for the proper amount of rain, in keeping with God’s stature as Israel’s gracious benefactor (גשמי רצון, ברכה ונדבה). God responds by providing a proper flow of rain, but the storm continues for so long that eventually the inhabitants are forced to seek refuge on the Temple Mount. Honi, nonetheless, advises that the petition for the rain to cease should not happen unless the Claimant’s Stone (אבן הטועים) has been washed away.

The illustrious Nasi of the Sanhedrin, Shimon ben Shetaḥ, then addresses Honi in a manner illustrating at once the rainmaker’s separation from the Jewish leadership yet his privileged relationship with God.

שלח לו שמעון בן שטח, אלמלא חוני אתה, גוזרני עליך נדוי. אבל מה אעשה לך, שאתה מתחטא לפני המקום ועושה לך רצונך כבן שהוא מתחטא על אביו ועושה לו רצונו. ועליך הכתוב אומר (משלי כג), ישמח אביך ואמך ותגל יולדתך

Shimon ben Shetaḥ sent for him: “Were you anyone but Honi, I would decree excommunication [for you]. But what can I do to you, given that you petition petulantly before God and he does as you wish, like a son who acts imperious toward his father, yet [the father] does as [his son] wishes. Concerning you the Scripture says, “Let your father be glad, and may your mother who gave birth to you rejoice” (Prov. 23:25).<sup>288</sup>

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<sup>287</sup> *m. Ta’anit*, 3.8.

<sup>288</sup> *Ibid.*

It is clear that the rabbi cares little for Honi's manner of intercession, which violates convention and employs forceful language that the rabbi considers prideful and disrespectful. Yet the rabbi concedes that Honi consistently draws forth a favorable divine response and thus enjoys some unusual form of favoritism from the God of Israel. There has been a common tendency to view the conflict in terms of a long-standing divide between rabbinic sages and charismatic miracle-workers.<sup>289</sup> Another more recent interpretation argues persuasively for Honi's status in the divine household as a *ben-bayit*, which in this case would point to one appointed as a domestic steward, and thereby having considerable property under his authority and the ability to manage it with a fair degree of latitude.<sup>290</sup> In simpler terms, Honi demonstrates the halakhic principle that the Mishnah has originally sought to illustrate: one does not normally petition God for abundant rains to cease. Therefore, from the perspective of the narrator, it is not clear that the Mishnah shares the Nasi's same aversion toward Honi's method of addressing the divine.<sup>291</sup>

Honi's method of rainmaking was not the only means whereby allegedly pious men of Israel would persuade God to provide rain for the community, as the standards presented in *b. Ta'anit* 23b-24a show that for some rabbis the method of appeal mattered. Rabbi Yona, for example, would humble himself and put on sackcloth, citing Psalms 130:1, "From out of the depths I have called to you, O' Lord" (מִצְמַקִּים קָרָאתִיךָ ה'); and having secured a favorable response, Rabbi Yona would take no public credit for the accomplishment. Rabbi Yehuda Nesia, after an unsuccessful fast aimed at bringing rain, begins lamenting his inferior leadership in comparison to Yehuda ben

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<sup>289</sup> Eli Yasif, *The Hebrew Folktale: History, Genre, Meaning*, trans. Jacqueline S. Teitelbaum (Bloomington: Indiana University Press, 1999), 144-165.

<sup>290</sup> Isaiah Ben-Pazi, "Honi the Circle Drawer: 'A Member of the Household' or 'A Son Who Implores His Father'?" *JSJ* 48, no. 4/5 (2017): 551-63.

<sup>291</sup> Josephus, in *Ant.* XIV.22, by contrast, thinks well of Honi: Ὀνίαν δέ τινα ὄνομα δίκαιον ὄντα καὶ θεοφιλή/“Now there was a certain man named Onias, righteous and favored by God,” . . . .

Gamliel, feeling woe for his current generation, so mired among such poor leadership. This act of humility then elicits the rain.

The Babylonian Talmud, however, adds to the original mishnaic narrative some thought-provoking stories, which contribute biblical, ethical, and environmental elements in order to illuminate the urgency of Honi's petitions and their potential outcomes. Among these additions are included a comparison between Honi's circle and the guard-post (מִשְׁמֶרֶת) of the prophet Habakkuk, where he reduces himself to a fixed enclosure (מְצוּרָה) allowing him to receive instruction from God regarding the imminent crisis about to ensue.<sup>292</sup> The amoraic version also rabbinizes Honi, assigning him students who lament both the initially meager amount of rainfall and the subsequent deluge following Honi's first two prayer-petitions. The talmudic Honi further reminds the people, who insist that he stop the rains that eventually fall in the proper measure, that he was in possession of a tradition prohibiting prayer to ward off an overabundance of the good. Honi, nevertheless, performs a sacrifice that works to ward off the incessant rains, accompanied by a recitation explaining the people's inability to endure an excess of either the bad or the good. Finally, the Talmud spins narratives about special descendants of Honi, who are also known for their rainmaking ability in the time of drought, but their abilities are closely aligned with moral codes of conduct pertaining to charity, repentance, thrift, simplicity, and several other virtues.

The art of drawing a circle around oneself in rabbinic literature, while hardly a frequent occurrence, has been viewed by some scholars as less of a magical procedure and more of a means of pleading on behalf of another party confronting an urgent predicament of distress.

To students of classical Hebrew the clause "drew a circle and stood inside it" (and another very like it) is a familiar one, though it is far from common in talmudic-midrashic sources. Now, it is an interesting thing that in these sources the peremptory note involved

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<sup>292</sup> Hab. 2:1.

in drawing a circle and ordering God to do something occurs only when the speaker, like Honi, is not making some request for himself, but *is demanding in behalf of someone else who is in straits* [emphasis the author's]. Thus, in addition to the Honi story, we have a description of how Moses interceded in behalf of Miriam: Aaron pleads with Moses, Shall we let our sister perish? "Thereupon Moses drew a small (!) circle and stood within it, and beseeched mercy in her behalf, saying, 'I shall not stir from here until Miriam my sister is healed.' As it is said, 'Heal her *now*, O God, I beseech Thee'" (Num. 12.13).<sup>293</sup>

Here the narrative finds itself within the intersection of law and soteriology, notably within the context of a crisis. The Mishnah has devoted its time toward delineating the proper responses to political and environmental emergencies. The effort to arrive at legally sound responses involves the soliciting of procedures for collective fasting, prayer, and repentance. An important legal principle arrived at in this discussion concerns the formal expression of repentance, which can be expressed through the sounding of the shofar in all instances except for one.

Chaya Halberstam has thoughtfully unpacked the legal background surrounding the buildup to the Mishnaic Honi narrative.

Alongside the litany of the required forms of penance in Mishnah *Ta'anit*, we are presented with a short narrative to illustrate the law, a discursive practice used from time to time in the Mishnah. The setting is a longstanding drought in the holy land, and the law that immediately precedes the story is the ruling that "for every catastrophe that befalls the community, one blows the *shofar* [ram's horn, as a form of penance], aside from [for the catastrophe] an excess of rain [i. e., a flood]." But the story itself is not a straightforward illustration of the statute; instead, it invokes a holy man, who is not a rabbi, and relates his rain-making abilities.<sup>294</sup>

Halberstam understands that, in the Honi narrative, the limits of legal observance converge with predicaments in the physical environment beyond human control, whereby direct and preferably immediate divine intervention is required. Although the Honi narrative will ultimately confirm the legal principle dictating that one not articulate acts of repentance, in particular the shofar

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<sup>293</sup> Judah Goldin, "On Honi the Circle-Maker: A Demanding Prayer," *HTR* 56, no. 3 (1963): 236.

<sup>294</sup> Chaya Halberstam, "Encircling the Law: The Legal Boundaries of Rabbinic Judaism," *JSQ* 16, no. 4 (2009): 402.

blast, in response to an abundance of divine blessing, Honi's unconventional methods of advocating on behalf of the community create tension between the careful analysis of the law and the not-so-careful project of invoking an immediate divine solution for community crisis.

The story of Honi provides an alternative to the penitential and legally-mandated system of fasting and praying for rain found in tractate *Ta'anit* - which itself is based on a cornerstone of the biblical covenant, in which the cessation of rain is linked specifically to the community's spurning of God and God's Torah:<sup>295</sup>

Indeed the contrasts are stark between Honi's extra-legal world and the representation of Torah observance through rabbinic legal rulings. Honi belongs to God's household, enjoying a certain degree of stewardship powers. He does not engage in the expected penitential prayers observed among many of the leading rabbis but rather confronts God directly with strong language and an enclosed legal space representing the demand that the divine power respond immediately to a legal challenge. It is perhaps the strong contrast represented in the Mishnaic Honi narrative, the petulant advocate versus the penitential rabbi, that gives greater strength to the legal principle at issue: if a non-traditional figure such as Honi ultimately respects the decree to not pray for the cessation of abundant rain, then how much more should the principle require observance among those who dedicate their lives to observing the Law. The rabbis resolve the tension between the ideal world of legal principles underlying daily life, on the one hand, and the crisis situation where legal formulae might no longer afford security. While the holy man employs methods incompatible with rabbinic protocol, he still remains within the boundaries of halakhic integrity, even if he justifies the ruling by his own expression of authority.

The departure point for where the law leaves off, and thereby extra-legal solutions emerge, illustrates well the limits of rabbinic piety and virtue in situations of profound crisis. The merits accrued by righteous deeds demonstrate remarkable staying power in rabbinic literature in the

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<sup>295</sup> Ibid., 404.

effort to ward off sin and maintain a functional, God-centered social-religious order predicated upon the life of Torah. As Julia Watts Belser has argued, however, in her study on *Bavli Ta'anit*, the doctrine of merit cannot fully safeguard individual or collective security, prosperity, and salvation in “this world.”

Instead of emphasizing the protective power of merit, *Bavli Ta'anit* advances an idea I call “performative perception,” a claim that individual interpretive choices have the power to materially shape the course of a person's life, transforming difficult circumstances and bringing about good fortune even in the midst of apparent disaster.<sup>296</sup>

Beyond the rabbinically constructed ideal of the Torah-centric life is acknowledged the uncertain universe where disaster may still befall the righteous and create chaos in the midst of the textually represented proper ordering of things. I would push this argument forward into the realm of the rainmaker, who is not necessarily the custodian of the anti-rabbinic occult arts, but rather one who preserves a prophetic connection to the God of Israel. He reserves the right to communicate with the divine during moments of crisis, and in a manner deemed not ideal yet necessary by the rabbinic compilers of the Mishnah.

Belser's study would seem to support the relative suspension of law, merit, and human agency in surrender to the project of averting prolonged drought in *Bavli Ta'anit*, where the presence of a charismatic holy man inundates the textual landscape, reversing nature's course and producing rain.

Rather than celebrate the efficacy of communal fasting, *Bavli Ta'anit* invests considerable narrative energy into stories of rabbinic and other early Jewish wonder-workers, crafting dramatic tales of celebrated sages and humble pious men who bring rain through their prayers and protests before God. Like the communal rain fasts, *Bavli Ta'anit*'s tales of charismatic holy men also emphasize the cultivation of intimacy with God, intensifying the relational discourse of the collective fasting body and transferring it to the particular body of the charismatic.<sup>297</sup>

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<sup>296</sup> Julia Watts Belser, *Power, Ethics, and Ecology in Jewish Late Antiquity: Rabbinic Responses to Drought and Disaster* (Cambridge: Cambridge University Press, 2015), 85-86.

<sup>297</sup> *Ibid.*, 119.

What guides the argument of the current discussion are the confrontations with the divine that, while operating outside the boundaries of law, merit, and human agency, ultimately safeguard the rabbinic intersection between salvation and law. In this light, Belser's emphasis on *parrhēsia* (παρρησία/פְּרִיטָה) as a mode of human address toward the divine in large part illuminates the advocate's habit of protest before God in the hope of staving off disaster.<sup>298</sup> Belser's study identifies what are the central elements of this phenomenon in the rainmaking narratives of *Bavli Ta'anit*.

Examining these narratives through the lens of *parrhesia* allows us to hone in on two central elements that drive the literary and cultural dynamics of these tales: the *parrhesiastes'* fearless critique of a superior, coupled with the privileged intimacy that exists between the two parties.<sup>299</sup>

Among the holy men whom Belser identifies as participating in the bold, public act of invoking rain for the collective is first Naqdimon ben Gurion,<sup>300</sup> who borrows 12 cisterns of water from a Gentile official during a drought, this on behalf of the Jews making a pilgrimage to Jerusalem. The water itself, or its monetary value, must be repaid by a designated time, of which ben Gurion is confident given that the appointed time for rain should provide the necessary supply of water. Upon the last day allotted for settlement of the debt, ben Gurion's petition before God is framed as a selfless act on behalf of the collective for the sake of God's honor.

This leads the discussion back to Honi, where exists a simple incident involving a divinely favored wonderworker who possesses the capability to intercede and advocate on behalf of the

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<sup>298</sup> While the civic nature of *parrhēsia* is duly noted in both Greek and early Christian sources in Late Antiquity, the current discussion focuses primarily on the religious forms of bold address, and to what degree they are apparent in the rabbinic representation of charismatic rainmakers.

<sup>299</sup> *Ibid.*, 132.

<sup>300</sup> *b. Ta'anit* 19b

community by means of a lawcourt pattern of prayer. The immediate crisis, while applied to a halakhic principle concerning the prohibition on praying for the cessation of too much rain, nonetheless transcends proper legal discussion, human agency, and merit earned from a life dedicated to Torah. An individual of preeminent ability to solicit the divine must be appealed to in order to end a drought that has persisted all the way to the Pesach season.

Suzanne L. Stone's analysis of Honi the Circle-Drawer presents an argument for the performative properties of the holy man's prayer-circle, which underscores the legal-religious forces at work in the Mishnah's construction of rainmakers.<sup>301</sup> Stone constructs a complex relationship between verbal performatives and legal formulae. A verbal performative, for Stone, is a legal formula which, when recited orally, institutes a new legal relationship. Careful to distinguish, at least in theory, between magical and legal performatives, Stone clarifies that,

As with verbal recitations, some rituals are magical acts, designed directly to actualize a new reality in the physical world by, for example, coercing the deity into a desired act; others are legal or religious performatives, acts that reference or activate an underlying legal or theological concept.<sup>302</sup>

Despite this distinction, Stone acknowledges that a close relationship exists between the magical and legal verbal performative, and furthermore that "the affinity between magical rituals or formulae and legal performatives is one that has been largely ignored by scholars who study ancient rabbinic texts."<sup>303</sup> Stone then raises the question of whether the ancient rabbinic practice of circle-drawing is better categorized as either magical or legal performative. This brings the

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<sup>301</sup> Suzanne L. Stone, "Rabbinic Legal Magic: A New Look at Honi's Circle as the Construction of Law's Space," *Yale Journal of Law & the Humanities* 17 (2005): 97-123.

<sup>302</sup> *Ibid.*, 99.

<sup>303</sup> *Ibid.*, 99.



discussion within the purview of ancient “Holy-man” studies and their relationship to how sages negotiated the boundaries between magic and law, miracle-working and adherence to tradition.

A key issue in the study of early rabbinic culture is the nature of certain religious virtuosos, to whom various so-called magical actions are attributed in talmudic-midrashic literature. Were the ritual acts attributed to these religious figures understood, within rabbinic culture itself, as magical acts—thus pointing to the recognition of a type of holy man within late antique Jewish culture similar to the Hellenistic divine man—or were these actions understood instead as legal performatives whose meaning was embedded in a complex of religio-legal concepts?<sup>304</sup>

Stone’s analysis attempts to remove the perceived problem of magic existing within an otherwise legally oriented mishnaic text, mainly by situating the act of circle-drawing within a broader rabbinic context. In such cases, circle-drawing anticipates an appeal in the form of prayer by an intercessor, with the intention of God reversing a previously ordained judgment on the people. According to Stone, “The circle is a legal performative effecting the creation of an authoritative judicial proceeding. In short, it is an imaginative enactment of the legal idea of what we now call jurisdiction.”<sup>305</sup> Honi’s circle and subsequent prayers, therefore, represent a rabbinic appropriation and extension of the prophetic advocate’s petitions before the biblical divine court. Equally important, Stone recognizes that attempts to understand the four rabbinic Honi narratives<sup>306</sup> in terms of rabbinic vestiges of magic, while arguably compelling studies, miss the main issues at stake. The Mishnah, Tosefta, and two Talmuds, Stone claims, are more focused on the behavior displayed in Honi’s intercessory prayer for rain, that is, whether it exhibits a certain insolence toward the deity. Moreover, the act of circle-drawing is further

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<sup>304</sup> Ibid., 100. It is perhaps more of a problem for modern scholars, as opposed to the ancient rabbis, to negotiate the boundaries between “normative” rabbinic discourse and the practice of magic.

<sup>305</sup> Ibid., 103.

<sup>306</sup> *m. Ta’anit*, 3:8; *t. Ta’anit*, 2:13; *b. Ta’anit*, 23a; *y. Ta’anit*, 66d.

attested in rabbinic midrashim about the prophets Moses and Habakkuk, who also refuse to leave a defined spot until God has responded to their prayer.

By interpreting the circle-drawing prayer performative in terms of the prophetic intercessor, Stone is arguing that such figures come closest to the rabbinic idea of a “lawyer-advocate,”<sup>307</sup> for the prayer is lodged within a legal argument which appeals a previous judgment. Furthermore, the assertive nature of the prayer, as well as the magical-ritual nature of its performance, point to a desperate situation in which God can be invoked in quite forceful and even disrespectful terms, much like the lawcourt patterns of prayer presented in Heinemann’s study. These Hail-Mary modes of prayer-petition often function on behalf of a community confronting imminent peril: Finally, Stone’s analysis further supports the rabbinic bridging of boundaries between the divine and human court, rendering problematic any strict distinctions between the two.

Such rituals also tend to have a blurring effect of easing, erasing, or reversing the usual boundaries or social hierarchies. Rituals often imagine a reversal of the ordinary state of affairs. They enact a wished-for state, the opposite of ordinary reality, such as reversing God’s apparent injustice or obliterating his decrees. This aspect of rituals recalls its connection to play, as play is the area where one can safely do what cannot otherwise be done. And Honi is not only a child at play but one who safely does, like Popilius, what is otherwise dangerous and brazen. In these narratives we also have a reversal of the familiar image of divine judgment, in which God judges man from His transcendent Court on High, populated by the *famalia shel ma’alah*—the angels who act as prosecutors and witnesses. Instead, these rituals imagine an earthly court in which man appeals and God is both the defendant and the judge who will reverse his decrees.<sup>308</sup>

The theological nature of Honi’s circle-drawing, I would argue, reflects the “this world”/“world to come” tensions in many of the rabbinic midrashim demonstrating advocacy. In several of these cases, Israel or some clear representation of Israel stands as the defendant, the prophetic advocate pleads on behalf of the morally lapsed congregation, and God presides as the

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<sup>307</sup> Stone, “Rabbinic Legal Magic,” 108-109.

<sup>308</sup> *Ibid.*, 116.

judge, jury, and sometimes even an additionally accused party. The legal performance in many ways resembles the patterns Stone identifies as operative in Honi's Circle.

Converging the divine and human courtrooms fits well within this rabbinic attempt to confirm its legally constructed world of piety, whereby each situation invites a halakhic interpretation and solution; but when a divine decree of condemnation has been passed, one threatening the rabbinic universe of piety and righteousness, based largely on human agency, the advocate, in this case appearing as a divinely favored rainmaker, serves to restore harmony within the rabbinic universe, even confirming the halakhic principle of not petitioning for relief from abundant rains. Where crisis confronts halakhic harmony, divine and human courtrooms likewise confront one another, where the advocate can restore the rains and along with them the soteriological benefits of the halakhah.

## **5.6 Conclusion**

As stated at the beginning of this chapter, attention to advocacy and intercession is uncommon in the tannaitic literature, yet there are key texts that reveal the theological connection between salvation and supporting speech, along with the tensions between adversarial and inquisitorial justice. This was the method of interpretation for the advocacy statements in *Mishnah Abōt*, which at once reacts unfavorably to the Roman-style courtroom advocate, yet acknowledges the need, both daily and eschatologically, to enlist the patronage of a heavenly advocate. On the other hand, tannaitic statements about courtroom advocacy in *Sifre Deuteronomy* and *Tosefta Peah* do not question the integrity of the advocate's earthly office. They instead present its existence as a given in the cultural environment within which the rabbis perform scriptural exegesis. Beyond serving scriptural exegesis, the advocate can appear in the

form of a pietistic outsider charged with restoring order to the community, as is the case with Honi the Rainmaker. Here the rabbis have adapted the holy man to the halakhic discussions of the rabbis while preserving an advocacy tradition that may very well predate the compilation of the Mishnah itself.

This chapter has argued for an early rabbinic eschatology that positions the restoration of Israel with the performative nature of the text, imagining a well-ordered Israel existing in the here and now. Little attention is paid to the prolonged period of Jewish subjugation under imperial powers, whereas halakhic discussions center on the proper legal approach to a relatively undisturbed Jewish life cycle. The assimilation of Greek and Roman intellectual and rhetorical elements in such legal and midrashic exchanges helps explain the frequent avoidance of mentioning events and circumstances related to Jewish suffering under Rome. The theological emphasis on the here and now helps to illustrate the inconsistent view of the rabbis toward advocacy. As a demonstration of judicial independence, the practice of advocacy for hire is condemned. Alternatively, as a means of expressing the ongoing project of atoning for sin and earning divine merit, advocacy can still perform its soteriological function of bridging the divide between two parties, in most cases the people of Israel and their God.

## Chapter 6: Advocacy in the Amoraic Literature

### 6.1 Introduction

Several useful approaches exist through which to understand the intersection of legal and theological contexts surrounding both the amoraic literature of the two Talmuds, as well as the aggadic midrashim composed in Palestine during Late Antiquity.<sup>309</sup> The setting through which I wish to consider the sources below pertains to the theological development of Israel as a corporate entity that increasingly manifested the balance between individual observance of halakhah—tailored ultimately toward the individual’s secure stake in the world to come—and the notion of Israel being redeemed as one collective, a phenomenon closely tied to relationships between God, Israel, Gentile nations, and the heavenly forces operating within the world. Similar to the rainmaking narratives, a further question is posed regarding moments in rabbinic discussion when individual merit, earned through halakhic observance, proves either insufficient for or not entirely relevant to the soteriological situation at stake. In such instances, rabbinic constructions of advocacy for Israel provide an additional layer of redemptive protection for a nation whose community members do not enjoy absolute autonomy in their quest for both safe passage to the afterlife and a guaranteed entry into the eschatological future.

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<sup>309</sup> On the Palestinian Talmud, Catherine Hezser and Peter Schäfer, eds., *Talmud Yerushalmi and Graeco-Roman Culture*, Vols. 1-3 (Tübingen: Mohr Siebeck, 1998-2002); Amram Tropper, “Roman Contexts in Jewish Texts: On “Diatagma” and “Prostagma” in Rabbinic Literature,” *JQR* 95, no. 2 (Spring, 2005): 207-227; Marton Ribary, “Literary Signals for Legal Abstraction in the Talmud Yerushalmi and the Justinianic Legal Corpus,” PhD diss., (University of Manchester, 2017). On the cultural context of the Bavli, C. Bakhos, and M. R. Shayegan, eds., *The Talmud in its Iranian context* (Tübingen: Mohr Siebeck, 2010); Shai Secunda, *The Iranian Talmud: Reading the Bavli in Its Sasanian Context* (Philadelphia: University of Pennsylvania Press, 2014); Geoffrey Herman and Jeffrey L Rubenstein eds., *The Aggada of the Bavli and Its Cultural World*, Brown Judaic Studies 32 (Providence, RI: Brown Judaic Studies, 2018); Matthew Goldstone, “The Babylonian Talmud in its Cultural Context,” *Religion Compass* 13, no. 6 (June 2019): 1-11. On the midrashim of the land of Israel, Sarit K. Gribetz, David M. Grossberg, Martha Himmelfarb, and Peter Schäfer eds., *Genesis Rabbah in Text and Context* (Tübingen: Mohr Siebeck, 2016); Yael Wilfand, “Alexander the Great in the Jerusalem Talmud and Genesis Rabbah: A Critique of Roman Power, Greed and Cruelty,” in *Reconsidering Roman power: Roman, Greek, Jewish and Christian Perceptions and Reactions*, ed. Katell Berthelot (Rome: École Française de Rome, 2020), 124-125.

Amoraic literature involving supporting speech and intercession is quite diverse, ranging from simple allusions in passing to more theologically charged situations pointing toward the eschatological destiny of Israel. The following pages will examine first the educational context of the Amoraim, mainly as an attempt to uncover how, given the surrounding schools of grammar and rhetoric within many larger imperial towns in the rabbis' orbit, the rabbis maintained a more restrictive attitude toward advocacy within their own writings yet conceded its utility when depicting events in the divine courtroom. This viewpoint is illustrated in various examples in the ensuing pages, where analogies to advocacy, as well as to its perception in the heavenly world, can clarify and support several spheres of halakhic discussion. While the rabbis generally reject the presence of advocates for hire, supporting speech in the soteriological sphere is welcomed on either a theoretical or practical level, demonstrating that the predominance of the judges within rabbinic courtrooms by no means precludes, but rather bolsters, the strong juridical setting of salvation within the rabbinic corpus. In this context, supporting speech has far from disappeared; it merely manifests absent of a professional fee.

The current discussion will begin by evaluating the place of elite legal and rhetorical training in advanced educational institutions, both Greco-Roman and rabbinic. The main thrust of the analysis will be to demonstrate how widespread the training and practice of Roman advocacy was within the major provincial locations of the empire, and how this may have impacted the rabbinic legal environment itself. Text analysis of a select number of accuser-advocate statements will then proceed. This talmudic dictum demonstrates a theoretical claim that the offices of the prosecution and defense are not interchangeable. Moreover, the distinctiveness of the two offices is supported by halakhic analogies that further place a theological stamp on the claims. The chapter will then move to writings that demonstrate the protection afforded by

supernatural advocacy in the face of persecution by the Roman authorities. An examination of the rabbinic new year in relation to eschatology will then ensue, the objective being one of identifying what elements of advocacy assist in the preservation of Israel's election at the time of universal divine judgment. The chapter will then move to rabbinic constructions of supporting speech associated with preeminent biblical prophets and kings. Finally, I will conclude with occurrences of advocacy connected to the heavenly academy conceived of by some rabbinic writers, their paradisiacal destination reserved for apex scholars.

## **6.2 Roman and Rabbinic Education as a Background for Advocacy Episodes**

Because advocacy and intercession, whether in earthly or supernatural settings, require a strong degree of persuasive speech, it is natural to inquire as to the potential influences the various Greek, Roman, and rabbinic educational methods of Late Antiquity exerted upon later rabbinic passages presenting supporting speakers, and to what degree they employed rhetorical devices of the imperial schools in the advancement of their arguments. Traditionally, there is thought to have been a distinction between the idealized mission of rabbinic education in Late Antiquity and the schools of grammar and rhetoric which elite speakers of Greek and Latin attended. Shmuel Safrai noted, for example, how the obligation that every Jewish child be educated marked a stark contrast to learning models in the Greek cities, which were generally urban and much more limited as to accessibility.<sup>310</sup> Recent scholarship, however, has largely contested this earlier conception of Jewish education in Late Antiquity. To begin, scant evidence exists for women receiving a primary education, which significantly reduces the percentage of

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<sup>310</sup> Shmuel Safrai, "Elementary Education: Its Religious and Social Significance in the Talmudic Period," *Journal of World History* 11 (1968): 148.

the educated Jewish population. Second, economic exigencies may have prevented many young Jews from receiving even a basic primary education.<sup>311</sup> Catherine Heszer states that “The rabbinic texts put forth by most scholars in support of a widespread school system in Roman Palestine were not only written down many centuries after the ‘events’ they purport to describe, they were also usually misinterpreted in order to fit the theory.”<sup>312</sup> Even if the rabbinic literary record could be trusted in its claim that most every Jewish child enjoyed access to Torah and Mishnah study until around the age of thirteen, it is unclear that this same accessibility continued for those seeking to pursue a more advanced adult education in the oral Torah under an acclaimed rabbi. Heszer argues that the evidence would indicate two general education settings for early rabbinic study: groups of disciples gathered around a distinguished, learned rabbi, and the development of study houses in particular locations.

Within more advanced stages of rabbinic training, the consideration of persuasive speech must have played some role in the development of advanced interpretation and discourse, as is evidenced by statements such as the following in *b. Sotah* 35a, where Rabba claims that the biblical man of renown, Caleb, must have employed rhetoric in turning the wilderness generation more favorably toward the will of Moses: ויהי כלב את העם אל משה אמר רבה שהסיתן בדברים / “‘Caleb then silenced the people toward Moses.’ Rabba said, [‘This Scripture states] that he stilled them by means of speeches.’”<sup>313</sup> Gerald M. Phillips, when considering passages such as these, argued

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<sup>311</sup> Catherine Heszer, “Private and Public Education,” in *The Oxford Handbook of Jewish Daily Life in Roman Palestine*, ed. Catherine Heszer (New York: Oxford University Press, 2010), 469-70.

<sup>312</sup> *Ibid.*, 170. Heszer (471) notes that “most of the rabbinic sources which mention schools (*batei sefer*) and teachers (*soferim*, *hazzanim*) stem from the amoraic period, that is, late antiquity. They refer to schools of a private and informal nature (cf. the Graeco-Roman elementary schools) which supplemented parental education rather than replacing it.”

<sup>313</sup> *b. Sotah*, 35a.



that they reflected a form of legal conversation, where most of God's law was spoken rather than written, and that the discovery of the oral law was a spoken art as well. The practice of persuasion, therefore, would have occurred as a natural facet of this decidedly spoken rather than written form of discussion and legislation.<sup>314</sup> Even God himself is characterized in *b. Sanhedrin* as not performing action until he has discussed it with the divine household (פמליא של מעלה), or perhaps in this case, within the divine courtroom.<sup>315</sup> The type of argumentation involved in such sophisticated legal and theological discussions, where even God himself is characterized as respecting and engaging with a strong argument, most likely remained within the sphere of those receiving an advanced, elite education, and therefore rabbinic education in the amoraic period partially shares the attributes of its counterparts within the larger Greek and Roman provincial cities.

When examining the late ancient Greek and Roman spheres of education, it is possible that the distinctions between schools of grammar and rhetoric, on the one hand, and rabbinic advanced education, on the other, are not quite so vast as the sources might indicate. Robert A. Kaster's monograph on grammarians in Late Antiquity identifies three distinguishing aspects of the grammarian-rhetorician's educational development:

From about age seven or eight (although the age was variable), the student's experience was governed by three goals, pursued first in the grammarian's school, then in the rhetorician's: mastery of correct language, command of a fairly small number of classical texts, and an ability to turn the knowledge of language and literature to a facility in composition and speech. Set in a form already centuries old, the grammarian's main contribution to those ends consisted of the "knowledge of speaking correctly" and the "explication of the poets."<sup>316</sup>

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<sup>314</sup> Gerald M. Phillips, "The Place of Rhetoric in the Babylonian Talmud," *Quarterly Journal of Speech* 43, no. 4 (1957): 390-393.

<sup>315</sup> *b. Sanhedrin*, 38b.

<sup>316</sup> Robert A. Kaster, *Guardians of Language: The Grammarian and Society in Late Antiquity* (Berkeley: UC Press, 1997), 12.

Thus far one already recognizes a loose similarity between these learning outcomes and those of the amoraic scholar charged with carrying on the traditions of his tannaitic predecessors, both in terms of scripture and oral Torah. But in the case of Greek and Roman education, pedagogy operated largely from social contexts governed by wealth and eloquence in the face of a less advantaged multitude mired in poverty and illiteracy.<sup>317</sup> “During the first five centuries of the common era, the grammarian's school ranked among the most important institutions, outside the family, through which the governing classes of the empire perpetuated and extended themselves.”<sup>318</sup> A grammarian or rhetorician, moreover, endowed their art of learning with a sacred identity that set apart a certain class of men distinguished by the preservation of proper livelihood and communal order:

This enduring belief in the separateness belonging to and created by the literary culture found expression in several persistent metaphors. Most notably, an idea of sacredness attached to the instruction and to its texts. . . Such voices spoke with the knowledge that they possessed something set apart and enduring, something fundamental to the scheme of right order: the sacred exercised a powerful centripetal pull on a select group of men, to whom it afforded a special, shared, coherent way of life.<sup>319</sup>

One important means by which to distinguish the inner circle of the educated was through taking ownership of the sacred language, thereby establishing its proper forms, utterances, and sacred identities. Some scholars have likewise argued for a rabbinic project to both preserve and revive the Hebrew language beginning in the third century C.E. Nicholas de Lange states that “This revival was accompanied and buttressed by a belief that the Hebrew language was uniquely linked to the people of Israel and their God; on this theological basis other theological

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<sup>317</sup> Ibid., 13-14.

<sup>318</sup> Ibid., 14.

<sup>319</sup> Ibid., 15-16.

claims were built.”<sup>320</sup> Another important factor affecting academic-religious life, as mentioned above, was the town’s function as an epicenter of learning circles: “of the hundred-odd grammarians we can identify and place from the mid-third through the mid-sixth centuries, all taught in spots that emerged as episcopal sees at some time during this period.”<sup>321</sup>

In terms of rabbinic learning centers, however, several other criteria determined their accessibility, not the least of which were the funding mechanisms ensuring the stable functioning of rabbinic schools.<sup>322</sup> Beyond funding, location appears to have been more flexible. David Aberbach has maintained that the rabbinic educational project indeed targeted the regions beyond the urban centers of elites: “Rabbinic literature has evidence of a long struggle to create a viable international system of education based on Scripture and halakha (Jewish law), mostly in Hebrew, and aimed chiefly at the poor living in a subsistence-level agricultural society.”<sup>323</sup> According to rabbinic sources, rather than education being centered within the largest towns of the empire, the early nucleus developed in the Galilee, long perceived as a habitation of the unlearned and ignorant. The talmudic traditions speak of a universal system of education for the people of Israel that, although beginning in Jerusalem, spread out among the provinces and cities and towns.<sup>324</sup> Perhaps the more nuanced view comes from Ben-Zion Rosenfeld’s study, which

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<sup>320</sup> Nicholas de Lange, “The Revival of the Hebrew Language in the Third Century CE,” *JSQ* 3, no. 4 (1996): 343.

<sup>321</sup> Kaster, *Guardians of Language*, 20.

<sup>322</sup> Susan Marks, “Who Studied at the Beit Midrash?: Funding Palestinian Amoraic Education,” *Journal of Ancient Judaism* 12, no. 2 (2021): 281-312.

<sup>323</sup> David Aberbach, “Poverty and mass education: The Jews in the Roman empire, *Working Paper Series*, No. 18-192 (2018), London School of Economics and Political Science (LSE), Department of International Development, London, 3.

<sup>324</sup> *b. Bav. Batra*, 21a.: “התקינו שיהו מושיבין בכל פלך ופלך ומכניסין אותן כבן שש עשרה כבן שבע עשרה”/“They instituted an ordinance that [teachers] should be assigned to every region, and they enrolled [the students] at the ages of sixteen and seventeen.”

has argued that the rabbinic class developed its own unique collection of identity markers indicating collective cohesion, attributes which were primarily cultural rather than material or genealogical. As custodians of oral Torah and the sacred scripture, “they could teach anywhere—in the cities, in the villages, even in the open air—and the urban or rural character of the settlement in which they resided influenced their activities. They had no need to confine their activities to a small number of large urban academies, as was common in the Roman world.”<sup>325</sup> Nevertheless, Rosenfeld believes that this relationship between urban centers and peripheral villages suggests that the most important locales for the great sages and their teachings remained in the cities, thus reflecting the nature of education among an elite class in general.<sup>326</sup>

Hezser has emphasized the examination of Greek and Roman education alongside its rabbinic counterparts, both phenomena being in need of fresh interpretations: “Graeco-Roman legal training is an area most suitable for comparison with rabbinic learning, which was also largely legal in nature, whereas rabbinic narrative and Torah interpretation would profit from a comparison with rhetorical education.”<sup>327</sup> Hezser appeals to William Harris’ enduring study of ancient literacy in the Greek and Roman worlds, which in the period of Late Antiquity is viewed as experiencing a decline, with many municipalities failing to fund a systematic project of education and tailoring more to the advanced rhetorical training of the elite strata of society.<sup>328</sup>

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<sup>325</sup> Ben-Zion Rosenfeld, *Torah Centers and Rabbinic Activity in Palestine, 70-400 CE: History and Geographic Distribution* (Leiden: Brill, 2010), 6-7.

<sup>326</sup> *Ibid.*, 8.

<sup>327</sup> Hezser, “Private and Public Education,” 468.

<sup>328</sup> William V. Harris, *Ancient Literacy* (Cambridge, MA: Harvard University Press, 1989), 285 ff. The irony of the gradual decline in literacy is not lost on Harris, who notes that it opened up easier opportunities for those capable of enduring an elite education: “In the fourth century there were far fewer literate freedmen than there had been 200 years earlier; but just for that reason perhaps a free-born male had more chance of rising to a high political and social position with the assistance of notarial skills” (288).

In light of the rabbinic tension between learning gravitating from the urban centers to the rural outlying lands, and the lack of sustaining a stable educational environment upon the passing of an elite rabbi teaching in the rural areas, it can perhaps be stated cautiously that the rabbinic model would suggest an elite educational environment which may have afforded a wider allocation of learning opportunities than did the advanced schools of Greek and Latin rhetoric. Its ability to extend beyond urban centers perhaps granted greater opportunities for literacy and primary education, although the weight of advanced learning remained principally within the larger towns.

When discussing, however, the impact of grammar and rhetoric on elite Greeks and Roman literati, as opposed to the primary and advanced rabbinic models of education, one can actually point to advocacy as a primary factor in these distinctions, especially in terms of the social mobility distinguishing those educated in both grammar and rhetoric. In this case, the opportunities for social advancement afforded themselves largely to advocates who had received the requisite academic training.

The general observation of Augustine and John Chrysostom, that liberal letters furthered temporal ambitions, is amply borne out by specific cases: Augustine himself, Ausonius and other teachers at Bordeaux, Libanius's students, rhetoricians and advocates who became governors, wandering panegyrists, and even a few fairly obscure grammarians.<sup>329</sup>

The situation in the western empire, in Bordeaux as an illustration, demonstrates that rhetoricians in Late Antiquity who hoped to both support their skills and ascend the imperial ranks, found an effective path through advocacy and the status it conferred.

Practice at the bar is another index of social status, implying rhetorical training and so the wherewithal to support it. Advocacy might also be taken as a sign of ambition; for although it was not the route that Ausonius eventually chose, it could provide an entry into the imperial service.<sup>330</sup>

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<sup>329</sup> Kaster, *Guardians of Language*, 28.

<sup>330</sup> *Ibid.*, 105.

The means to administrative positions was also facilitated by advocacy in some of the larger regional centers capable of supporting a school with at least one accomplished teacher of rhetoric.

“In the fourth century especially, advocacy was a promising path for an ambitious man, not least because provincial governors often chose their own counselors (*assessore*) from among the advocates, and the governors in turn were heavily recruited from among the assessors.”<sup>331</sup>

Equally telling was the number of trained rhetoricians who went on to become bishops.

Augustine himself was remarkable among those Christians walking the tightrope between classical letters and early Christian service to Christ. He remarks in his *Confessions* that “hinc verba discuntur, hinc acquiritur eloquentia, rebus persuadendis sentiis que explicandis maxime necessaria”/“Here words are to be learned; here the eloquence is attained most necessary to persuading people to your ways of thinking and ordering of opinions.”<sup>332</sup>

While the Talmud is fairly unequivocal about a universal project of education and literacy, largely based on the notion of inculcating the youth in the principles of Torah, can one arrive at any legitimate assessment as to the degree of privileged access afforded the students of rabbinical teachers, who went beyond the fundamentals of Torah study and immersed themselves in more advanced forms of argument, legal discussion, and theological interpretation? At issue are the instructional settings within which advanced rhetorical training took place, and to what degree these settings may have included some degree of advocacy. First, in terms of

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<sup>331</sup> Ibid., 124.

<sup>332</sup> *Aug. Conf.* I.16.26. See V.8.14 for Augustine’s comments on the lucrative nature of establishing oneself as a teacher of rhetoric in Rome. Citations of the Latin text are taken from *Augustine: Confessions Books I–IV*, ed. Gillian Clark, Imperial Library of the Cambridge Greek and Latin Classics (Cambridge: Cambridge University Press, 1995).

accessibility, the rabbinic setting for more advanced education likely proved much more restrictive, limited to the master teacher(s) and a select cohort of disciples.<sup>333</sup> Nonetheless, on occasion a prominent rabbi might lecture about legal and religious topics to a broader audience, accompanied often by a colleague or disciple who stood up to repeat each utterance of the teacher.

Richard Hidary argues that, in spite of the condensed form of most discussions and legal rulings in the Jerusalem Talmud, a project of comparing the *sugyot* and late ancient rhetoric presents a viable undertaking.

First, because even the truncated form of lectures that serve as the basis for many *sugyot* still may retain a kernel of the structure and lines of argumentation from the original oral presentation. Second, and more importantly, the final work of the redactors is worthy of study on its own, regardless of whether it accurately portrays amoraic teachings.<sup>334</sup>

In light of Hidary's contention that the structure and argument can still be excavated from the abbreviated form of what might have been either rabbinic lectures or discussions, he maintains that many of these talmudic *sugyot* contain persuasive oratory worthy of comparison to ancient classical models. If, moreover, a persuasive rabbinic argument can be identified as one of intervening on behalf of another party, there may exist the element of advocacy in such speeches.

Hidary demonstrates that *y. Berahot* 1.1, for example, contains the primary elements of judicial oratory, absent of the exordium and refutation. It includes the sections of narration, partition, and the argument itself. The three main proofs of the argument, moreover, comprise a standard ordering of the strong, weakest, and strongest lines of evidence, a technique advised by the standard handbooks on classical oratory. The progression of argument in this *sugya* actually

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<sup>333</sup> Richard Hidary, *Rabbis and Classical Rhetoric: Sophistic Education and Oratory in the Talmud and Midrash* (Cambridge: Cambridge University Press, 2017), 78.

<sup>334</sup> *Ibid.*, 79.

shows an implicit line of defense in support of Rabbi Gamliel's ultimate conformity with the majority halakhic opinion.

Hidary also offers a cogent analysis concerning the close relationship between the Greek *progymnasmata*, a collection of preparatory exercises that would train students of rhetoric for the more elaborate orations to follow. These included the *controversiae*, speeches composed for an imagined court proceeding, and *sauserua*, contrived deliberative orations delivered through the voice of a well-known ancient speaker weighing two alternative possibilities of argument, each of which would come later in their schooling.<sup>335</sup> Hidary has argued that several of the techniques and forms of such training exercises manifest in various degrees in rabbinic writings. In other words, rather than consistently reflecting the elaborate structures of classical rhetoric, much of the rabbinic literature more accurately reflects the training exercises afforded aspiring orators: "Specifically, the penchant for arguing both sides of an issue, the use of a dialogic format, and the discussion of hypothetical cases that characterize rabbinic literature find close parallels in Roman school exercises."<sup>336</sup> Such training tools focused on one component of a speech, such that the consummation of the exercises would result in a student prepared to deliver an oration containing all such elements. For the purposes of the present study, the *progymnasta* that introduce a law require the student to offer arguments both defending and attacking the proposal. Exercises surrounding accusation and defense are quite significant in this regard, for even if the rabbinic discussion forbids professional advocates, the rabbinic arguments themselves may still involve accusations and defenses loosely modeled on genuine court cases.

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<sup>335</sup> A clear introduction and primary source collection in both Greek and English is found in George Kennedy, *Progymnasmata: Greek Textbooks of Prose Composition and Rhetoric* (Leiden: Brill, 2003).

<sup>336</sup> *Ibid.*, 132.



With these factors in view, one may observe how closely connected educational and legal training were within advanced rabbinic education, a phenomenon which once again begs the question of direct Greek and Roman influence on rabbinic legal training. Hezser has warned against viewing parallels between classical and rabbinic legal settings as indicative of direct lines of influence, and that the comparative approach is better served by understanding how the rabbis demonstrated their own unique form of interaction with Greek and Roman legal models.

It is tempting to argue that such similarities concerning the form and/or content of their teachings point to direct influence of one set of scholars on the other. This is a temptation we should resist. Such tempting parallels need to be understood against the background of the rabbis' participation in a Late Antique cultural context dominated by Greco-Roman culture.<sup>337</sup>

The similarities and differences in the legal arena, so closely bound to the rabbinic circles of education, should be understood both in terms of both legal theory and practice. Hezser's analysis approaches Jewish and Roman comparisons through the lens of five categories: Legal thought, social contexts of both legal rulings and discourses, prominent legal topics, development and circulation of legal traditions, and the codification of laws. Essentially both traditions focused on case laws much more than systematization. Case laws, and the application of these precedents to new legal situations appearing difficult to resolve, conferred a certain degree of power on those qualified to advise and issue rulings. The encounters, therefore, between ordinary litigants and educated legal scholars placed the former to some degree in a state of dependence on the latter's expertise.

Case law required the personal contact between litigant and legal advisor. So long as no theoretical legal system with fixed rulings existed, clients who required legal advice were personally dependent on the few who were knowledgeable of the legal traditions and able to apply them to new situations and circumstances. The scholars had undergone a long process of study and service themselves. The ability to advise in legal matters and

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<sup>337</sup> Catherine Hezser, "Roman Law and Rabbinic Legal Composition," in *The Cambridge Companion to the Talmud and Rabbinic Literature*, ed. Charlotte Elisheva Fonrobert and Martin S. Jaffee (Cambridge: Cambridge University Press, 2007), 144.

provide case decisions was handed down informally from teacher to student. Accordingly, a small group of legal experts perpetuated themselves.<sup>338</sup>

The notion that specialized legal knowledge conferred power upon the trained scholar certainly placed Roman advocates in potentially lucrative and prestigious positions when representing their clients; but given the general rabbinic antipathy toward advocates for hire, it remains to be seen whether the act of providing legal counsel to litigants ever acted as a form of either professional patronage or advocacy. On firmer ground is the possibility that legal representation and supporting speech still occurred among rabbis in demand for their legal expertise, given how wide the gulf was between the custodians of knowledge and those without legal training.

Examining the social settings of both Roman and rabbinic legal practice, one observes that the amoraic rabbis, like their Roman counterparts, often congregated among one another informally in the endeavor to train select bodies of disciples who would go on to pass the fruits of such legal engagements to subsequent generations of students.<sup>339</sup> One question Hezser raises within this dynamic concerns the nature of relationships between legal specialists and lawyers among their respective ancient lawcourts, both public and private. As legal adviser, the two systems are broadly similar, in that Roman jurists afforded legal counsel to those who solicited their expertise, just as rabbis played the part of counselors in the realm of halakha within an ever-changing environment, where new social conditions required new interpretations of the law.

In the evaluation of legal traditions bearing relevance to advocacy, the Babylonian Talmud presents a special challenge, given that it has inherited the influences of its Palestinian predecessor in terms of Greek and Roman contexts, while at the same time it incorporates a measurable degree of Sasanian influence, particularly within the legal sphere. As Maria Macuch

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<sup>338</sup> Ibid., 146.

<sup>339</sup> Ibid., 148.

has stated, “. . . the question no longer is, whether Sasanian law was known or discussed by the rabbis, but rather *to which extent* it was adapted consciously or unconsciously and played a part in the formation of rabbinic law and certain rulings transmitted in the Talmud.”<sup>340</sup> Maruch has categorized the problems involved in understanding the relationship between Sasanian legal terms, expressions, and traditions, on the one hand, and rabbinic laws and discussions, on the other. Borrowing terminology does not automatically imply adopting of laws, and adopting of some laws does not necessarily mean these were applied to Jews as opposed to gentiles within their communities. The Talmud does appear to appropriate legal terminology from later sources postdating the Zoroastrian scriptures, not automatically connected to purely religious law but reflecting instead the legal profession’s emergence as its own discipline, still related to religion but not presupposed by it.<sup>341</sup> Sasanian jurisprudence in ways reflected a similar project on the part of Jewish sages of Late Antiquity, namely that of harmonizing ancient legal-religious culture with contemporary social and cultural conditions: “regulations had to be clarified, and that the gulf between legal provisions and social reality had to be harmonized were perhaps the main factors that gave rise to jurisprudence.”<sup>342</sup>

Yaakov Elman, when considering Sasanian influences on the Bavli’s legal development, attempted to explain how Persian legal influences may have contributed to the three main centuries of development for legal theory and institutions as reflected in the discussions of the

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<sup>340</sup> Maria Macuch, “Allusions to Sasanian Law in the Babylonian Talmud,” in *The Talmud in Its Iranian Context*, ed. C. Bakhos and R. Shayegan (Tübingen: Mohr Siebeck, 2010), 103.

<sup>341</sup> *Ibid.*, 105.

<sup>342</sup> János Jany, “The Jurisprudence of the Sasanian Sages,” *Journal Asiatique* 294, no. 2 (Dec. 2006): 292.

Babylonian Talmud.<sup>343</sup> In terms of adaptation to Persian legal traditions, Elman first addresses what he calls “rabbinic intellectual-theological engagement with Persian tradition,” that is, to what extent rabbinic statements either legitimize or delegitimize Persian oral traditions, either in terms of their “authority” or “authenticity.”<sup>344</sup> Of course, one of the major problems with determining these legal comparisons is the degree to which the redactors of the Bavli superimposed on texts their own negative views of Persian laws and courts, which may not have reflected the opinions of the rabbis themselves. Elman observes that, by the inception of the Sasanian period, the Jews of Babylon had experienced roughly 750 years of coexistence with Persian culture. Under these circumstances, cultural convergence of varying degrees should be assumed as a given. This is illustrated theologically, for example, in R. Yosef, who voiced strong condemnation of Persians<sup>345</sup> yet had assimilated a strong level of Zoroastrian theological principles.<sup>346</sup>

Having established a larger legal and educational landscape through which to examine amoraic texts related to advocacy, attention can now be directed toward a selection of writings that employ legal and theological means of explaining an advocate’s place in the divine economy. Again it will serve well to understand the soteriological component informing these occurrences, in so far as a divide separates two parties, with the possible result of severe harm afflicting the weaker of the two. The rhetorical means by which this predicament is resolved will

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<sup>343</sup> Yaakov Elman, “Middle Persian Culture and Babylonian Sages: Accommodation and Resistance in the Shaping of Rabbinic Legal Tradition,” in *The Cambridge Companion to the Talmud and Rabbinic Literature*, ed. Charlotte E. Fonrobert and Martin S. Jaffee (Cambridge: Cambridge University Press, 2007), 168.

<sup>344</sup> See *Ibid.*, 185, 190. Such may be the case with the many negative assessments of Persian law attributed to Rabbi Nahman.

<sup>345</sup> *b. Meggilah*, 11a.

<sup>346</sup> *b. Abodah Zarah*, 4b.

hopefully demonstrate the intersection of legal discussion and soteriology, and in that sense the strong juridical current directing rabbinic salvation.

### **6.3 “An Accuser cannot become an Advocate”**

A relatively rare yet intriguing saying concerning advocacy appears over a broad range of amoraic texts, that being the simple dictum that “An accuser cannot become an advocate” (אין קטיגור נעשה סניגור). Little attention has been drawn toward these occurrences, as well as to the rabbinic discussions that have prompted their appearances toward the closing of a particular argument. Examining the various contexts giving rise to this pronouncement may shed light on the rather strict rabbinic separation between the functions of an accuser and advocate. The hard differentiation between the two merits comment in light of how these functions are often shared in Late Second Temple texts involving intercessors and advocates. Rather than considering a supporting speakers as those capable of issuing accusations against their adversaries, the rabbis place them in sharp contrast to accusers during the process of legal or exegetical interpretation. Exploring these contexts, then, and the possible similarities among them may illuminate the legal and theological motivations behind this saying.

A discussion in *b. Rosh Hashanah 26a* illustrates a standard method by which this saying comes into play, where a legal disagreement over proper religious observance points toward a deeper theological meaning underlying the rabbis’ interpretation of the Mishnah. The legal problem at hand involves the Mishnah’s prohibition on sounding the shofar blast through the horn of a cow during the new year festival. Presumably horns cannot be sounded, which raises a problem, since the shofar itself is considered a category of horn belonging to a ram. The Gemara first presents the dissenting opinion by stating that the horn of a cow is exclusively referred to as

*qeren* (קרן), while the shofar can be called either by its own name or a type of *qeren*.

Nevertheless, both are forms of a horn. Rabbi Ulla then clarifies and supports the reasoning of the Mishnah.

עולא אמר: היינו טעמא דרבנן, כדרב חסדא. דאמר רב חסדא: מפני מה אין כהן גדול נכנס בבגדי זהב לפני ולפנים לעבוד עבודה לפי שאין קטיגור נעשה סניגור

Ulla said, “This is the basis for the Rabbis’ decision, in accordance with the argument of Rab̄ Hisdah as Rab̄ Hisda has said, ‘Why does the High Priest not enter the Holy of Holies with golden attire to perform the [Day of Atonement] service? Because the accuser cannot become the advocate.’”<sup>347</sup>

Ulla’s recollection of Hisda’s argument is that the High priest is charged with performing an intercessory ceremony on that day, but were he to wear gold, it would presumably recall the golden calf apostasy, which ranks supreme among Israel’s sins requiring collective atonement. Wearing golden garments would position the priest as one invoking the worst sin of Israel and placing him in the role of an accuser. His function on the Day of Atonement, by contrast, is one of pleading for the sins of the people, to defend them rather than to condemn.

The counterargument identifies objects within the inner sanctum of the Temple that are either made or adorned with gold. The rabbis supporting the Mishnah’s ruling counter that inanimate objects laden with gold are irrelevant. What matters is that a sinner (חוטא) entering the most holy place cannot be clothed in gold. What is worn outside the inner sanctum, as well as the state of anything inanimate within the inner sanctum, does not matter. It is the priest himself, the one pleading atonement for the people, who cannot wear gold. Finally, the opposing argument goes back to the Mishnah’s original line of reasoning, which stated that the *qeren* status of the cow’s horn disqualified it as a shofar, not the rule that an advocate should not become the accuser.

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<sup>347</sup> A similar line of reasoning is attributed to Rabbi Levi in y. *Rosh Hashana* 3.2, but the argument is merely cited and passed over, without any further assessment of its merits. The Bavli version offers much more engagement and is therefore the focus of the current discussion.

Those favoring the Mishnah's opinion state that there are indeed two lines of evidence for excluding the cow's horn. This argument continues and in fact does not get resolved. The significance of the rabbinic statement concerning accuser and advocate is important more so for its understanding of the priest's role during the atonement festival; he intercedes on account of the people's past transgressions. This function includes the blasting of the shofar, which also represents an act of advocacy for the people. This blast cannot be used with the remains of an animal associated with Israel's greatest sin. Symbols of accusation cannot dilute acts of advocacy.

A similar observation on the vestments of a high priest appears in *y. Yoma* 7.3, where a discussion ensues concerning the Mishnah's statement on the eight garments (בשמונה כלים) worn by the high priest, as opposed to the four garments belonging to the ordinary priest (הַקְּדוּשָׁה).<sup>348</sup> The additional four articles donned by the High Priest ostensibly pertain to his powers relating to the *Urim* and *Tummim*, which are petitioned only for the sake of kings or other high ranking officials responsible for the community's greater welfare (צורך הציבור). While the larger discussion will center on legitimate reasons for the High Priest's wearing double the number of garments compared to the common priest, an incidental question arises as to why the High Priest officiates without wearing gold, in response to which Rabbi Levi offers the advocate-accuser argument.

אמר רבי לוי. שאין קטיגור נעשה סניגור. אתמול כתוב בהם ויעשו להם אלהי זהב ועכשיו הוא עומד ומשמש בבגדי זהב

Rabbi Levi said, "Because the accuser cannot become an advocate. Yesterday it was written regarding them, 'They fashioned for themselves gods of gold,' and now he would stand and minister [for the people] in garments of gold?"

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<sup>348</sup> הַקְּדוּשָׁה is presumably related to the Greek, ἰδιώτης, in this case referring to the category of a commoner; in Jewish terms, that would indicate a common priest.

y. *Yoma* offers the same rationale for the prohibition on the High Priest's wearing of gold as does b. *Rosh Hashanah* 26a: that the act would undermine the priest's advocacy function before the people. Again, gold would symbolize the sin of the people and transform his office into an accusatory one. Both passages, therefore, illustrate the rabbinic perception of the High Priest as one who performs a legal-expiatory function for the most severe sins of Israel, which cannot in any way be compromised by placing his role within the realm of an accuser. The legal nature of expiation and salvation are very much in view in these passages, with the focus being on the community as opposed to the individual.

b. *Hagigah* 13b arrives at the incompatibility of accusers and advocates by way of a discussion on the divine chariot, which itself appears through a roundabout discussion of halakhic topics that either have much or little support in the written Torah. From this comparison, the rabbis arrive at the principle that all aspects of written and oral Torah, no matter their explicit degree of written support, are of vital importance for Torah study (תורה גופי). Having established the importance of all halakhah, the rabbis now isolate specific elements of the scripture that have restrictions for those teaching and interpreting them. This is a widely discussed Mishnah concerning forbidden relations (עֲרִיזוֹת), the act of creation (מַעֲשֵׂה בְרֵאשִׁית), and the divine chariot (מַרְכָּבָה). Concerning the chariot, the rabbis are disagreed as to how exacting this prohibition is, namely in the sense that one can only teach this topic if he possesses extraordinary wisdom. In the process of debating who is worthy of this teaching, eventually the Gemara expounds on the nature of the chariot and the interpretation of Ezekiel 1. A problem is posed regarding the beasts of the divine chariot, namely why the creatures with the four faces include an ox in one section of text but later the face of a man. Reish Lakish argues that Ezekiel pled with God that the ox be replaced, since it was reminiscent of the golden calf, posing the



deliberative question, “Should an accuser become an advocate” (קטיגור יעשה סניגור)? In other words, the chariot which bridges the heavens and earth cannot display imagery suggesting an accusation of Israel. Once again, the rabbis show great concern for objects representing either God itself or the office of atonement. The imagery must suggest advocacy for Israel in order to be effective.

A minor analogy is raised in *b. Kiddushin 5a*, where the modes of betrothal are being discussed and the rabbis question the feasibility of either contracting or nullifying a marriage by means of money. If money or a document should be used as a means to marriage, it ought not also act as a means of nullification.

יאמרו כסף מכניס כסף מוציא סניגור יעשה קטיגור אי הכי שטר נמי יאמרו שטר מוציא שטר  
מכניס קטיגור יעשה סניגור

People will say, ‘money establishes, and money dissolves [the marriage].’ Should an advocate become an accuser? If this is the case regarding a document also, people will say, ‘a document establishes and a document dissolves [the marriage].’ Should an accuser become an advocate?

In this particular situation, the Talmud is referring to the same resource being applied to opposing purposes, which would make as much sense as an advocate playing the role of accuser. Here the analogy carries no special meaning other than to illustrate a strong contrast regarding the stipulations of a marriage contract.

*b. Berahot 59a* situates an accuser/advocate statement within a litany of blessings concerning God’s benevolence in the world, specifically in regard to matters that exceed the power of humanity to alter and therefore require one’s humility and gratitude in the presence of the divinity. Despite the roundabout course the sages take to arrive at the legal statement, it is clear once again that the context involves matters of weighty judgment that have had, and continue to have, a significant impact on the fortunes of Israel. The Gemara begins this discourse by

explicating the proper times to perform prayers on behalf of miracles, both individual and collective. Examples include prayers of thanks for recovering from illness, release from prison, walking through the desert, or travelling by sea. There are also several locations in and around Israel where God's miracles occurred, such that blessings should also be performed when passing through these places. This section of *Berahot* also contains an extended passage on the nature of dreams and their interpretation. It is important to recall, moreover, that the text expands significantly on the simple yet profound mishnaic statements on locations where either miracles occurred or idolatry was removed. In the event of idolatry's removal, the Mishnah explains several instances of the practice connected to both polytheistic divinities and the constellations. Amidst these discussions there also exists a strong emphasis on landmarks and prominent figures, both in Israel and in Babylon. The intention appears to be one of associating land with historical memory, and the need to acknowledge the sovereign deity in all these matters by accepting current circumstances and anticipating the future restoration of things.

Eventually, through the consideration of unusual sites in the sky, the discussion gravitates towards the stars, where the rabbis are attempting to resolve a contradiction between Job 9.9 and Amos 5.8. In terms of the stars, Pleiades and Orion, the question is raised as to which precedes the other? The two stars are considered complements of one another, as the extreme cold of Pleiades balances the extreme heat of Orion. It is God's ongoing adjustments to this balance that triggers the existence of scorching heat and bitter cold. In examining the Job passage, the scripture states, *עָשָׂה-עַשׂ כָּסִיל וְכִימָה וְחִדְרֵי תַמָּן*, "He made Ursa Major, Orion, and Pleiades" (Job 9.9). Then an unusual tradition with no attribution is stated:

שבשעה שהקדוש ברוך הוא בקש להביא מבול לעולם נטל שני כוכבים מכימה והביא מבול לעולם וכשבקש לסתמה נטל שני כוכבים מעיש וסתמה

When the Holy One, blessed be He, set out to bring the Flood upon the world, he took hold of two stars from Pleiades and brought the Flood upon the world, and when He sought to stop up [the waters], he took hold of two stars from Ursa Major<sup>349</sup> and filled the gap [with them].<sup>350</sup>

Once Ursa Major has forfeited two stars to Pleiades, the implication is that it will petition for their return. The question, therefore, arises as to why God did not simply return these stars to Pleiades, since he himself orchestrated the flood. Somehow the rabbis believe that the stars bear responsibility for the flood and therefore function as accusers.

וליהדר לה אין הבור מתמלא מחוליתו. אי נמי אין קטיגור נעשה סניגור  
וליברי לה תרי ככבי אחרני אין כל חדש תחת השמש אמר רב נחמן: עתיד הקדוש ברוך הוא  
להחזירן לה שנאמר ועיש על בניה תנחם

And [as for the possibility of] returning it to her? A pit is not filled by its own sand. On the other hand, an Accuser cannot become an Advocate. Should God have formed two other stars for her? “There is nothing new under the sun” [here]. Rab Nachman said, “In the future, the Holy One, blessed be He, shall return [the stars] to her, as the Scripture states, ‘You can guide Ursa Major through her sons.’”

The stars cannot perform the role of advocates by independently initiating their original balance. The ultimate restoration of their integrity is reserved for God to perform in the eschatological future.

#### 6.4 Repentance and Good Deeds as Advocates in *Bavli Shabbat 32a*

*Bavli Shabbat 32a* provides further perspective on the connection between impending judgment and the role of advocates, one that again transcends temporal boundaries and attempts to fuse the Israelite past with its anticipated deliverance in the world to come.

אדם יוצא לשוק, יהי דומה בעיניו כמי שנמסר לסרדיוט. חש בראשו — יהי דומה בעיניו כמי שנתנוהו בקולר. עלה למטה ונפל — יהי דומה בעיניו כמי שהעלוהו לגרדום לידון, שכל העולה לגרדום לידון אם יש לו פרקליטין גדולים — ניצול, ואם לאו — אינו ניצול

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<sup>349</sup> The “Great Bear” occurring only in the Book of Job, and referring to a major constellation in the rabbinic writings.

<sup>350</sup> *b. Beraḥot 59a.*

A man who goes out to the marketplace should consider himself as having been delivered over to the Roman captain. If he suffers a headache, he should consider himself as one who has been placed in a prisoner's band. If he climbed into his bed and fell, he should consider himself as one who has been taken up to the torture rack for judgment. As for anyone who goes up to the torture rack for judgment,<sup>351</sup> if he has prominent advocates, he shall be delivered, but if not, he shall not be delivered.

This section of the tractate focuses on impending judgment and how illness may impact the criteria for examining one's guilt or innocence. The statement concerning the marketplace seems unusual in comparison to the other categories suitable for undertaking a divinely based investigative judgment of the individual. When juxtaposed with another setting, that of crossing over water, where the presence of Gentiles is either accepted or rejected, the marketplace would seem to be an additional location where Gentiles under judgment could include those among Israel who are subject to similar condemnation. Each negative outcomes results from a certain state: being present in the marketplace, a severe headache, or a fall. Their outcomes of being captured by a soldier, harnessed to a collar, and taken to the gallows suggest the threat of capital punishment and could very well represent a larger and more significant act of divine condemnation.

All that is required for salvation, however, no matter the number of those persecuting the condemned, is the presence of one heavenly advocate. Here the contrasts are less between divine and human courts and more between Roman forms of persecution and the divine protection granted by a Paraclete. In this situation, no alternative appears possible, given the gravity of the impending punishment. When discussing this passage, Shoal Shafat likens it to capital punishment exacted by the Roman legal authorities.

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<sup>351</sup> For a discussion of *הַעוֹלָה לַגִּדּוּם* as a rabbinic parallel to the Latin, *ascendere gradum*, see Saul Lieberman, "Roman Legal Institutions in Early Rabbinics and in the Acta Martyrum," *JQR* 35, no. 1 (July 1944): 14-15

These words recall the process an accused underwent before the Roman courts. First, he was handed to a soldier who brought him to court in a neck iron. Finally, he was brought to the scaffold.<sup>352</sup>

What is thought-provoking is the possibility that the need for an advocate when sentenced to the scaffold may reflect the only defense available to those facing judgment in the Roman courts, an opportunity that is also presented as possible in the divine court. In other words, the torture and affliction, followed by potential capital punishment that issues from the Roman scaffold, is juxtaposed with the possible condemnation endured when confronting the judgment of the heavenly court. The affliction exacted by the state's legal apparatus is used as a motivator for considering the grave consequences of condemnatory divine judgment. In the Roman court, a professionally trained human advocate is necessary for acquittal, while in the divine courtroom, it is the righteous actions of a man in concert with repentance that become personified as one's defenders.

As the subsequent passage explains, the two principal advocates for this type of judgment are repentance and good works. Performing acts of righteousness has already been considered in this study, which leaves the issue of repentance as an advocate, as well as its relationship to real-life situations of judgment, as necessary for explanation. The text reads as follows:

ואלו הן פרקליטין של אדם: תשובה ומעשים טובים. ואפילו תשע מאות ותשעים ותשעה מלמדים עליו ויחננו חובה ואחד מלמד עליו זכות — ניצול, שנאמר: "אם יש עליו מלאך מליץ אחד מני אלף להגיד לאדם ישרו. ויאמר פדעהו מרדת שחת וגו'". רבי אליעזר בנו של רבי יוסי הגלילי אומר: אפילו תשע מאות ותשעים ותשעה באותו מלאך לחובה ואחד לזכות — ניצול, שנאמר מליץ אחד מני אלף

And these are the advocates for humanity: Repentance and good works. And even if nine-hundred and ninety-nine people are pleading against him for a guilty verdict, but one pleads for his innocence, he is delivered, as it is written, "If he has one angel as his representative out of one-thousand, so as to speak on behalf of the man's righteousness, then he shows him favor and says, "Deliver him from descent to the pit, [I have found a redemption]" (Job 33:23-24). Rabbi Eliezer, the son of Rabbi Yosi the Galilean, says, "Even if nine-hundred and ninety-nine are among the same angel pleading for his guilt,

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<sup>352</sup> Shoval Shafat, "Why Repentance Affects Divine Punishment but Not Human Punishment," *Journal of Law, Religion and State* 4, no. 1 (2015): 108.

and one for his innocence, he is delivered, as it is written, “One advocate out of one thousand.”

As some scholars have rightfully observed, while repentance occupies a prominent place in the divine economy of acquittal and deliverance, within rabbinic criminal or civil courtroom procedure itself, it exerts little to no influence on the arrival of a verdict.<sup>353</sup> Mishnah Sanhedrin 4.3 contains a litany of limitations, for example, on capital offenses, but repentance is not included on the list. Repentance, on the other hand, is thought to shield the safety of a person from the seemingly impersonal principle of justice (מידת הדין) operative in the human courtroom.<sup>354</sup> In the divine courtroom of high-stakes judgment, however, repentance ranks among the most powerful advocates humanity can enlist.

The principle of repentance before the divine throne further supports the possibility of widespread guilt among the people, with repentance offering a solution for all who remain guilty according to the principles of strict justice. In one instance, the Jerusalem Talmud has God offering an extreme response to the ministering angels, who are arguing against the allowance for King Manasseh to repent,

אם איני מקבלו בתשובה הרי אני נועל את הדלת בפני כל בעלי תשובה

If I do not receive his [act of] repentance, I will be shutting the door before all who plead for repentance.<sup>355</sup>

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<sup>353</sup> *b. Makot*, 13b; Shafat, “Why Repentance Affects Divine Punishment.” Note, however, the significant power at times attributed to repentance in the rabbinic divine economy of salvation. Apparently, the rabbis disagreed on the degree to which repentance could neutralize impending condemnation. See *m. Yoma*, 8.8: התשובה מקפרת על עבירות / “Repentance itself atones for minor transgressions, for positive commandments and negative commandments. But severe transgressions remain pending until the Day of Atonement comes and covers them.

<sup>354</sup> *b. Pesahim*, 199a.

<sup>355</sup> *y. Sanhedrin*, 51b.

Or put another way, בתחלה צדיק ובסוף חסיד /“In the beginning, he acts righteously, but in the end with grace.”<sup>356</sup> This passage sees an individual acting righteously early on by paying back according to another’s actions, but ultimately it is God who must “act graciously.”<sup>357</sup> Rabbi Yohannan argues as follows in the same passage: “Great is repentance, as it nullifies the legal sentence issued against a person.”<sup>358</sup>

Shafat’s argument, however, that repentance and good works represent forms of flattery characteristic of a Roman advocate before a judge seems slightly suspect. Here Shafat is borrowing from Lieberman’s examination of the parallels between a Roman advocate’s praising the judge—or the emperor for that matter—and the Israelite prophets likewise praising Yahweh prior to pleading their cause. While the rabbis do at times make this analogy, note that repentance represents an act of atonement and supplication, but not in terms of undue praise lavished on God as much as acknowledgment and confession of one’s transgression. The skillful flattery lavished on the Gentile judge shows little in common with how the rabbis describe repentance, especially in both the Babylonian and Jerusalem Talmud versions of *Rosh Hashannah*. Furthermore, the notion that it was flattery of the judge that secured the advocate’s successful defense, as opposed to a well-reasoned and persuasive argument, appears to oversimplify late ancient Roman jurisprudence. How advocates in fact won the victory during the Second Sophistic and Late Antiquity reflected a drawn-out process of interaction with the rescript system, and in many instances required a certain amount of favor from the emperor’s legal representatives. Suffice it to say at this juncture that formalities involving praise were not

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<sup>356</sup> *b. Rosh Hashannah*, 17b.

<sup>357</sup> *Ibid.*, בתחלה כי אתה תשלם כמעשהו ולבסוף ולך ה' חסד, *b. Rosh Hashannah*, 17b.

<sup>358</sup> *Ibid.*, גדולה תשובה שמקרעת גזר דינו של אדם

the essential components of victory but rather conventions associated with both a fair hearing and the practice of gratitude for the judge's potential favor.

### 6.5 The Mnemonic of Shavuot 30b

While the above text focuses on persecution and capital punishment, another illuminating passage, beginning at *b. Shevuot* 30a, focuses on what the rabbis call the “testimonial oath” (שבועת העדות), a courtroom privilege extended, according to the Mishnah, only to men, non-relatives, and all those not “disqualified” (פסול) due to some other prohibitive circumstance. In addition to these stipulations, litigants are normally required to stand during court proceedings, and while the judge may seat them, he cannot allow only one to stand, meaning he cannot hear a disproportionate amount of testimony from one while severely curtailing the testimony of another. In regard to witnesses, however, the rabbis appear agreed that they themselves should remain standing when addressing the court. Moreover, litigants must also stand when the judge pronounces their verdict. All these conditions belong to a larger discussion of issuing fair judgments and not showing deference to some litigants based on social status, in particular the elevated status of Torah scholars in comparison with, say, ordinary people of the land (צורבא (מרבנן ועם הארץ).

After considering these matters of judicial fairness, the rabbis present a mnemonic illustrating what is perhaps a commentary on Exodus 23:7 that was earlier interpreted by the Mekhilta: סימן /סניגרון בור גזלת מרמה “A mnemonic: “Advocacy, the uncultivated, robbery, fraud.” Each of these represent deceitful judicial practices, whose prohibition is substantiated through the divine command, “Keep far away from a false statement” (מדבר שקר תרחק). The subsequent explanation of why advocacy for hire should be forbidden appears unremarkable and mainly a restating of



the warnings issued in both the *Mekhilta d'Rabbi Yishmael* and *Mishnah Abōt*. As with the earlier text, advocacy belongs to a category of judicial practices based on deceit. Advocates, ignorant students, theft, and false testimony all violate the negative commandment in Exodus 23:7 that one should keep their distance from any form of deceitful judicial practice.

What is telling in these prohibitions is an explanation provided in a subsequent mnemonic, ם"ע ומטעי"ם/ םמרטו"ט שומ"ע ומטעי"ם “Rags, hearing, and explaining.” Here scenarios are presented where students observe their rabbis either privileging judgment in favor of the poor, erring in judgment, or condoning false testimony. The student is obliged to speak out and not wait until he has had an opportunity to discuss the matter privately with his teacher. Therefore, while professional advocacy is considered deceitful judicial practice, a qualified student is encouraged to intercede on behalf of those who might fall victim to a judge’s legal malpractice.

The absence of a paid advocate, moreover, does not preclude other servants of the courtroom from speaking on behalf of a defendant, as is the case with whom Samuel Mendelsohn referred to as the “probationer” (תלמיד), that being the young disciple of the rabbis in training for a career as a judge.

פותחין בזכות אמר אחד מן העדים יש לי ללמד עליו זכות או אחד מן התלמידים יש לי ללמד עליו חובה משתקין אותו אמר אחד מן התלמידים יש לי ללמד עליו זכות מעלין אותו ומושיבין אותו ביניהם ולא היה יורד משם כל היום כולו

“They open [the proceedings] with [the possibility of ] acquittal. If one of the witnesses claims, ‘I can teach [a reason] for acquitting [the accused],’ or one of the students [claims], ‘I can teach [a reason] that [the accused] is liable,’ [the judges] silence them. But if one of the students claims, ‘I can teach [a reason] for acquitting him,’ they would bring him up and have him seated among [the judges], and he would not come down from there the entire day.”<sup>359</sup>

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<sup>359</sup> B. *Sanhedrin*, 40a; Samuel Mendelsohn, *The Criminal Jurisprudence of the Ancient Hebrews*, 2nd ed. (New York: Hermon Press, 1968), 141-142.

While the probationer is not a fellow-citizen called upon to speak on behalf of the defendant as a character witness, as was often the case in ancient Athens, his formal speech could potentially constitute advocacy and thereby influence the outcome of the trial.

## 6.6 Discourses on the Patron in *Yerushalmi Beraḥot*

Catherine Hezser has argued that one of the principle manifestations of the early rabbis' relationships with the receptive portion of the non-rabbinic community was in terms of patron-client relationships, which consisted of "a personal exchange relationship between unequals."<sup>360</sup> Several talmudic passages present people enlisting the rabbis' services in areas of their expertise, procuring them gifts and hospitality in exchange for services such as legal counsel, personal assistance, and Torah instruction. In terms of legal counsel, this constitutes one sphere where the identity of a rabbinic *pātrōnus* became associated with forms of representation such as mediation, arbitration, and advocacy. Relying to some degree on the model Peter Brown had established for Christian holy men as patrons and arbitrators in Late Antiquity,<sup>361</sup> Hezser examines several texts reflecting legal counsel offered by rabbis to the public.<sup>362</sup>

Given the well-accepted connection between *pātrōnus* and *advocātus* in Roman literature, where the two are often interchangeable and embody the original notion of protecting the less powerful and pleading one's defense, it is surprising that rabbinic texts closely focused on

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<sup>360</sup> Catherine Hezser, *The Social Structure of the Rabbinic Movement in Roman Palestine* (Tübingen: Mohr Siebeck, 1997), 353.

<sup>361</sup> Peter Brown, *Society and the Holy in Late Antiquity* (Berkeley: UC Press, 1989), 103-152.

<sup>362</sup> These forms of social, legal, and religious patronage are complex, and their place alongside Roman and early Christian models of benefactors and patronage in Late Antiquity demands careful comparisons. See Susan Sorek, *Remembered for Good: A Jewish Benefaction System in Ancient Palestine* (Sheffield: Sheffield Phoenix Press, 2010); Yael Wilfrand, *Poverty, Charity and the Image of the Poor in Rabbinic Texts from the Land of Israel* (Sheffield: Sheffield Phoenix Press, 2014).

patrons have not provoked much consideration in relation to advocacy, both in relation to its acceptability and its soteriological function in rabbinic discussions. A rather simple yet theologically powerful example from *y. Berahōt* helps illuminate a common rabbinic attitude toward human patrons; namely, that they prove ineffectual as protectors of those oppressed by the government. Essentially, their ability to represent and redeem the persecuted suffers the severe limitation of being unable to protect and preserve life.

בשר ודם יש לו פטרון אמרו לו נתפס בן ביתך אמר להן אני מקיים עליו אמרו לו הרי יוצא לידון אמר להן אני מקיים עליו אמרו לו הרי הוא יוצא ליתלות היכן הוא ואיכן פטרונו. אבל הקב"ה הציל את משה מחרב פרעה הדא הוא דכתיב (שמות י"ח:ד') ויצילני מחרב פרעה

As for a man having a patron, [if] they say to him, “A member of your household has been seized,” he answers them, “I am going to support him.” [If] they say to him, “Look, he’s going to be condemned,” he answers them, “I am going to represent him [in court].” [If] they say to him, “Look, he is going out to be hanged,” where is he, and where is his patron? But the Holy one, blessed be He, delivered Moses from the sword of Pharaoh, as it is written, “He delivered me from the sword of Pharaoh” (Ex. 18:4).<sup>363</sup>

The progression from household to courtroom to execution suggests circumstances where an advocate is required to protect an individual from a more powerful political force. The reference to Moses being saved from Pharaoh confirms this setting, as do the subsequent midrashim that attempt to explain the means by which God saved his prophet.

The three stages of persecution, moving from home to the courtroom to execution, are repeated in the second midrash. Here the form of execution is drowning, and once again the human patron is powerless to reverse the outcome. God is then identified as the one who delivered Jonah from the belly of the large fish. In the third case, the persecuted man is going to be burned alive, and his helplessness, even with the support of a patron, is contrasted with the deliverance of Daniel’s friends from the fiery furnace. The fourth example, finally, presents an

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<sup>363</sup> *y. Ber.* 9.2

imminent execution by way of the devouring of beasts, which again is contrasted with Daniel's deliverance from the lions' den.

The human patron is further differentiated by his relative inaccessibility, demonstrating that he really does not fulfill the proper role of patron in terms of being immediately available to the less powerful when they are in dire need.

רבי יודן אמר משמיה דידיה בשר ודם יש לו פטרון אם באת לו עת צרה אינו נכנס אצלו פתאום אלא בא ועמד לו על פתחו של פטרונו וקורא לעבדו או לבן ביתו והוא אומר איש פלוני עומד על פתח הצירך שמא מכניסו ושמא מניחו. אבל הקב"ה אינו כן אם בא על אדם צרה לא יצווה לא למיכאל ולא לגבריאל אלא לי יצווה ואני עונה לו מיד. הה"ד (יואל ב) כל אשר יקרא בשם ה' ימלט

Rabbi Yudan said in his own name, [When] a person has a patron, if a time of trouble befalls him, he cannot enter without warning into the patron's home, but he arrives and stands at the entrance of the patron's home and calls out to his servant or to another member of his household. And the servant says, "Mr. So-and-So is standing by the entrance of your courtyard." It's possible that [the patron] will either escort him in or leave him there. But the Holy One, blessed be He, does not act in this way. "If trouble befalls a person, he does not cry out either to Michael or Gabriel but he shall cry out to me, and I shall answer him immediately." Therefore it is written, "All who call in the name of the Lord shall find refuge" (Joel 2:32).<sup>364</sup>

Thus, in addition to the limited power the advocate can exercise in relation to the state, there also exists a severe problem in immediate crisis situations, something akin to being placed on hold when calling for emergency assistance. The human patron is in fact characterized as lamenting the degree to which his client annoys him: אם הטריה עליו ביותר הוא אומר אשכח פלן דקא מטרחא לי "If he bothers him, he says, 'have you ever seen someone who bothers me so much?'" Yet in another example, the prospect of imminent danger looms large.

רבי פינחס בשם רבי תנחום בר חנילאי בשר ודם יש לו פטרון ובאו שונאים ותפשו אותו על פתח הצירו של פטרונו עד דצווה ליה עד הוא נפק עברת חרבא על קדליה וקטלית יתיה אבל הקב"ה הציל את יהושפט מחרב ארם דכתיב (דברי הימים ב י"ח:ל"א) <ו>יזעק יהושפט וה' עזרו ויסיתם אלהים ממנו מלמד שלא היה חסר אלא חיתוך הראש ויסיתם אלהים ממנו

Rabbi Pinchas said, in the name of Rabbi Tanchum bar Hanilai, "[When] a man of flesh and blood has a human patron, and those who hate [the man] come and seize him at the

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<sup>364</sup> Ibid., 9.2.

entrance of the patron's courtyard, before he cries out, before [the patron] goes out to help him, the sword is at his neck and kills him. But the Holy One, blessed be He, delivered Jehosephat from the sword of Aram, as it is written, "Jehosaphat cried out and the Lord helped him and kept them away from him, which teaches us that as they were about to cut off his head, God kept them away from him.

These various midrashim are simple and direct in their claims, introducing the fatal flaw of human patrons, namely that they fail to protect their clients from life-threatening disasters. The passages further demonstrate the rabbinic distrust in any advocate that is not directly empowered by God himself. Earlier in the same tractate, the dilemma of drought is considered, yet there is no inherent difficulty with a rabbinic intercessor mitigating the crisis: "When Israel sins and does evil deeds, the rains are withheld. When they bring an elder, such as R. Yose the Galilean, to intercede for them, the rains fall again."<sup>365</sup> When the predicament involves confrontation with human authorities, as opposed to the forces of nature, only a divine advocate can deliver his people. Even the angelic advocate, relatively commonplace in Second Temple apocalyptic, is at times considered insufficient.

## **6.7 Israel's Acquittal during the Eschatological New Year Festival**

To this point, the texts discussed have concerned the relationship between advocacy and various forms of halakhic discussion involving exegetical problems of interpretation, imperial persecution, proper legal procedure, and the advantages of divine over human patronage within a hostile world. Barring the "advocate cannot become an accuser" occurrences, each of these textual settings has dealt with compromised relationships between God's people and either (1) God itself, or (2) the ruling authorities under which the people of God reside. As such, these texts have dealt with soteriological issues that do not demonstrate an urgent eschatology; but if the

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<sup>365</sup> y. *Ber*, 8.2.

conditions of persecution prove weighty enough, the situation for the individual in need of an advocate can still be dire enough to warrant an immediate intervention. Nevertheless, each text poses situations where people require deliverance from a jeopardized condition to a secure state of being. In the juxtapositions between advocate and accuser, however, the placement of the phrase most often pertains to theological principles concerning the relationship between God and the collective people of Israel. Actions by the priest that conjure up reminders of the golden calf incident could place Israel at risk. Even faulty instruction about the divine chariot could bring the golden calf to mind. In short, certain rituals and images must embody the concept of advocacy for Israel. Should they suggest accusation, the ritual or teaching in question has been misinterpreted and misapplied.

Certain amoraic texts containing advocacy invoke a much stronger sense of futuristic eschatology, which moves the theological setting into the realm of Israel's ultimate endgame in the drama of salvation history. The rabbinic construction of the new year festival falling on the first day of Tishrei is illustrative, as it offers an important eschatological framework for understanding the advocate's defense of Israel. Having its biblical origins in a divinely consecrated day<sup>366</sup> marked by complete cessation of work<sup>367</sup> and the blasting of the shofar,<sup>368</sup> the festival of trumpets emerged in the tannaitic literature as an annual day of universal judgment.<sup>369</sup>

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<sup>366</sup> Nehemiah 8:2: וַיָּבִיֵא עֶזְרָא הַכֹּהֵן אֶת־הַתּוֹרָה לְפָנֵי הַקְהָל־מֵאִישׁ וְעַד־אִשָּׁה וְכֹל מִבֵּינֵן לְשִׁמְעַע בְּנוֹם אֶתְדֵּ לְחֹדֶשׁ הַשְּׁבִיעִי / "Ezra the priest brought the Torah before the community assembly, among both men and women, and all who could understand by listening, on the first day of the seventh month."

<sup>367</sup> שָׁבֶתוֹן, Lev. 23:24; כָּל־מִלְאֲכַת עֲבֹדָה לֹא תַעֲשׂוּ; Num. 29:1.

<sup>368</sup> תְּרוּעָה, Lev. 23:24; Num. 29:1

<sup>369</sup> The possible Second Temple antecedents of the rabbinically constructed festival and liturgy exceed the scope of this discussion. See Philo, *Spec. Leg.* I.180; Torleif Elgvin, "Qumran and the Roots of the Rosh Hashanah Liturgy," in *Liturgical Perspectives: Prayer and Poetry in Light of the Dead Sea Scrolls*, ed. Esther G. Chazon, Ruth Clements, and Avital Pinnick (Boston: Brill, 2003), 49-67.

While the first day of Tishrei had already become a uniquely rabbinic new year in the tannaitic literature,<sup>370</sup> the midrash *Leviticus Rabbah* 29 expanded the juridical elements associated with this festival into an annual, textually ritualized divine courtroom performance. Equally telling, the midrashic conception of universal judgment and the acquittal of Israel was situated within the primordial history of creation, where the transgression of Adam had established the conditions for the future judgment of the world and Israel's path to repentance. This connection between the New Year, creation, and judgment derives from Adam's primordial transgression in the Garden of Eden. *Leviticus Rabbah* 29.1 claims that the twelfth day of creation marked Adam's judgment and pardon for his sin of disobedience. Likewise, the people of Israel, as a memorial to this foundational act of transgression and acquittal, would endure judgment on the first day of Tishrei and also be pardoned.

אמר הקדוש ברוך הוא לאדם, זה סימן לבניך כשם שעמדת לפני בדין היום הזה ויצאת בדימוס, כך עתידין  
בניך לעמד לפני בדין ביום זה ויוצאין לפני בדימוס, אימתי בחדש השביעי באחד לאחד

The Holy One, blessed be, said to Adam, “This will be a sign to your descendants. Just as you stood before me in judgment on this day and departed with amnesty, so in the future your descendants will stand before me in judgment on this [same] day, and they shall depart before me with amnesty. When [will this take place]? On the first day of the seventh month.”<sup>371</sup>

The festival's universal relevance to both Jews and Gentiles was expressed in no-nonsense terms by Philo, demonstrating that eschatological attributes of the New Year festival were already stirring by the Late Second Temple period.

διττὸν λόγον ἔχουσα, τὸν μὲν ἴδιον τοῦ ἔθνους, τὸν δὲ κοινὸν ἀνθρώπων ἀπάντων·

It holds a two-fold meaning, for the nation [of Israel] specifically, and for the community of all mankind [in particular].<sup>372</sup>

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<sup>370</sup> *m. Rosh Hashanah* 1.1-2; *m. Moed Qatan*, 3.6; *t. Rosh Hashanah*, 1.7.

<sup>371</sup> *Lev. Rabb.* 29.1.

<sup>372</sup> Philo, *Spec. Leg.* II. 188.

Philo viewed the universal properties of the shofar blast as pertaining to war, more specifically God's restoration of peace against that which produces chaos on earth; yet Philo's understanding of the festival's uniquely Jewish associations with Torah revelation, on the one hand, and universal judgment on the other, demonstrates that the legal and soteriological elements of the rabbinic new year did not emerge in isolation from other currents of pre-rabbinic Jewish thought. Others have argued that the connections between creation and universal judgment, which would strongly influence the rabbinic conception of the new year, were already apparent in Qumran sectarian literature such as *1QMysteries* and *4QInstruction*. David Flusser has been a proponent of this view and has performed rigorous comparisons between the Rosh Hashannah theology and liturgy, on the one hand, and these particular eschatological texts from Qumran.

The determination that Essene thought influenced the Rosh ha-Shanah liturgy is not itself particularly difficult; however, the precise channels of this influence remain obscure. We noted above that the Book of Mysteries illuminates the language of the prayer, not vice versa, even though the liturgical passage reflects the religious thought of the Dead Sea community. This literary aspect leads us, willy-nilly, to propose that both this section of the Rosh ha-Shanah liturgy and our passage in *1QMysteries* emerged from a common source, a source that was undoubtedly part of the Qumran literature.<sup>373</sup>

While the Mishnaic tradition lists four different New Years' festivals, each associated with specific traditions and festival activities, the current discussion focuses on the third tradition listed, that being the first day of the seventh month of Tishrei. Some vital elements connected to this festival include its association with sabbatical years (שְׁמִטָּה), the Jubilee years (יְוִבֵלֹת), and the agricultural imagery of planting (נְטִיעָה) and produce (יִרְקוֹת). In this sense, the festival demonstrates a close relationship with renewal of the land, debt remission, and the abundance

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<sup>373</sup> David Flusser, *Judaism of the Second Temple Period, Volume 1, Qumran and Apocalypticism*, trans. Azzan Yadin (Grand Rapids: Eerdmans, 2007), 137; See also Elgvin, "Qumran and the Roots of the Rosh Hashanah Liturgy."



associated with vibrant agricultural planting and harvesting. The overarching theme governing these topics is that of universal judgment, where all of humanity proceed before the divine judge of the world, their sum total of deeds undergoing supernatural scrutiny.

בארבעה פרקים העולם נדון, בפסח על התבואה, בעצרת על פרות האילן, בראש השנה כל באי העולם עוברים לפניו כבני מרון, שנאמר (תהלים לג) היוצר יחד לבם, המבין אל כל מעשיהם. ובחג נדונין על המים

During four time periods the world is judged: on Pesach concerning the produce, on *Atzeret* concerning the fruit of the tree, on the New Year, [when] all inhabitants of the world pass before Him as rebel soldiers,<sup>374</sup> as the Scripture states, “The one who fashions their hearts together, who recognizes all their actions” (Ps. 33:15).<sup>375</sup>

The above-mentioned attributes of the rabbinic new year festival are merged with the biblical tradition associated with the first of Tishrei, that of the blasting (תְּרוּעָה) of the ram’s horn (שׁוֹפָר).<sup>376</sup>

A further development of interest is the Tosefta’s expansion of this eschatological declaration, whereby the divine court of the God of Israel assumes absolute control over both the appointed agricultural festivals and the exacting of universal judgment.

בראש השנה כל באי עולם עוברים לפניו כבני מרון שנא' (תהילים ל"ג:ט"ו) היוצר יחד לבם וגו' ואומר (תהילים פ"א:ה') תקעו בחודש שופר ואומר (שם) כי חק לישראל הוא וגו' קדשוהו ב"ד הדין נכנס לפניו ואם לאו אין הדין נכנס לפניו

On Rosh Hashanah, all inhabitants of the world pass before him like rebel soldiers, as the Scripture states, “The one who fashions their hearts, etc.” (Ps. 33:15), and He says, “Sound the shofar on the new moon” (Ps. 81:4), and He further states, “For this is a statute for Israel, etc.” (81:5). If the court has sanctified this, the [divine] court enters before him, and if not, the [divine] court does not enter before him.<sup>377</sup>

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<sup>374</sup> Normally translated as “troops” or “soldiers,” the meaning of מְרוֹן refers to rebellion, with כְּבֵי מְרוֹן naturally suggesting “rebels.” The Aramaic cognate term, כְּבֵי אִימְרָנָא, receives mention by the Amoraim in *Bavli Rosh Hashana* 18a and is associated with the troops of David. Some translations render the term as “sheep.” See Vered Noam, “Essentialism, Freedom of Choice, and the Calendar: Contradictory Trends in Rabbinic Halakhah,” *Dinē Israel* 30 (2015): 126, 130.

<sup>375</sup> *m. R. Hash.*, 1.2.

<sup>376</sup> Besides the shofar, the Hebrew Bible associates the sounding of the תְּצַצְרָה with sacrificial ceremonies in the Temple, while the blasting of the former was reserved for the special commemoration of the new moon occurring on the seventh month of Tishrei.

<sup>377</sup> *t. Rosh Hashanah*, 1.10.

As has been recognized, “. . . the Bible generally associates ‘blasts of sound’ with Shofar, and the delineation of *Shofar* for Rosh Hashanah and *hatzotzerot* for customary sacrifice became an early recognized, traditional norm.”<sup>378</sup> Moreover, the blowing of the Shofar on the Jewish new year took place exclusively in the Jerusalem Temple, prompting disagreements among the Tannaim regarding how to preserve the rite following the destruction of the Second Temple in 70 CE.<sup>379</sup>

Regarding each of these horns, similar to the detailed discussion surrounding the proper determination and announcement of the new year, the Mishnah investigates in some depth the components of a legitimate shofar. A specific blowing technique, furthermore, appears to have distinguished the ceremonial blowing of the trumpets, for both assembly and ritual sacrifices, from the blasting of the shofar, whose origins may exist in more urgent military activities.<sup>380</sup> Hoenig correctly identified the pertinent terms of “order,” “pitch,” and “intensity” as receiving their more elaborate treatment within Mishnah Rosh Hashanah. More specifically, “The fine distinction between *tekiah* and *teruah* is rabbinic, not biblical; in the Bible both verbs are used interchangeably for ‘sound.’”<sup>381</sup> According to the guidelines set forth in the Mishnah,

סדר תקיעות, שלש, של שלש שלש. שיעור תקיעה כשלש תרועות. שיעור תרועה כשלש יבבות

The order of the sounding is three [sets] of three [blasts]. The duration of the *tekia* is equal to three *teruoth*. The duration of the *teruah* is equal to three trembling sounds.

The sequence of three being sounded is further elaborated in *Sifra Leviticus*, whereby the three blasts represent, on the one hand, kingship (מַלְכִיּוֹת), memorials (זְכָרוֹנוֹת), and horn blasting

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<sup>378</sup> Sidney B. Hoenig, “Origins of the Rosh Hashanah Liturgy,” *JQR* 57 (1967): 313.

<sup>379</sup> *m. R. Hash.* 4.1-2.

<sup>380</sup> Num. 10:1-10; Hoenig, “Origins,” 320.

<sup>381</sup> Hoenig, “Origins,” 321.

(שופרות), and on another level the theological impact of the revered ancestors, divine powers, and the holiness of the divine name (אבות וגבורות וקדושת).<sup>382</sup> It is warranted, therefore, to note, in addition to the lush agricultural imagery associated with the theme of rebirth in the new year, that divine kingship and historical memory influence the concept of judgment governing the rabbinic new year. Memory is largely one of memorializing salvation history, while royal, divine judgment exists in tension with the more pristine atmosphere of rebirth. To these ends, the unique rabbinic representation of the Jewish new year, regardless of earlier antecedents, cannot be understated. The festival “was given decisive cultural and conceptual formation by the Rabbinic Sages in the early centuries of the common era.”<sup>383</sup> In light of its eschatological and juridical properties, this festival naturally warranted a scheme for defending Israel during the universal judgment of humanity. The nature of the defense and its connection to eschatology, moreover, illuminates the collapsing of time in many advocacy traditions, whereby the defense of Israel looks forward to the more definitive divine judgment that permanently vindicates Israel in the world to come.

### **6.7.1 Israel as the King’s Son: Invoking the Merit of the Patriarchs**

The fourth century aggadic midrash, *Leviticus Rabbah*, maintains the relationship between the new year and divine judgment while keeping strict lines of separation between the nations and Israel, thus reserving a privileged place for the latter during God’s reckoning of human accounts. The Babylonian Talmud, by contrast, acknowledges three classes of people subject to judgment:

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<sup>382</sup> *Sifr. Vayik. Emor*, 11.4.

<sup>383</sup> Eli Reich, “God of Judgment, God of Compassion: A Reading of the Rosh Hashanah Service,” *Judaism* 46, no. 3 (Summer 1997): 259.

the wicked, righteous, and intermediate (רשעים, צדיקים, בינונים).<sup>384</sup> According to the Jerusalem Talmud, in similar fashion, all humanity faces divine judgment.<sup>385</sup> *Pesikta Rab-Kannah* intersects with several motifs present in Leviticus Rabbah, allowing room for select comparisons of various texts with regard to the supporting speakers advocating for Israel at the time of universal judgment.<sup>386</sup>

This discussion of the rabbinic new year festival will argue that, among the multiple theological concerns of the text traditions, the phenomenon of advocacy reveals a stark contrast between Gentile condemnation and Israel's vindication, one consistent with other aggadic orientations toward soteriology which include divinely supported intercessors. Furthermore, when an intercessor in the form of a supporting speaker pleads for Israel in the divine courtroom, the favorable outcome results not from Israel's merit but rather through the counsel of the advocate himself—or itself—who must negotiate the salvation of Israel in lieu of her inability to satisfy the strict codes of divine justice. This pattern of vindication, hardly standard within rabbinic literature, still indicates a common tradition of separation between Israel and Gentile, raising the question of how deeply rooted extra-religious hostility was within Palestinian rabbinic circles during the fourth and fifth centuries. Determining the degree to which such hostilities were real or primarily literary constructions may further illuminate some traditions of midrashic literature emerging in Palestine during a period of increasing Roman Christianization.

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<sup>384</sup> *b. Rosh Hashanah* 16b

<sup>385</sup> *y. Rosh Hashanah*, 57b.

<sup>386</sup> The text-critical problem of the relationship between Leviticus Rabbah and PRK exceeds the boundaries of the present study. Foundational essays include, Joseph Heinemann, "Chapters of Leviticus Rabbah whose Origins are Disputed", (Hebrew) *Tarbiz* 37:4, 343; Jacob Neusner, "Appreciation and Imitation: The Priority of Leviticus Rabba over Pesiqta Derab Kahana," *PAAJR* 54 (1987): 140-168.

Leviticus 23:24, attesting to a formative stage in the development of the ancient festival of trumpets, provides the scriptural basis for various leaps to divine judgement associated with this celebration, judicial tropes employed as early as Philo and the Qumran literature, and then developed more fully in the tannaitic corpus and subsequent aggadic midrash. The Leviticus passage understands this festival, arriving between the spring harvest and the Day of Atonement, as a special sabbath memorial marked by assembly and celebration.

דַּבֵּר אֶל־בְּנֵי יִשְׂרָאֵל לֵאמֹר בַּחֹדֶשׁ הַשְּׁבִיעִי בְּאַחַד לַחֹדֶשׁ יִהְיֶה לְכֶם שַׁבָּתוֹן זִכְרוֹן תְּרוּעָה מִקְרָא־קֹדֶשׁ

“Speak to the Israelites as follows: ‘On the seventh month, on the first of the month, you shall have a special sabbath observance, a memorial marked by the blasting of the shofar, a holy convocation.’<sup>387</sup>

While Numbers 29:1-6 further prescribes the burnt, grain, sin, and drink offerings associated with the festival, its calendrical observance still shows no explicit rationale attached to agricultural cycles, temple ritual requirements, or blessings for the abundance of crops. Early rabbinic literature began associating the new year with produce tithing, but its primary attributes pertained to Sabbath rest, Jubilee, and God’s enthronement, where the intercessory blasting of the shofar encouraged God to accept Israel’s prayers for clemency.<sup>388</sup> There appeared to have been, therefore, a metaphysical justification for the date of the first day of the seventh month as Israel’s new year.<sup>389</sup>

During the tannaitic period, the New Year festival further developed as a period of divine judgment, universal in scope by incorporating Jew and Gentile alike. Note how both the Mishnah and Tosefta characterize the people being judged: כָּל בְּאֵי הָעוֹלָם עוֹבְרִין לִפְנֵי / “All the inhabitants of

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<sup>387</sup> Lev.23:24.

<sup>388</sup> *m. R. Hash.*, 1.1-3

<sup>389</sup> See the discussion in Noam, “Essentialism, Freedom of Choice, and the Calendar,” 124.

the world pass before Him.”<sup>390</sup> The innovation of Leviticus Rabbah 29 was to significantly expand the intersectional celebration of both original creation and the eschatological judgment, while also providing diverse theological representations of how this judgment would take place. The connection between creation and eschaton would involve marked differences in outcomes separating Israel from the Gentiles. What I will attempt to argue below is what distinguishes Israel within these outcomes; namely, the people’s royal status as God’s elected son, Israel’s association with creation itself, and the ancient oaths sworn by God to Israel.

This textual analysis first addresses Israel’s position as the king’s son, who despite his standing to inherit the king’s estate, occupies a precarious position due to his trespasses. By virtue of various forms of divine and patriarchal intercession, Israel ultimately preserves its place as the elected son. *Lev. Rabb.* 29.1, through the opening of Rabbi Shmuel bar Nachman, immediately establishes the relationship between celebration through the ram’s horn, commemoration of creation, and the impending judgment of all creation, both in Israel and the provinces (המדינות). Stark contrasts are posed between life and death, hunger and fullness, and peace and the sword. Then twelve hours of the first day of creation are listed, beginning in the first hour with the divine plan (עלה במחשבה) and closing with the final three hours, which include human trespass, divine judgment, and divine amnesty (יצא בדימוס).<sup>391</sup> Having determined the creative and juridical components of the festival, the opening of the rabbinic discussion addresses a comparison between Israel and her historical timeline of imperial oppressors, a comparison situated within the biblical episode of Jacob’s ladder (Gen. 28:12-17). The midrash

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<sup>390</sup> *m. R. Hash.* 4.1; *t. R. Hash.* 1.10

<sup>391</sup> דימוס, borrowing from Greek, δῆμος, in this context suggestive of public festivals wherein royal amnesty takes place.

has called Jacob's faith into question, as he watches Babylon, Medea, Greece, and Edom successively ascend and descend the supernatural stairs bridging heaven and earth. While God has invited Jacob to likewise ascend the ladder, the patriarch fears attaining a similar outcome as his predecessors. It is this lack of trust in God that results in Israel experiencing exile and oppression at the hands of the imperial powers. She is, however, assured future pardon and deliverance. The removal of God's judgment and replacement with clemency is generated, according to Rabbi Yehuda, Rabbi Nachman's son, by the blasting of the shofar, which transfers God physically from the throne of judgment (כסא הדין) to the seat of mercy (כסא רחמים).<sup>392</sup> Israel's opportunity for clemency, in spite of her patriarchal founder's great lapse of faithfulness, strongly separates her outcome from the nations during the universal divine judgment. The shofar blast here functions as an inanimate advocate, informing God of his annual relocation to the mercy seat in response to Israel's performance of atonement.

Israel's predicament at the moment of divine judgment, according to Leviticus Rabbah 29.7, resembles that of a king's son standing trial before his own father, the offense in this case not explicitly identified. The parable does suggest, however, that the divine sovereign was poised to pronounce a verdict yet maintained a special relationship to Israel as both her father and accuser. In order to make safe passage from condemnation to clemency, Israel is advised to appeal to the merit of the patriarchs (זכות אבות), whose names must be recited before God on the first day of the seventh month.

משל לבן מלכים שהיה לו דין בפני אביו, אמר לו אביו ואם אתה מבקש לזכות לפני בדין ביום מני נקולוגוס פלוני ואת זכי לפני בדין. כך אמר הקדוש ברוך הוא לישראל בני, אם אתם מבקשים לזכות לפני בדין ביום הזה תהיו מזכירין זכות אבות ואתם זוכין לפני בדין

A parable: [This may be compared] to the son of a king that was standing trial before his father. His father said to him, "If you seek to be acquitted before me in your judgment on

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<sup>392</sup> For a variation on the contents of each divine hour, as well as the movement from the judgment to the mercy seat, see *b. Avod. Zar.* 3b.

this day, appoint for yourself so-and-so the successful advocate,<sup>393</sup> and you shall be acquitted of the judgment before me.” Likewise did the Holy One, blessed be He, address Israel. “My children, if you seek to be acquitted of the judgment before me on this day, mention the merit of the ancestors, and you shall be innocent of the judgment before me.<sup>394</sup>

This divine counsel does not convey the notion of Israel receiving ongoing benefits through the merits of the three patriarchs; their very names must be recited in order to avert a condemnatory verdict just prior to God’s universal judgment. Therefore, the notion of advocacy is both ritualized and performative. While the rabbis do not map the choreography of the festival performance, one envisions a festival of blasting the shofar while alternatively pleading the names of the patriarchs.

The pleading of Abraham especially is thought to afford Israel a completely clean slate; this claim is situated in PRK within a series of statements confirming the outright wickedness of humankind.

כל הבלים וכזבים שישיר עושין בעולם הזה כדיי הוא אבינו אברה' לכפר את כולם. ומה טעמ', האדם הגדול בענקים הוא וג' (יהושע יד:טו)

As for all the follies and falsehoods that Israel commits in this world: our ancestor Abraham [possesses] sufficient [merit] to atone for all of them. And what is the reason? “He was the greatest of men among the giants” (Josh. 14:15).<sup>395</sup>

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<sup>393</sup> The term used for “advocate” here, ניקוליגוס, is unattested in Greek lexicons. It appears to be a Hebrew variation on δικολόγος (*dikologos*, “lawsuit-arguer, and by extension, an advocate). ניקוליגוס may be a combination of νίκη (*nīkē*) and λόγος (*logos*), suggesting one who employs victorious arguments and thus a successful advocate. It could also derive from νεῖκος (*neikos*, quarrel, strife) + λόγος (*logos*), meaning woodenly a spokesperson of strife. By whatever means this rare word entered into the rabbinic vocabulary, it strongly suggests an experienced or successful advocate.

<sup>394</sup> *Lev. Rabb.* 29:7; See also PRK 23.7.

<sup>395</sup> PRK, 23.8.



Each patriarch, moreover, confers a specific benefit upon Israel, as explained through scriptural references associated with their redemptive attributes.<sup>396</sup> Abraham occupies the prominent place of being first; Isaac is inseparable from the salvific power of his near sacrifice on Mount Moriah, and Jacob embodies Israel's status of divine election.

באחד זה אברהם שנאמר (יחזקאל לג, כד): אחד היה אברהם. (ויקרא כג, כד): זכרון תרועה, זה יצחק, שנאמר (בראשית כב, כג): וירא והנה איל, (ויקרא כג, כד): מקרא קדש, זה יעקב, שנאמר (ישעיה מח, יב): שמע אלי יעקב וישראל מקראי. ואימתי תהיו מזכירין זכות אבות ואתם זוכין לפני בדין, בחדש השביעי

[Regarding] “On the first,” this is Abraham, as the Scripture states, “Abraham was first” (Ezek. 33:24). [Regarding] “a memorial of shofar blasting,” this is Isaac, as the Scripture states, “He looked, and there was a ram . . .”(Gen. 22:13). [Regarding] “a holy convocation,” this is Jacob, as the Scripture states, “Hear me, God of Jacob, and Israel whom I called” (Is. 48:12). And when you shall mention the merit of the ancestors, you shall be acquitted before me in judgment, on the seventh month.<sup>397</sup>

Of the three scriptural allusions to the patriarchs above, the first establishes line of descent, the second illustrates the connection between Isaac's merit and the ram's horn, whereupon the rabbis will continue discussing the binding of Isaac's redemptive value once the ram's horns are entangled in the thicket (Gen. 22:13).

*b. Rosh Hashanah* 16a understands the binding of Isaac as transferring merit to Israel in the sense that, once the shofar is blasted, the act of sacrifice near averted is transferred to Israel herself, as if the people themselves had been bound, not slain, and delivered on that day.

אמר רבי אבהו: למה תוקעין בשופר של איל? אמר הקדוש ברוך הוא: תקעו לפני בשופר של איל, כדי שאזכור לכם עקידת יצחק בן אברהם, ומעלה אני עליכם כאילו עקדתם עצמכם לפני

Rabbi Abbahu said, “Why do they blast from a horn that comes from a ram? The Holy One, blessed be He, [said], ‘Make a blast in my presence with a Ram’s Horn, in order that I may remember on your behalf the binding of Isaac, the son of Abraham, and I will raise you up as if you had bound your own selves before me.’”<sup>398</sup>

<sup>396</sup> For a discussion of the threefold advocacy of the patriarchs within this midrashic tradition, see Steven G. Sager, “Studies in three Pisqaot of “Pesiqta de Rav Kahana” Midrash,” PhD diss. (Duke University, 1989), 92 ff.

<sup>397</sup> *Lev. Rabb.*, 29.7

<sup>398</sup> *b. Rosh HaShanah*, 16a.

The reference to Jacob is associated with both the divine name itself and the process of gathering together God's people in a holy ceremony (מקרא קדש). The parallel text from PRK, furthermore, helps to illuminate the eschatological privilege Israel will maintain when God performs a sweeping judgment of the world. Sager's study illuminates this intersection of salvation privilege, advocacy, and the eschatological stakes involved.

The threefold advocacy of the patriarchs is symmetrical with the three point metaphor of instruction/learning presented in the first half of the petiha. Each one presents a pertinent example of God instructing Israel for their benefit as regards the celebration of the New Year. The metaphor of the tools addresses the personal issue of improving self conduct and controlling the evil inclination. Invoking the merit of the patriarchs speaks to formal, public, liturgical advocacy not unlike the parable's advice of enlisting the aid of a renowned advocate. The potent advocacy of the patriarchs now joins that of the ram's horn as further evidence of God's desire for Israel "to be found innocent" on the first day of the seventh month.<sup>399</sup>

In this midrash, the ram's horn is synonymous with the merit of Isaac, suggesting that sounding the horn and reciting patriarchal merit occur in tandem, or perhaps in an antiphonal call and response. The ram's horn conveys the further meaning of the Israelites destined to experience exile in the most powerful kingdoms of the earth: Babylonia, Media, Greece, and Rome.

אמר רבי הונא ברבי יצחק מלמד שהראה הקדוש ברוך הוא לאברהם את האיל נתש מחרש זה ונסבך בחרש זה אמר הקדוש ברוך הוא לאברהם כך הם עתידין בניך, נאחזין באמות, ונסבכין בצרות ונמשכין ממלכות למלכות מבבל למדי ממדי ליון, ומיון לאדום, וסופן לגאל בקרניו של איל הדא הוא דכתיב (זכריה ט, יד): וה' עליהם יראה ויצא כברק חצו וגו' בשופר יתקע

Rabbi Huna in the name of Rabbi Isaac said, "This teaches that the Holy One, blessed be He, showed Abraham the ram, released from one thicket and entangled within another. The Holy One, blessed be He, said to Abraham, "So shall be your children in the future, seized by the nations, entangled in troubles, and marched from one kingdom to another, from Babylon to Media, from Media to Greece, and from Greece to Edom. And her outcome is to be redeemed by the horns of the ram, as the Scripture states, "And the Lord shall appear to them, and his arrow shall go forth like lightning, etc., he will sound the ram's horn" (Zech. 9:14).<sup>400</sup>

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<sup>399</sup> Sager, "Studies in three Pisqaot," 93.

<sup>400</sup> *Lev. Rabb.*, 29.10.

This passage expresses the soteriological nature of the new year festival, as its ritual acts ensure God's defense of Israel at the anticipated eschaton.

The first act of separation between Israel and the Gentiles, according to the passage above, pertains to release from guilt when Jacob doubted his ability to ascend the ladder to heaven. The second degree of separation involves release from servitude to world empires. This redemption, however, goes beyond liberation from rulers, for the midrash offers additional interpretations of the relationship between Israel and the nations that confirm their strict separation with respect to salvation outcomes. This is evident in the approach taken in Leviticus Rabbah 29.2, where the rabbis compare Jacob with the kings of the four nations that attempted to ascend Jacob's ladder to heaven.<sup>401</sup> While the kings have the audacity to ascend, which leads to their successive divinely forced descents, Jacob does not believe God when he is told to ascend, which is identified as the cause for Israel's eventual exile. Israel, however, will ultimately be redeemed from the subjugation of the four kingdoms, in contrast to the decisive punishments exacted on the nations.

Also unlike the Gentile nations, Israel will only be chastised to the degree that she is refined in preparation for the future world to come.

מלמד שהראה הקדוש ברוך הוא ליעקב שרה של בבל עולה ויורד, של מדי עולה ויורד, ושל יון עולה ויורד  
ושל אדום עולה ויורד, אמר הקדוש ברוך הוא ליעקב אף אתה עולה

"It teaches that the Holy One, blessed be He, showed Jacob the ruler of Babylon ascending and descending; [the ruler] of Medea ascending and descending, [the ruler] of Greece ascending and descending, and [the ruler] of Edom ascending and descending. The Holy One, blessed be He, said to Yaakov, 'You should also ascend'<sup>402</sup>

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<sup>401</sup> The association between Jacob's dream and Israel's new year is evidenced as early as Jubilees 31:3-32; 32:4-29.

<sup>402</sup> 29,4

When Jacob fears that he will descend in disaster should he climb the ladder, his lack of faithfulness results in God's future sentencing of Israel to a prolonged period of exile under each regime that originally attempted to ascend to heaven. Upon previewing the future plight of Israel, Jacob considers the possibility that exile may endure forever, but he receives divine assurances that the sentence is temporary. The fate of the subjecting nations, on the other hand will result in an unfavorable outcome reflective of God's original expelling of each Gentile ruler from the realm of heaven.

כי אעשה כלה בכל הגוים אשר הדחתך שמה, אמות העולם שהן מכלין את שדותיהן אעשה כלה, (ירמיה ל, יא): ואותך לא אעשה כלה, אבל ישראל שאין מכלים שדותיהם כמה דאת אמר (ויקרא כג, כב): לא תכלה פאת שדך, לא אעשה כלה. (ירמיה ל, יא): ויסרתך למשפט, מיסרך ביסורין בעולם הזה כדי לנקותך מעוונותיך לעתיד לבוא אימתי בחדש השביעי

"For I will make an end of all the nations where I have dispersed you" (Jeremiah 30:11). As for the nations of the world who exhaust their fields, I will destroy them; but [as for] Israel who does not use up their fields, as the Scripture states, 'you shall not fully reap the corner of your field' (Lev. 23:22), I will not destroy. But I shall discipline you by judgment, disciplining you by sufferings in this world in order to cleanse you from your iniquities in the world to come. When? In the seventh month."<sup>403</sup>

The connection between Israel's redemption and patriarchal merit, therefore, is equally a connection to God's doing away with both the Gentiles and their land, more specifically the produce of their labors. The contrast between Israel and non-Israel demonstrates a hostility not unlike the sectarian views of God's enemies in Late Second Temple literature.

When the divine court renders judgment, it applies to both Israel and the nations, the outcome marked by strict divisions and a polemic against the outsider. The unfavorable judgment exacted on the nations, portrayed as the enemies of Israel and their king, may look back to some of the

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<sup>403</sup> Ibid; *Pesik. Rab. Kahn.*, 23.2.

royal Psalms that speak of the enemies of God. The midrashic literature, however, conceives of these enemies as purely set against Israel.

The battle has been reduced to a juridical struggle, a war of words, evidence, and testimony, which perhaps reflects the reality of Byzantine Palestine when the Jews did not have an army and would not fight on the battle field.<sup>404</sup>

Perhaps equally striking are the supernatural, post-mortem abilities of the three patriarchs to transfer acquittal to the congregation of Israel, in this case the advocates manifesting in a rabbinically expanded performance of the past experiences of the patriarchs. These representative lines of Israel's defense are not equal, furthermore, in their possession of merit. Abraham and Isaac appear, through their signature acts, far more meritorious than the patriarch Jacob, whose sin at the divine ladder is only forgiven through God's unilateral act of clemency.

### 6.7.2 The Shofar and the Ox-Goad

As mentioned above, Israel's entitlement to advocacy and intervention during the final judgment is evidenced by the blasting of the Shofar (תרועה), which occasions God's relocation from the "throne of judgment" (כסא הדין) to the "throne of mercy" (כסא רחמים). The problem arises that, according to the strict standards of divine justice, Israel cannot attain acquittal for her sins, but through the blasting of the Shofar, a transfer of God's seat of power occurs from justice to mercy.

בשעה שהקדוש ברוך הוא יושב ועולה על כסא דין, בדין הוא עולה, מאי טעם, עלה אלהים בתרועה, ובשעה ישראל נוטלין את שופריהן ותוקעין לפני הקדוש ברוך הוא, עומד מכסא הדין ויושב בכסא רחמים, דכתיב: ה בקול שופר, ומתמלא עליהם רחמים ומרחם עליהם והופך עליהם מדת הדין לרחמים, אימתי בחדש השביעי

At the time when the Holy One, blessed be he, reigns and ascends upon the throne of justice, he ascends by means of justice. What is the reason? "God ascends with a blast." And when Israel takes their shofars and blasts them before the Holy One, blessed be He, He rises from the throne of justice and sits upon the throne of mercy, as it is written, "The

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<sup>404</sup> Jeffrey L. Rubenstein, "Mythic Time and the Festival Cycle," *The Journal of Jewish Thought and Philosophy* 6 (1997): 175.

Lord, at the blast of the shofar.” And he is filled with mercy on their account, and being merciful to them, he changes the standard of strict justice on their account to [the standard] of mercy. When? On the seventh month.<sup>405</sup>

The intercessory blasting of the shofar reveals a rabbinic representation of the interaction between the divine court and the community of Israel.<sup>406</sup> In each case, God’s intervention within the community is required in order for Israel to receive deliverance, while the non-inclusion of Gentiles within the paradigm of deliverance remains very real. For example, the illuminated divine countenance (אור פנים) descends to the earthly court in order to clarify urgent matters of *halakhah* among select “elders” (זקנים), rulings of course which will apply to the congregation of Israel. The Gentiles, however, lack any divine legal intervention guiding their laws and courts. The method of blasting the shofar, furthermore, enables Israel to propitiate their God: אשרי העם: אשרי העם / “Happy are the people that know how to persuade their creator through the shofar blast.”<sup>407</sup> Yet the God of Israel remains non-responsive to the trumpet blasts of the nations, whose instruments are distinguished by their Greek and Latin names, סלפירגס (σάλπιγξ) and בוקינוס (*būcīna*). The shofar blast entails a privileged form of communication between the divine and Israel and characterizes the outsider as possessing an inferior horn, as well as a non-propitiatory method of sounding it. The intercessory properties of the shofar, therefore, serve to distinguish it from the horns of foreign culture and build a further case for Israel’s election on the universal day of judgment.

The representation of God’s movement from the throne of judgment to the seat of mercy is quite emphatic as well in *Pesikta de-Rab Kahana*, where further support is garnered for the

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<sup>405</sup> *Lev. Rabb.* 29.3

<sup>406</sup> See further, on how God favors Israel’s standing within the divine court on the day of judgment, y. *Rosh Ha-Shanah*, 1.3.

<sup>407</sup> PRK 23.4.

special election of Israel, in spite of her lacking any unique merit that might qualify her for such election. Consider Rachel Anisfeld's understanding of PRK's movement of God, through the shofar blast, to the seat of mercy.

One of the most pronounced themes of this chapter in PRK is God's movement "from the attribute of justice to the attribute of mercy." While this theme is not a surprising one for Rosh HaShanah, it should be noted that other themes were equally possible, such as the theme of God's coronation and kingship, and indeed the theme of His judgment. It thus seems significant that the chosen theme is God's mercy and not His judgment and that this theme is captured here repeatedly in terms of movement or change. Moreover, it seems significant that the theme of divine movement toward mercy is more prominent than the theme of human movement toward improved actions and repentance.<sup>408</sup>

The shofar blast, according to this characterization, indicates a human endeavor not characterized by any herculean effort toward atonement or character development, yet the action provokes a monumental response on the part of God, in as much as condemnation for sins has been nullified.

Divine intervention facilitating Israel's redemption is further evidenced in Leviticus Rabbah's interpretation of the evil inclination in humanity, whose taming is likened to the prodding of a heifer with an ox-goad. The opening scripture for this principle comes from Isaiah 48:17: "Thus says the Lord, your redeemer, the holy one of Israel, 'I am the Lord your God, who teaches you how to benefit, who guides you on the path you should walk.'" Playing off "the one who teaches you" (מְלַמֵּד), the midrash considers the teacher, in this case God, prodding Israel in the manner that the farmer trains the heifer: "The one who prods you, just as the ox-goad prods the heifer."<sup>409</sup> The midrash then presents three names by which the Ox-goad is called, each respectively associated with imparting instruction, knowledge, and discernment to the heifer. The text then employs *a fortiori* reasoning to claim that, given men design an ox-goad to guide

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<sup>408</sup> Rachel Anisfeld. *Sustain Me With Raisin-Cakes: Pesikta DeRav Kahana and the Popularization of Rabbinic Judaism* (Leiden: Brill, 2009), 87-88.

<sup>409</sup> *Lev. Rabb.* 29:7, מסקד לך כמה דהדין מסאסא מסקד להדא פרתא

and discipline a heifer, how much more important that people should receive some form of prodding to avoid the evil inclination, whose intention is to banish people from the world to come. The designing of a divine goad, therefore, aims to steer Israel clear of the evil inclination. A person is incapable of manufacturing this goad: “The Holy One, blessed be He, says, ‘A man makes an ox-goad for his heifer, but he does not make an ox-goad for the evil inclination.’ [As the Scripture states], ‘The one who guides you in the way you should go.’”<sup>410</sup>

### 6.7.3 The Evidence of the Talmud

The Jerusalem Talmud, in tractate *Rosh ha-Shanah*, offers an illuminating reading of God’s unique legal and soteriological attributes that is quite interactive with imperial political and legal procedure. Within a much broader section focused on the nature and timing of God’s new year judgment, when all people will pass before him, Rabbi Lazar makes a distinction between the ordinances of a king and the God of Israel.

אמר רבי לעזר פרא בסיליוס או נומוס אוגריפוס בנוהג שבעולם מלך בשר ודם גוזר גזירה רצה מקיימה רצו אחרים מקיימים אותה אבל הקדוש ברוך הוא אינו כן אלא גוזר גזירה ומקיימה תחילה מה טעם ושמו את-משמרתני אני יי אני הוא ששימרתני מצותיה שלתורה תחילה

Rabbi Lazar said, “παρὰ βασιλέως ὁ νόμος ἄγραφος.”<sup>411</sup> According to the custom of the world, a King of Flesh and Blood issues a decree. If he so desires, he upholds it; or if he so desires, others uphold it [rather than he himself]. But the Holy One, blessed be He, does not act like that. Rather, he issues a decree and upholds it from the beginning. What is the basis for this? ‘They shall observe my ordinance, I am the Lord.’<sup>412</sup> [That is to say], I am the One who observed the commandments of the Torah from the beginning.”<sup>413</sup>

<sup>410</sup> See also PRK 23.7, (שם שם) תלך בדרך מלך בשר ודם גוזר גזירה רצה מקיימה רצו אחרים מקיימים אותה אבל הקדוש ברוך הוא אינו כן אלא גוזר גזירה ומקיימה תחילה מה טעם ושמו את-משמרתני אני יי אני הוא ששימרתני מצותיה שלתורה תחילה

<sup>411</sup> “Regarding a king, the Law is not recorded.” The Greek rendering of the translation more accurately captures the indebtedness of the rabbis to their surrounding Greek context, as they obviously deemed it important to retain the original language in this strong claim made concerning worldly monarchs.

<sup>412</sup> Lev. 22:9.

<sup>413</sup> y. *Rosh ha-Shanah*, 1.3.5/57b.



The opinion appears to convey that the worldly king incurs no obligation to uphold the very edicts he passes, such that, while the people's observance is obligatory, the king's remains optional. The laws of the God of Israel, by contrast, derive from their being legitimized by God's observance of his own decrees from their very inception. To keep the divine law, therefore, is to imitate God himself. The rabbis then apply the example of God rising before Abraham in Genesis 18, when the patriarch had become quite old, to confirm the law of rising and revering the presence of an elderly person.<sup>414</sup>

Having established the unique nature of their God, the rabbis then proceed to the special merit of Israel in relation to impending judgment. Two opinions are presented in relation to Deuteronomy 4:7-8, which are worth citing in full for the sake of understanding the talmudic application of written Torah to the legal and soteriological contexts of final judgment.

בִּי מִי־גוֹי גָּדוֹל אֲשֶׁר־לוֹ אֱלֹהִים קְרֹבִים אֵלָיו כִּי־הִנֵּה אֱלֹהֵינוּ בְּכָל־קְרָאֵנוּ אֵלָיו: וּמִי־גוֹי גָּדוֹל אֲשֶׁר־לוֹ חֻקִּים וּמִשְׁפָּטִים צְדִיקִים כָּל־הַתּוֹרָה הַזֹּאת אֲשֶׁר אֲנִי נֹתֵן לְפָנֵיכֶם הַיּוֹם:

For who is such a great nation that should have God so close to her, as is the Lord our God whenever we call to Him? And who is such a great nation that should have statutes and ordinances as righteous as this entire Torah, which I am presenting before you this day?<sup>415</sup>

The purpose of the scripture is one of distinguishing Israel from other nations, just as their God, by virtue of its faithfulness to its own laws, was distinguished from a king. Here the nearness of the people to their God, along with their privileged access to just laws, makes them unique among all the other nations. This principle provides an opening for the first interpretation of Rabbi Simon.

אמר רבי סימון כתיב כי מי גוי גדול אשר־לוֹ חוקים ומשפטים צדיקים וגו' רבי חמא בירבי חנינה ורבי הושעיה חד אמר אי זו אומה כאומה הזאת בנוהג שבעולם אדם יודע שיש לו דין לובש שחורים ומתעטף שחורים ומגדל זקנו שאינו יודע היאך דינו יוצא אבל ישראל אינו כן אלא לובשים לבנים ומתעטפין לבנים ומגלחין זקנם

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<sup>414</sup> Lev. 19:32.

<sup>415</sup> Deut. 4:7-8

Rabbi Simone says, “It is written, ‘For who such a great nation that has righteous statutes and ordinances, etc?’”<sup>416</sup> [As for] Rabbi Hamah, in the name of Rabbi Haninah, and Rabbi Hoshaiyah, the first argues as follows: “Which nation is like this nation? According to the custom of the world, a man knows that he faces judgment, so he dresses in black, dons a black cloak, and allows his beard to grow, since he does not know how his judgment will turn out. But for Israel, this is not the case. Rather, they wear white clothing, don white cloaks, and shave their beards. They also eat, drink, and rejoice, knowing that the Holy One, blessed be He, will perform miracles on their behalf.”

Simon’s analysis reveals a certainty among Israel that the nation will be vindicated during divine judgment, while all other people must endure a period of uncertainty prior to receiving their verdict.

Rabbi Hoshaiya, however, interprets Deuteronomy 4:7-8 differently, instead focusing more on the internal operations of the courts.<sup>417</sup>

וְחֹרֶנָּה אָמַר אִי זֶה אֹמֶת כְּאֹמֶת הַזֹּאת בְּנוֹהֵג שְׁבַע עוֹלָם הַשְּׁלֵטוֹן אֹמֵר הַדִּין הַיּוֹם וְהַלִּיסְטִיס אֹמֵר לְמַחֵר הַדִּין לְמִי שׁוֹמְעִין לֹא לְשֵׁלֶטוֹן אֲבָל הַקְּדוֹשׁ בְּרוּךְ הוּא אֵינּוּ כֵן אָמְרוּ בֵּית דִּין הַיּוֹם רֹאשׁ הַשָּׁנָה הַקְּדוֹשׁ בְּרוּךְ הוּא אֹמֵר לְמֵלָאכִי הַשֶּׁרֶת הָעֵמִידוּ בִּימָה [יַעֲמְדוּ סְנִיגוֹרִין יַעֲמְדוּ קְטִיגוֹרִין שְׁאָמְרוּ בְּנֵי הַיּוֹם רֹאשׁ הַשָּׁנָה] נִמְלָכוּ בֵּית דִּין לְעֵבְרָה לְמַחֵר הַקְּדוֹשׁ בְּרוּךְ הוּא אֹמֵר לְמֵלָאכִי הַשֶּׁרֶת הָעֵבִירוּ בִּימָה לְמַחֵר יַעֲבְרוּ סְנִיגוֹרִין יַעֲבְרוּ קְטִיגוֹרִין שְׁנִמְלָכוּ בְּנֵי לְעֵבְרָה לְמַחֵר

But the other said, “‘Is there a people like this people?’ According to the custom of the world, if the sovereign says that the trial is today, and the robbers say it is tomorrow, to whom does one listen? Not to the ruler? But the Holy One, blessed be He, does not act like that. If the court declares, ‘The New Year is today,’ the Holy One, blessed be He, says to the ministering angels, ‘Raise up the platform,<sup>418</sup> let Advocates and Accusers take their stand, for my children have declared that today is the New Year.’ And if the Court ruled to move the day to tomorrow, the Holy One, blessed be He, says to the ministering angels, ‘Remove the platform, the Advocates, and the Accusers, for my children have ruled to transfer [the New Year] to tomorrow.’”

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<sup>416</sup> Deut. 4:7

<sup>417</sup> While the JT is not entirely clear regarding which teaching is attributed to which rabbi, PDRK considers the second interpretation as belonging to Rabbi Hoshaya.

<sup>418</sup> בימה, From Greek, βῆμα, indicating a raised platform provided for either a judge presiding at court, a tribunal, or both. For its associations with a Roman courtroom, refer to *Lev. Rabb.* 13.5.

Here an Israelite court determines the precise arrival of the New Year rather than the heavenly court. This is significant, for it in effect claims that the eschatological judgment day of all humanity happens at the pleasure of Israel's courts themselves, rather than at the determination of a divine court. God's court prepares itself for this proclamation, having the advocates and accusers prepared for when the proceedings take place. The nature of this adversarial divine courtroom of course exhibits a touch of irony, in as much as it awaits the announcement of the rabbinic court before pronouncing trial and judgment, yet it is organized along the lines of a Roman court, where the prosecution and defense will exchange arguments regarding the judgment of Israel.

The biblical festival of trumpets was associated mainly with a community sabbath rest accompanied by a solemn assembly and shofar blasting. The early rabbinic evidence of the Mishnah and Tosefta indicate that the first of Tishrei became associated with God's enthronement, universal judgment, and the blasting of the shofar. In this setting, the rabbis had conceived of Israel as securing an annual means of exemption from divine condemnation. We have also witnessed that Leviticus Rabbah 29 represented this judgment in strict binary terms, not between righteous and wicked individuals, but between the congregation of Israel and the empires of the world, represented by Babylon, Media, Greece, and Rome. Israel's passage from condemnation to acquittal does not occur through the people's own merit but rather through divinely instituted forms of intercession and advocacy. The sources of these interventions have thus far been found in the rabbinic constructions of Israel as God's son, patriarchal merit, the sounding of the shofar, and Israel's privilege to be released from the evil inclination. Israel is also seen as occupying a more privileged place in the divine courtroom, whereby God even

allows the rabbis to establish the date of the new year's festival in consultation with the divine court.

## 6.8 Advocacy and Judgment in Rabbinic Interpretations of Samuel

Several biblical writers viewed Samuel as a supporting speaker and intercessor for Israel. His credentials are confirmed in both the Deuteronomistic Histories as well as in subsequent passages of prophetic literature.<sup>419</sup> The gathering of the Israelites at Mizpah in 1 Samuel 7:3-6 demonstrates the prophetic office of instructing the people as to what actions will justify them before their God, a proclaimed assurance of deliverance (מִיַּד פְּלִשְׁתִּים וְיִצְלַח אֲתֶכֶם), and a further pledge that the prophet will recite a prayer—more specifically an appeal—to Yahweh on behalf of the people (וְאֶתְפַּלֵּל בְּעִדְכֶם אֶל־יְהוָה). While Samuel's qualifications demonstrate him as the culmination of the prophet-judge tradition, his ability to speak for Israel, and then convey God's demands back to the people, shows that he mediated deliverance to Israel until the inception of the Davidic monarchy and the alterations of the prophetic office—at least textually—which accompanied this development. This reality emerges within Samuel's farewell speech, where he reaffirms the wickedness of the people in requesting to be ruled by a king (1 Sam 12:17). The tension between the prophet-judge's comparison of the divine king, Yahweh, with a human monarch exercising absolute powers indicates, therefore, that prophets will continue to occupy a prominent role of speaking and interceding on behalf of Israel. In this sense, the last portion of this farewell speech proves quite telling, with the Israelites urging,

הַתְּפַלֵּל בְּעֵדֵינוּ עֲבֹדֵינוּ אֱלֹהֵינוּ וְאֵלֵינוּ נִמּוֹת כִּי־נִסְפְּנוּ עֲלֵינוּ כָּל־חַטֹּאתֵינוּ רָעָה לִשְׁאֵל לָבוּ מִלֵּךְ:

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<sup>419</sup> Jer. 15:1a is illustrative: וַיֹּאמֶר יְהוָה אֵלַי אִם־נִעַמְד מֹשֶׁה וְשַׁמּוּאֵל לְפָנַי אִין נִפְשִׁי אֶל־הָעָם הַזֶּה: “[Even] if Moses or Samuel were standing before me, my spirit would not be [disposed favorably] toward this people.”

“Intercede with Yahweh on behalf of your servants, so that we do not die, for we have added evil to all our sins by requesting a king for ourselves.”<sup>420</sup>

The performance of intercession for Israel is indeed required of Samuel, who equates the neglect of this office as tantamount to sin against God: *גַּם אֲנֹכִי חָלִילָה לִי מִמְטָא לַיהוָה מִחֲדָל לְהִתְפַּלֵּל*  
*בְּעַדְכֶם*/Moreover, as for myself, far be it from me to sin against Yahweh by neglecting to plead on your behalf.”<sup>421</sup>

The reception history of Samuel at times shows tendencies to emphasize the intersection between the prophetic and intercessory roles, which are unquestionably related to the prophet’s role in securing salvation for the people. The text of 3 Enoch issues a strong statement regarding these offices.

But when the Holy One, blessed be he, shall see that there is none righteous in that generation," none pious on the earth, no righteousness in men's hands, no one like Moses, no intercessor like Samuel, who could entreat the Omnipresent One for salvation, for redemption, for his kingdom to be manifested in the whole world, for his great right hand to be set before him once again, so that he might effect with it a great deliverance for Israel; then the Holy One, blessed be he, will at once remember his own righteousness, merit, mercy, and grace, and, for his own sake, will deliver his great arm, and his own righteousness will support him, as it is written, “He saw that there was no one”—like Moses, who sought mercy many times for Israel in the wilderness and annulled the decree against them—“and he was astonished that there was no intercessor”—like Samuel, who interceded with the Holy One, blessed be he, and cried to him; and the Holy One answered him, and did what he wanted, even what was not foreordained, as it is written, “It is now wheat harvest, is it not? I will call on the Lord and he shall send thunder and rain.”<sup>422</sup>

This late ancient work incorporates many of the essential aspects of the advocate-intercessor’s role. First, it looks forward to the eschatological moment when, in spite of the dangers for all people, righteousness will be virtually absent. The advocates of old, such as Moses and Samuel,

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<sup>420</sup> 1 Sam. 12:19

<sup>421</sup> Ibid., 12.23

<sup>422</sup> 3 Enoch 48, 5-7, OTP 1, trans. P. Alexander.

will no longer appear. Yet for the sake of God's own righteousness, salvation will still be granted to the people, despite their overall lack of merit.

There exists a rabbinic tradition concerning Samuel that the first and fifth blessings of the eighteen benedictions are connected to him by virtue of his both crying out and having his prayers heard on behalf of Israel. The context of this passage pertains to the refraining of reciting “recollections” (זְכוֹרוֹנוֹת) or *shofarot* (שׁוֹפְרוֹת) except during the New Year's festival (רֵאשׁ הַשָּׁנָה), the Jubilee (יּוֹבֵל), or a period of war (שְׁעַת מִלְחָמָה).

על הראשונה הוא אומר מי שענה את אברהם כו' תנא יש מחליפין צעקה לאליהו ותפלה לשמואל בשלמא גבי שמואל כתיב ביה תפלה וכתיב ביה צעקה

Concerning the first [blessing], [the prayer leader] recites, “The one who answered Abraham.” It has been taught [in a Baraita], “There are those who reverse [the order of the blessings, reciting first, ‘The one who hears] cries,’ in respect to [the blessing of] Elijah, [and then reciting, ‘The one who hears] prayer,’ in relation to [the blessing] of Samuel. Concerning Samuel, [one can choose either order], as it is written concerning him, ‘prayer,’ and it is written concerning him, ‘Crying out.’”<sup>423</sup>

The scriptural attestation of Samuel praying and crying out for the people warranted his inclusion within the early development of the eighteen benedictions, and the petitions in 1 Samuel 12 appear foremost on the minds of the rabbinic interpreters. A passage from *Bavli Beraḥot* 12b demonstrates this reverence for the prophet-judge on account of his intercession for Israel.

ואמר רבה בר חנינא סבא משמיה דרב: כל שאפשר לו לבקש רחמים על חבירו ואינו מבקש — נקרא חוטא שנאמר: גם אנכי חלילה לי מחטא לה' מחדל להתפלל בעדכם

And Rabba bar Ḥinnana Saḅa stated in the name of Rab, “As for anyone who has the ability to petition for mercy on behalf of his fellow man but does not request it, he is referred to as a ‘sinner,’ as the Scripture states, ‘And as for me, far be it from me, that I should sin against the Lord by ceasing to intercede on your behalf’” (1 Sam. 12:23).

The rabbinic discussion, to this point, has focused on how one should declare the justice and righteousness of God during the third blessing of the eighteen benedictions. Rabba bar Ḥinnana

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<sup>423</sup> *b. Ta'anit*, 17a.

has suddenly gone off topic and raised the issue of pleading on behalf of one's fellow citizens. The rabbis wrestle with the distinction between pleading for an individual or a community, considering the opinion that an individual who feels shame is forgiven. Samuel's example is again considered, in this instance when he was conjured up from the dead so that Saul could plead to the prophet in desperation over God's abandonment of him. The rabbis, citing 1 Sam. 28:18, determine that Samuel guarantees a place for Saul in the prophet's realm of the afterlife: במחיצתי [ומחר] אתה ובניך עמי" ואמר רבי יוחנן "עמי" במחיצתי 'And tomorrow, you and your sons will be with me.' Rabbi Yochanan said, "'With me,' meaning in my designated location." מְחִיצָה here is probably referring to a designated area which the rabbis perceive as being reserved for the righteous in the afterlife.<sup>424</sup> In both texts it is clear that the rabbis believe that Samuel, upon receiving Saul's plea, was able to intercede, thereby guaranteeing him divine forgiveness and a secure place in the postmortem world.

## 6.9 Solomon and the Prayer of Dedication

While rabbinic discussions of Solomon are numerous, the nature of his Prayer of Dedication (1 Kings 8) deserves careful attention, as it addresses a ruler's responsibility to plead for the peoples' welfare before a transcendent God. Solomon has acknowledged in the dedication that the divinity lacks any inherent need to reside within profane space, and therefore it reflects God's benevolence that he chooses to reside within their city and consider the security of the people. The ritual performance has Solomon proclaiming that, despite the gravity of sin, the people of Israel may come directly before God. Solomon acts as the preeminent leader by virtue of his

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<sup>424</sup> See also, *b. Eruvin*, 53b. In both texts it is clear that the rabbis believe that Samuel, upon receiving Saul's plea, was able to guarantee him forgiveness and a secure place in the postmortem world.

position as king, while acting as the intercessor who bridges the vast chasm between humanity and God. Michael Widmer has referred to the prayer of dedication as “Solomon’s sevenfold intercessory prayer on behalf of Israel and the foreigners.”<sup>425</sup> While this characterization possibly overstates the extent of the pericope’s audience, intention, and theological principles, there is little doubt regarding Solomon’s intercessory function as one advocating for the state of Israel, in this case as a preventative means of warding off sin and affording a mediatory resource at a centrally located, consecrated space.

The degree of salvific power inherent within the dedication ceremony is not lost on the rabbis, who recognize the principles of petition, forgiveness, and redemption within the biblical narrative. The power of the event is well encapsulated in the affirmation by the divine voice, *כולכם מזומנין לחיי העולם הבא* / “All of you are reserved for the life of the World to come.”<sup>426</sup> In rabbinic literature, the dedication ceremony of Solomon, including his intercessory appeals, normally serves to support larger arguments that seek to confirm Solomon’s piety at the ceremony. A few representative examples in this regard will illustrate this line of argument.

In *b. Berahot* 31a, Solomon’s dedication prayer, focused on a direct request for help on the people’s behalf, belongs to several other lines of evidence governing the proper way to pray. One prays three times daily in the direction of Jerusalem; one prays silently during the *Amidah*, following the example of Hannah. In terms of the order of prayer, one must first engage in songs of praise; only then may one recite one’s personal requests. This principle draws support from

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<sup>425</sup> Michael Widmer, *Standing in the Breach: An Old Testament Theology and Spirituality of Intercessory Prayer* (Winona Lake, IN.: Eisenbrauns, 2015), 253.

<sup>426</sup> *b. Moed Katan*, 9a; *Gen. Rabb.* 35.3



Solomon's dedication prayer, in which a few simple words supposedly supply the evidence for praise prior to request.

יכול ישאל אדם צרכיו ואחר כך יתפלל — כבר מפורש על ידי שלמה, שנאמר: "לשמע אל הרנה ואל התפלה". "רנה" זו תפלה, "תפלה" זו בקשה. אין אומר דבר בקשה אחר אמת ויציב. אבל אחר התפלה, אפילו כסדר ודוי של יום הכפורים אומר

One might believe that a person can request his own needs, and afterwards he may pray. [But this] has already been explained by [the example of] Solomon, as the Scripture states, "[So turn thyself toward the prayer and supplication of your servant, O' Yahweh my God], so as to regard his joyful praise and prayer." *Rinnah* is [a form of] prayer, [and] *tefillah* [pertains] to a request. One therefore does not recite a matter of request after the *emet v'yatsiv*.<sup>427</sup> But following prayer even the order of the Day of Atonement confessions one may recite.<sup>428</sup>

The teaching, derived from Solomon's proclamation, is consistent with earlier texts stating that the petitions of an advocate must be preceded by praise for the sovereign, whether that be the emperor, king, or God himself. The first term for prayer pertains to songs of praise, which must come prior to direct requests from God. The prioritizing of forgiveness, which Solomon was attempting to secure during his original dedication prayer, and which the rabbis have presented in the form of the Yom Kippur confessions, helps articulate how these requests Solomon speaks of involve redemption from sin.

The relationship between the blessings of the Jewish *Amidah* prayer and Solomon's dedication ceremony are likewise apparent, where appeals for mercy and forgiveness surround the stating of prayers at the Temple's inauguration.

הני עשרים וארבע דתעניתא כנגד מי אמר רבי הלבו: כנגד עשרים וארבע רננות שאמר שלמה בשעה שהכניס ארון לבית קדשי הקדשים אי הכי, כל יומא נמי נמרינהו! אימת אמרינהו שלמה ביומא דרחמי אנן נמי ביומא דרחמי אמרינן להו

To what are related the twenty-four [blessings] of the fast days? Rabbi Helbo said, they are in relation to the twenty-four songs of praise which Solomon recited when he brought

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<sup>427</sup> Designating the title of a prayer following the Hebrew *Sh'ma* during both morning and evening religious service.

<sup>428</sup> *b. Berahot*, 31a.

in the Ark to the Temple's Holy of Holies." If this is the case, let us indeed recite [these songs of praise] each day. When did Solomon recite these? On a day of [petitioning for] mercy. It follows that we also recite them on a day of [petitioning] for mercy.<sup>429</sup>

In this instance, Solomon's form of prayer before God at the dedication is one of repeated requests for mercy. These blessings act as a model for how Israel herself should pray during a time of special appeals for God's clemency, namely during the Day of Atonement festival.<sup>430</sup> Such prayer, moreover, is quite distinct from the lawcourt prayer patterns employed by an intercessor during an immediate crisis. These are daily forms of devotion that ideally act as a preventative in the event the people are found guilty of transgression.

Another amoraic tradition has Solomon pleading on behalf of his father David at the dedication ceremony, as God had assured David that the resolution to his requests for forgiveness would take place during Solomon's reign as king. The initial recitations of praise, however, do not persuade the God of Israel.

בשעה שבנה שלמה את בית המקדש ביקש להכניס ארון לבית קדשי הקדשים דבקו שערים זה בזה אמר עשרים וארבעה רננות ולא נענה

When Solomon had built the Temple, he sought to bring the Ark into the Holy of Holies. The gates then clung to one another. He recited twenty-four songs of praise, but he was not answered.

When Solomon appeals, however, on the basis of David's merit, God immediately responds, even though the intercessory prayers are ostensibly on behalf of David himself for past offenses.

כיון שאמר (דברי הימים ב ו, מב) ה' אלהים אל תשב פני משיחך זכרה לחסדי דויד עבדך מיד נענה

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<sup>429</sup> *b. BerachOt*, 29a.

<sup>430</sup> An alternative tradition exists in *Lev. Rabb.* 12.5, where the dedication of the First Temple occurs concurrently with the celebration of Solomon's marriage to one of the Pharaoh's daughters. The events are interpreted as the catalyst for God's decision to eventually destroy Jerusalem. See Gerhard Langer, "Solomon in Rabbinic Literature," in *The Figure of Solomon in Jewish, Christian and Islamic Tradition: King, Sage and Architect*, ed. Joseph Verheyden (Leiden: Brill, 2013), 136.

As soon as he stated, “Lord God, do not turn away the presence of your anointed one. Remember the piety of David your servant,” immediately he received an answer.<sup>431</sup>

The intention of the midrash appears one of emphasis on David’s merit as opposed to that of Solomon. In spite of Solomon’s great power and accomplishments, his ability to plead successfully for remission of sins is futile in absence of the mentioning of his father’s name.

The Babylonian Talmud has also associated Solomon’s Temple dedication ceremony with the Rosh Hashannah festival, which was already seen above to convey strong soteriological, eschatological, and intercessory properties. As noted, the rabbinic construction of the Rosh Hashannah festival merges the operations of the earthly and heavenly courtrooms, thus establishing a mode of judgment which partially collapses the barriers between holy and worldly space. Divine judgment indeed depends upon human consecration, both legal and religious, of the date of the new year.

תנו רבנן כי חק לישראל הוא משפט לאלהי יעקבמלמד שאין בית דין של מעלה נכנסין לדין אלא אם כן קידשו בית דין של מטה את החדש

Our Rabbis have taught [regarding this Scripture]: “For this [new year festival] is a statute for Israel, an ordinance of the God of Jacob,” teaching that the divine court cannot convene for judgment unless the earthly court [first] sanctifies the month.<sup>432</sup>

In effect, this connection enables the idealized Sanhedrin to claim the privilege of some degree of authority over the universal judgment process. While the Amoraim did not invent the idea of judgment coinciding with the new year festival, the uniquely rabbinic transformation of the adjudication process, along with claims to participatory authority in partnership with the God of Israel, demonstrates a signature form of converging the legal with the soteriological, the earthly

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<sup>431</sup> *b. Sanhedrin*, 107b.

<sup>432</sup> *b. Rosh Hash.* 8b

with the divine. The further step taken, however, involves representing the king's function within this salvation event.

כדרב חסדא דאמר רב חסדא מלך וציבור מלך נכנס תחילה לדין שנאמר משפט עבדו ומשפט עמו

[This teaching] is in accordance with Rabbi Hisdah, as Rabbi Hisdah has said, “[Concerning] the king and community, the king enters first for the judgment, as the Scripture states, “[that He may enact] the judgment of His servant and the judgment of His people” (2 Kings 8:59).

The larger context of Solomon's closing portions of his dedication speech pertains to establishing his words of supplication for the people as a daily means of judgment, according to the rabbis, first for the king and next for the community.<sup>433</sup> Solomon here, unlike his limited capacity to plead in *b. Sanhedrin* 107b, has assumed the authority to plead regularly both for the monarchy and his people, to become the first line of defense in the event of their transgressing against their God, who now works in partnership with the earthly judge. With the Israelite monarchy long dissolved, the privilege of the judicial partnership falls upon the Sanhedrin itself.

## 6.10 Halakha and Eschatology in the Rabbinic Elijah

Among the many heralded biblical figures appearing frequently in rabbinic literature, the manifestations of Elijah are noteworthy, for such incidents offer insight into the rabbis' conceptions of themselves in relation to Israelite prophetic traditions. Within the present discussion, the focus pertains to a dual function Elijah occupies in rabbinic texts, where he at once intervenes and at times resolves halakhic disputes among the rabbis,<sup>434</sup> while at the same

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<sup>433</sup> 1 Kings 8:59: עמו ומשפט עבדו ומשפט עמו | משפט עבדו ומשפט עמו / “And may it come to pass that these words of mine, by which I have sought favor before Yahweh, stay close to Yahweh our God both day and night, that he might preside in judgment over his servant and his people Israel according to the daily circumstances.”

<sup>434</sup> *b. Menach.* 32a: אם יבא אליהו ויאמר אין חולצין במנעל שומעין לו אין חולצין בסנדל אין שומעין לו שכבר נהגו העם בסנדל

time retaining his association with the eschatological period of the messiah.<sup>435</sup> On the one hand, Elijah participates in the paradigm of realized eschatology, set on the backdrop of an idealized legal-religious landscape occupied by the rabbinic sages. The prophet, moreover, possesses supernatural powers but remains limited in the exercising of these powers. On the other hand, Elijah's association with the closing verses of the biblical book of Malachi oftentimes places him on the rabbis' messianic radar, where the prophet assumes his traditionally ascribed role as herald for the world to come.

Elijah has traditionally been viewed as a messianic forerunner from the time of the Late Second Temple era, whether that motif does or does not conflate Elijah with Phineas. In short, if Elijah, through the reception history of Mal. 4.23-24, had become associated with the "great and terrible day of the Lord" (יום יהוה הגדול והנורא), it would follow that his role would pertain to messianic matters on account that the Day of the Lord motif had itself become synonymous with messianic expectation.<sup>436</sup> Within the intersection of the folkloric halakhist and messianic torchbearer motifs, this discussion inquires as to how Elijah might participate in advocacy and intercession for particular rabbis or the larger congregation of Israel. The argument derived from this approach is that occasions where Elijah advocates for either the individual or collective demonstrate the tension between the prophet's rabbinically constructed halakhic and eschatological attributes. He at once preserves the congregation within the perceived reality of a

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"If Elijah should come and state that one cannot perform ḥalitza with a shoe, [the rabbis] listen to him, [but if he states that] one [cannot perform ḥalitza] with a sandal, they do not listen to him, since it is already the people's custom to use a sandal." *b. Yeb.* 41b; *y. Ber.* 3b

<sup>435</sup> On interpreting difficult scriptures in the messianic age, *b. Menahōt.* 45a; declaring places and vessels pure, *b. Hhagigah.* 25a; *b. Pesachim.* 15a.

<sup>436</sup> Allison Jr., "Elijah Must Come First," 257.

Torah-observant life, while at the same time the prophet defends Israel's privilege to both congregational salvation and land redemption during the world to come.

A noteworthy example of Elijah's ability to both instruct the rabbis and to illustrate the necessity of intercessory action takes place in *b. Ta'anit* 22, where the prophet pronounces two unlikely candidates, according to rabbinic standards, as qualified for salvation in the world to come. At work in this exchange are the following claims: that few individuals are worthy of salvation in the world to come; those who are qualified superficially appear as outcasts; that pleading for mercy or reconciliation characterizes the qualified peoples' mission; and that Elijah stands in the intersection of instruction, intercession, salvation, and the eschaton.

רבי ברוקא חוזאה הוה שכיח בשוקא דבי לפט הוה שכיח אליהו גביה אמר ליה איכא בהאי שוקא בר עלמא דאתי אמר ליה לא. אדהכי והכי חזא לההוא גברא דהוה סיים מסאני אוכמי ולא רמי חוטא דתכלתא בגלימיה. אמר ליה האי בר עלמא דאתי הוא

Rabbi Beroqa Hoza'a was [often] found in the marketplace of Bei Lepheth. It happened that Elijah would appear to him. [The rabbi] said to him, "Is there anyone in this market who is a candidate for the world above?" [Elijah] said to him, "No." Meanwhile, [Rabbi Beroqa] saw a man who was wearing black shoes, and who did not place the sky-blue, thread [of fringes] on his garment. [Elijah] said to [Rabbi Beroqa], "That man merits the World-to-Come."

The unusual man works as a jailer (perhaps a prison-warden),<sup>437</sup> and his mission consists of keeping male and female prisoners separated, protecting Jewish women from desirous Gentile men, and informing rabbinic sages (לרבנן) of Gentile decrees in order that the sages will intercede with the authorities (ובעו רחמי) and thus abrogate the decree. The last responsibility evokes a sense of urgency, since Rabbi Beroqa, when he first desires a meeting with the man, is told to wait until the following day, as it turns out that a decree has just been passed that requires immediate rabbinic appeals before God so as not to impact the Jews. Elijah, in this situation, is instructing a prominent rabbi as to who merits entry into the world to come, in this case a rare

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<sup>437</sup> Jastrow, 406.

figure in the marketplace who is exceptionally deserving. He earns this right through his ability to not only keep the people from sin, but also by staying current on Gentile decrees capable of causing severe harm to Israel. It is necessary that the sages who are capable of moving God through intercessory appeals receive updates on these decrees, namely from one who plays the role of a late ancient Jewish spy among the Gentiles. In this midrash, therefore, Elijah provides instruction in end-times salvation by identifying an unlikely figure who keeps the wheels of intercession spinning. The obscure figure's selfless service to his people further embodies the ethical nature of one deserving of the world to come. As with many advocacy midrashim, the convergence of present crisis—Gentile decrees jeopardizing the safety of Israel—and eschatological redemption guides the narrative.

Another instance of Elijah both instructing the rabbis and at the same time acting as a vehicle for intercession—and even offering instruction regarding intercession—takes place during an extended passage in *b. Bava Metzia*, which extolls the virtues and interpretive accumen of Rabbi Hiyya. After a midrash where Elijah confirms the superiority of Rabbi Hiyya's chariot in relation to the postmortem rabbinic academy of the heavens (מתִּיבְתָא דְרַקִּיעַ), an incident transpires involving Elijah in relation to the potency of the prayers of the patriarchs. These prayers are then compared in power only to those of Rabbi Hiyya. Elijah has appeared late to the Academy during a new moon, and his explanation for being late relates to his responsibility for awakening Abraham, Isaac, and Jacob and preparing them for intercessory prayers.

אדאוקימנא לאברהם ומשינא ידיה ומצלי ומגנינא ליה וכן ליצחק וכן ליעקב ולוקמינהו בהדי הדדי סברי  
תקפי ברחמי ומייתי ליה למשיח בלא זמניה

“I have to wake up Abraham, wash his hands, and he performs the prayers, and I lay him back down. The same goes for Isaac and Jacob.” [The Rabbi asked, “can you] wake them

up all together?” [Elijah said], “I claim [were I to do that], that their prayers for mercy would be so powerful as to usher in the messiah before his time.”<sup>438</sup>

The key term within this discourse is וּמְצִלֵי, which indicates prayers of deliverance rather than merely the daily liturgy. The fact that the prayers occur at the beginning of the month also signals a more significant form of patriarchal prayer. The combined weight of such prayers, according to Elijah, would result in the messiah arriving prematurely, testifying to the nature of these prayers being for deliverance of Israel. This is further confirmed in the explanation of Rabbi Hiyya’s prayers, which cause the world to tremble (רָגַשׁ עֲלֵמָא) when he and his sons recite the verse concerning God’s bringing the dead back to life (מִחַיֵּה הַמֵּתִים). Again, this section addresses rabbis deliberating in their idealized postmortem academy, likely awaiting Elijah as a discourse partner and arbitrator concerning halakhic matters. The prophet reminds them, upon arriving late, that he prioritizes the enabling of patriarchal intercessory prayer on behalf of Israel. Elijah here as well functions as both halakhic dialogue partner and herald for the world to come.

### 6.11 The Heavenly Rabbinic Academy

Instances of supporting speech within the rabbinically constructed academy of the sages (מְחִיבְתָא דְרַקִּיעָא) deserve further attention, as they raise the question of whether interactions between the deceased and the living generate any advocacy moments of significance, that is, occurrences where salvation and well-being hang in the balance. This celebratory yeshiva, a profound intermediate resting point between the inaugurated eschatology of the rabbinic life and the ultimate redemption of the world to come, affords a glimpse into how some rabbinic traditions imagined a postmortem safe space that still maintained contact with the realm of the

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<sup>438</sup> *b. Bav. Metz.* 85b



living. The soteriological element presented below captures the need for either the living or the dead to advocate for someone in need of safe passage.

As with several other advocacy occurrences, the need to speak on behalf of one less powerful or fortunate takes place tangentially to the larger rabbinic discussion, as in the case of Rabbi Shmuel's attempt to recover the orphan-fund that has gone missing upon the death of his father, humorously referred to as Abba bar Abba. While attempting to invoke the presence of his father at the cemetery, Shmuel encounters a deceased companion named Levi, who sits downcast, at a distance from the rest of the dead, due to his being banned from the heavenly yeshiva. He had apparently disrespected a past teacher, Rabbi Afes, by failing to ever enter his academy, thus rendering his afterlife as an isolated existence within the cemetery, constantly in a state of mourning and dejection. When Shmuel eventually confronts his deceased father, before broaching the subject of the missing orphan funds, he pleads with his parent to allow Levi safe passage to the heavenly academy: *אי השיבנא נעיילוהו ללוי ועיילוהו ללוי* "If I am esteemed [in this world], let them allow Levi to ascend [to the Academy]. And they raised Levi [to the Academy]."<sup>439</sup> In this encounter between the dead and the living, therefore, a rabbi of preeminent reputation can appeal to the supernal academy in order to overturn a candidate's rejected request for admission. This simple act of advocacy may appear incidental and unimportant within the larger midrash, which argues the opinion that the dead have knowledge of what takes place among the living, here through the proof that Rabbi Shmuel's father had informed him of the whereabouts of the orphans' slush fund. Yet the soteriological importance of entry into the

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<sup>439</sup> *b. Ber.* 18b. Note the similar constructions for an esteemed individual in this world in both *b. Gittin*, 56b ( *מאן* / *דחשיבת בהאי עלמא טובא* / "Who is esteemed in this world?") and in the above *b. Berahot* passage (*דחשיבת בהאי עלמא טובא* / "Because you are highly esteemed in this world."), in the latter instance, a reference by Shmuel's father to his son's prominence in the world of the living.

heavenly academy renders this event as far more than incidental, as the need for departed rabbis to enter is actually projected back to the time of Moses in the wilderness, where the heavenly academy was thought to have already existed.

A narrative in *Bavli Bava Kamma* illustrates the appeals process for postmortem entry into the heavenly academy by having Moses play advocate on Judah's behalf. The performative function of the narrative is one of establishing precedent for such an appeal through the supreme lawgiver, Moses himself. The sages are discussing Moses' blessings of the Israelite tribes recorded in Deuteronomy 33, in particular regarding those sons of the patriarch Jacob "who had their names repeated" (אותן שהוכפלו בשמות) in Moses' blessings. The verses in question are Deuteronomy 33:6-7.

דאמר ר' שמואל בר נחמני אמר רבי יונתן מאי דכתיב (דברים לג, ו) יחי ראובן ואל ימות  
ויהי מתיו מספר וזאת ליהודה

As Rabbi Shmuel said [that] Rabbi Yonatan said, "What is [the connection between the Scriptures], "May Reuben live and not die, that his men are only a few" (Deut. 33.6), "And this concerning Judah, . . ." (Deut. 33:7)?<sup>440</sup>

In other words, the blessings for both patriarchs petition for preservation of life, although Judah's blessing appears much more elaborate, as he is envisioned as contending in battle while God safeguards him against his enemies (וְאֵל-עִמּוֹ תִּבְיָאֲנִי; קָדְיוֹ רַב לִי, וְעֵזְרִי מִצָּרָיו תִּהְיֶה) (Deut. 33.7). Once again, the issue before the sages concerns a postmortem predicament, this time pertaining to the preserved bones of Judah when the Israelites embarked on their forty-year trek in the wilderness.

כל אותן ארבעים שנה שהיו ישראל במדבר היו עצמותיו של יהודה מגולגלין בארון עד שבא  
משה ובקש רחמים אמר לפניו רבונו של עולם מי גרם לראובן שיודה יהודה

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<sup>440</sup> *b. Bava Kama*, 92a.

All those forty years that Israel was in the wilderness, the bones of Judah would roll about in the Ark, until Moses came and petitioned for mercy. He said before Him, “Lord of the Universe, who caused Reuben to confess . . . Judah.”<sup>441</sup>

This cryptic prayer seems to be a plea to release the bones of Judah from their plight during the journey, to give the deceased ancestor rest, while the prayer also intends to remind God of his power to elicit confession for sin in both Reuben and Judah.

מיד שמע ה' קול יהודה על איבריה לשפא לא הוּו קא מסקי למתיבתא דרקיעא (דברים לג, ז) ואל עמו  
תביאנו לא הוּו ידע מאי קאמרי רבנן ולמשקל ומיטרה בהדי רבנן (דברים לג, ז)  
ידיו רב לו לא הוּו סליק ליה שמעתתא אליבא דהלכתא (דברים לג, ז) ועזר מצריו תהיה

Immediately, “Hear, O’ Lord, the voice of Judah,” [each] of his limbs [reattached] to [their] sockets. [Yet] he still had not ascended to the Heavenly Academy. “And bring him to his people” (33:7): [Judah] still did not know what the sages were discussing, or [how] to contemplate and weigh matters among the sages. “May his hands contend on his behalf” (33:7): He was [still unable] to arrive at his own interpretations of the discussion according to the halakhah. “And you shall be a helper in the face of his enemies” (33:7).

According to the midrash, Judah is destined for a postmortem life in the heavenly academy, but at the moment of God answering Moses’ plea, Judah was only in a state of sound body, not yet resurrected to the heavenly academy. The people with whom Judah will eventually be reunited are the sages of the academy, but he still cannot comprehend their discussions or arrive at his own interpretations of the Halakhah. In this imaginative midrash, however, the phenomenon of the heavenly academy is confirmed as already established upon the death and resurrection of the ancestor Judah, whose people are the rabbinic sages, and his mission to discuss and interpret the Halakhah alongside them.

The narrative receives a fuller treatment in *b. Sotah 7b*, where the question of confessing sin is contextualized within the setting of the adulterous woman undergoing the brutal, biblical Sotah ordeal, although in this case the highly misogynistic ritual of Numbers 5 receives a rabbinic

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<sup>441</sup> Ibid.

representation and ritualization that renders it, while still problematic, open to several opinions serving to mitigate the potential damage inflicted on the accused. The legal component leading to a midrashic interpretation of Judah's burial and passage to the heavenly academy finds a place in the judge's attempts to elicit a confession from the accused adulteress. How does the Talmud, in this case, move from the biblically objectified woman undergoing an ancient potion ordeal to the case of Judah confessing his previous sins as a condition for entering the heavenly academy? One method employed by the judge is the use of past narratives, perhaps homiletical interpretations, drawn from the scripture that provide scriptural models for a sinner's confession (אומר לפנייה דברים של הגדה ומעשים שאירעו בכתובים הראשונים). Judah offers one example of confession, presumably over his mistreatment of Tamar (Gen. 38:26), such that "He inherited the life of the world to come."<sup>442</sup> The same outcome resulted for Reuben for sexual transgression. In both instances, the sages understand the immediate reward as one of ranking among the foremost inheritors of the land of Israel. On the other hand, *b. Makkot* 11b shows the most detailed steps framing Judah's development as a sage in the heavenly academy, each advancement a result of Moses' pleas before the God of Israel.

עאל איבריה לשפא לא הוה קא מעיילי ליה למתיבתא דרקיע (דברים לג, ז) ואל עמו תביאנו  
לא הוה קא ידע למישקל ומיטרח בשמעתא בהדי רבנן (דברים לג, ז) ידיו רב לו לא הוה ידע  
לפרוקי קושיא (דברים לג, ז) ועזר מצריו תהיה

[While] his limbs reattached to [their] sockets, He was still not granted entry into the Heavenly Academy. [Moses prayed], "And bring him to his people" (Deut. 33:7); [yet] he still did not know how to participate in discussions of the ancient traditions in the presence of the Sages. [Moses further prayed], "Let his hands be content on his behalf" (33:7); [yet] he still did not know how to settle difficulties [raised regarding his arguments]. [Moses further prayed], "May you [Lord] be the Helper against his adversaries" (33:7).

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<sup>442</sup> *b. Sotah* 7b.

Quite intriguing about Moses' incremental appeal on Judah's behalf is that the reward established for him is one the rabbis envision for the preeminent sages, and while entry for Judah may originally have been predicated upon confession, the requisite skills for life in the Academy require Moses' direct pleas to God in order to bear fruit. If these are the criteria for Judah's entry, the appeals for rabbinic aspirants would likely require an equal amount of intercessory power.

## **6.12 Conclusion**

Several occurrences of supporting speech have been examined in the current chapter, with the larger intent being one of illustrating the degree to which amoraic advocacy references can range from simple allusions, tailored toward the confirmation of a particular halakhic opinion, to profound claims regarding the acquittal of Israel in the world to come. While the professional advocate finds no acceptable place within the rabbinic courtroom, supporting speech still manifests over a broad spectrum of settings. The goal of becoming a professional advocate afforded the Greek and Roman educated minority access to the upper strata of the social hierarchy. A successful rabbinic education, on the other hand, at minimum conferred upon one the qualifications of a teacher worthy of drawing a circle of disciples. In some cases, it might have further propelled a select few to the status of judges. Nevertheless, how the rabbis imagine advocacy deals less with social rank and rather extensively with matters of halakhah and corporate salvation.

The separation of accuser and advocate somehow became a principle for illustrating what was possible within the realm of halakhic interpretation, with these occurrences at times pointing toward urgent situations with respect to the well-being of Israel. On the other hand, strict boundaries between accusation and defense may reflect a rabbinic distaste, at least in theory, for

a trained speaker who offers arguments for both sides of a dispute, as opposed to simply rendering what would amount to a just judgment. In other circumstances, however, whether it be the predicament of lacking a qualified patron, or else the eschatological nature of the new year festival, supporting speech serves the purpose of preserving life, election, and salvation. The rabbinic discussions involving the new year festival, as well as those focused on postmortem conceptions of the Israelite patriarchs and prophets, seem to move seamlessly between serving halakhic discussions and confirming both the present and future salvation of corporate Israel. Even in situations where an individual's salvation is at stake, as in the case of admitting Rabbi Levi into the heavenly academy, the welfare of the individual hinges on their belonging to the collective, one which was reimagined within a rabbinic image during the romanticized period of Israel's wandering in the wilderness. How the rabbis imagined the biblical patriarchs and prophets of old engaging in advocacy is even more lucidly illustrated through examining midrashim centered on Abraham and Moses. These texts reconstruct the classical episodes about Sodom and the golden calf incident, connecting the prophet's advocacy for the people to much larger issues operative within the rabbinic learning environment. How such writings demonstrated Israel's election and vindication in the world to come is the focus of the next two chapters.

## Chapter 7: Abraham's Pleas for Sodom in Genesis Rabbah 49

### 7.1 Introduction

While various rabbinic writings offer brief analogies, legal discussions, theological claims, or narratives containing clear advocacy terminology, especially as it pertains to the divine courtroom, other rabbinic texts offer more extended interpretations of biblical narratives involving divinely favored human advocates. Such texts present renowned biblical servants in a prophetic capacity, pleading before the God of Israel, who presides as supreme judge over the divine court. Occurrences of Hebrew and Aramaic terms for advocacy (עוֹרֵךְ דִּין/פְּרָקְלִיט/סְנִיגוֹר), along with their cognates, may still appear in such rabbinic passages, but their common characteristic centers on prophetic appeals before Yahweh in the attempt to reverse a pending condemnation order, one issued against a persistently defiant collective. God's verdict allows the possibility of repeal should the arguments of the prophetic legal advocate prove persuasive.

Two biblical traditions immediately occupy the foreground in this regard, the first being the pleas of the founding Hebrew patriarch Abraham on behalf of the people of Sodom (Gen. 18:16-33), and the other Moses' advocacy for the Israelites who had complained against Yahweh's servant during two separate wilderness incidents (Ex. 32:11-14, 30-35; 33:12-17; Num. 14:11-19). In each instance, the God of Israel intends to annihilate the collective body of transgressors, while his favored servant appeals to specific arguments supporting the possibility of acquittal, or at minimum for a reduced form of punishment. With these considerations in mind, this chapter discussion will examine Abraham's advocacy in Genesis Rabbah 49, which exhibits fluid lines between divine and human courtrooms; that is, these biblical advocacy episodes often inspire the interaction between human and divine legal procedures as the rabbis perceived them, and in this context largely reflect the rabbinic tension between divine and human legal standards within the

broader context of Judaism in Late Antiquity. Furthermore, the rabbinization of Abraham enabled salvation to increasingly be portrayed as a rabbinic, scholarly endeavor. Advocacy, in this regard, manifests either through acceptable forms of rabbinic argumentation or else by means of a rabbinic assessment of what is not acceptable to argue. In either case, the rabbinic stamp of approval on supporting speech applied to salvation remains operative. Finally, the eschatological currents within this text are relatively strong, frequently resulting in the application of the prophet's arguments to Israel's ultimate vindication in the world to come.

## **7.2 Situating Abraham's Appeals**

How the rabbinic literature constructs Abraham's appeal for the city of Sodom (Gen. 18:16-33) within the early aggadic midrash, *Genesis Rabbah*, constitutes the focus of the current discussion. Abraham's insistent appeals for an imagined righteous minority in Sodom raises fundamental questions regarding rabbinic understandings of human intercessors before the divine judge. First, how do the rabbinic interpreters expand the theological boundaries of these biblical narratives, mainly in the sense of offering innovative insights on divine condemnation and deliverance? Second, to what degree does this biblical advocacy narrative enable the aggadic interpreters to elevate Abraham to the status of a preeminent Torah master? Has the midrash in some measure recreated the patriarch in the rabbinic image of the wise sage? And by doing so, do the rabbis suggest that such erudition qualifies one for privileged access to the divine court? Third, what key words, comparisons, parables, historical memories, and cultural influences provide a window into the larger world of rhetorical argument within which the rabbis would have fashioned their interpretations? Finally, how heavily weighted is the juridical component of salvation within the rabbinic assessment of Abraham as advocate? Put another way, do the



rabbis of this late ancient aggadic midrash perceive salvation and condemnation as actually being determined in a divine courtroom, and does the courtroom setting reflect larger cultural contexts surrounding the processes of acquittal and prosecution?

By examining these questions, the analysis of these texts engages the literary methods, theological underpinnings, and potential underlying contexts presupposing the rabbinic construction of Abraham as an advocate before the divine court. I will argue that the rabbinic representation of Abraham as advocate on behalf of Sodom, like many other portions of Genesis Rabbah, provides an exegetical basis for Abraham's role in the enduring election and salvation of Israel, mainly through the divinely endowed merit Abraham maintains not only as a preeminent Torah scholar, but also by virtue of his superiority as an advocate as compared with Job. The founding patriarch justifies and preserves Israel's election and preservation by embodying the proper balance between unsurpassed righteousness and a superior skill set as both orator and teacher. Abraham's example, in this regard, renders him an elite rabbinic vehicle for the deliverance of Israel, essentially an iconic ancestor turned rabbinic sage, whose virtues transfer to Israel as a collective.

The long-standing disagreements over dating, setting, audience, and narrative function belonging to the biblical Sodom narrative in Genesis 18-19 present few difficulties for the exegesis of this particular rabbinic interpretation, in large part because the rabbis approached the text in its early canonical form as a divinely produced unity. Scholarly works on the biblical Sodom tradition cast a wide net, and there remains minimal consensus on either the earliest settings of the story or the theological claims specific to Abraham's negotiations with

Yahweh.<sup>443</sup> Many scholars have long argued that the dialogue between Abraham and Yahweh (Gen. 18:16b-32), the ensuing tale of the two angels' rescue of Lot and his family (19:1-29), and the subsequent story concerning the daughters of Lot (19:30-38) likely began as independent accounts that were later woven together into a coherent narrative.<sup>444</sup> Some scholars, when assessing these ostensibly separate accounts, have argued for a relatively later date for Gen. 18:16-33, since the text addresses the injustice of corporate punishment in terms of unfairly impacting the innocent, as opposed to the straightforward judgment of Sodom in Genesis 19.<sup>445</sup> Alternatively, thematic parallels between chapters 18 and 19 have led other scholars to view the two chapters as part of the same narrative tradition.<sup>446</sup>

Beyond these broad areas of disagreement there remain some literary and legal approaches to Genesis 18:16-33 that provide useful models through which to begin unwrapping rabbinic exegesis of the text. James Bruckner's monograph offers one appropriate window into legal topics bridging the concerns of both the biblical narrative and its rabbinic interpreters.<sup>447</sup> Bruckner has contributed a compelling analysis of the legal framework presupposing Abraham's involvement in the judgment of Sodom, and in this regard offers a relevant launching point from

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<sup>443</sup> See the summary in Robert I. Letellier, *Day in Mamre Night in Sodom: Abraham and Lot in Genesis 18 and 19*, Biblical Interpretation Series 10 (Leiden: Brill, 1995), 1-29; Nathan Macdonald, "Listening to Abraham—Listening to Yhwh: Divine Justice and Mercy in Genesis 18:16-33," *CBQ* 66, no. 1 (January 2004): 25-43.

<sup>444</sup> Walter Brueggemann, *Genesis* (Westminster: John Knox Press, 1986), 162; Shamaï Gelande, *Israel and Judah: Studies in Unification and Division* (Leiden: Brill, 2011), 60.

<sup>445</sup> Gerhard von Rad, *Genesis, Revised Edition: A Commentary* (Philadelphia: Westminster Press, 1972); Ehud Ben Zvi, "The Dialogue between Abraham and YHWH in Gen. 18:23-32: A Historical-Critical Analysis," *JSOT* 53 (1992): 27-46; Johannes Unsok Ro, "The Theological Concept of YHWH's Punitive Justice in the Hebrew Bible: Historical Development in the Context of the Judean Community in the Persian Period," *VT* 61, no. 3 (2011): 406-425.

<sup>446</sup> Gordon Wenham, *Word Biblical Commentary Vol. 2, Genesis 16-50* (Waco: Waco Books, 1994), 43-44.

<sup>447</sup> James K Bruckner, *Implied Law in the Abraham Narratives: A Literary and Theological Analysis*, JSOTSup 335 (Sheffield: Sheffield Academic Press, 2001).

which one may raise questions concerning the legal and theological concerns of the rabbis. Additionally, a prominent theme emerging from this legal and rhetorical approach to the biblical text is the tension between strict, retributive divine justice and the more flexible form of adjudication Abraham boldly brings to the table in Genesis Rabbah (49.9). In fact, the modification of a strict legal code emerges as a pressing concern for the latter midrashic commentators and serves well in the analysis of several other interrelated and intertextual portions of Genesis Rabbah 49. It follows, then, that the oft-quoted question posed by Abraham in Gen. 18:25, *הֲשֹׁפֵט כָּל-הָאָרֶץ לֹא יַעֲשֶׂה מִשְׁפָּט* / “Shall the judge of all the earth not act justly?”, takes on an enduring importance in the rabbinic text. Another locus where meaning is broadened pertains to the belief that a small percentage of innocent people can necessitate the acquittal of the otherwise guilty majority.<sup>448</sup> This principle gains ground in the aggadic interpretation of Genesis 18 and becomes a foundation for the proper administering of justice. The merit of the patriarch Abraham emerges within this discussion as securing salvation for Israel rather than Sodom, reflecting a particular Jewish conception of the role of the righteous in affording deliverance to the guilty.

### 7.3 God and Abraham in Dialogue

Prior to the amoraic period of rabbinic Judaism, Abraham’s pleas to Yahweh on behalf of the Sodomites had not drawn considerable attention from the early rabbinic interpreters known as the *Tanaim*, despite that this biblical episode resonates with issues of theodicy, divine legal procedure, persuasive oratory, and the “merit of the Fathers” (*זכות אבות*). Genesis 18:16-33 did however invite significant discussion from the fourth-fifth century midrashic work of Palestinian

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<sup>448</sup> Brueggemann, *Genesis*, 172.

origin, *Genesis Rabbah*. Chapter 49 of this midrash reconsiders the importance of Abraham's advocacy for the imagined righteous of Sodom, largely as a means of investigating the relationship between divine and earthly justice in the securing of a privileged place for the people of Israel. Despite the relevance of such topics as strict versus legal retributive justice, the intersection between human and divine law, and what I would propose as a Jewish form of vicarious atonement within this midrash, *Genesis Rabbah* 49 has gone largely unnoticed in the recent secondary literature on the divine courtroom. The few scholars dealing with this text have rightly acknowledged its focus on divine legal procedure, the nature of human appeals before God, and Abraham's preeminent status in the rabbinic economy of salvation.<sup>449</sup> Some scholars have further inquired as to how this rabbinic discussion reflects late ancient Greek and Roman principles of rhetoric, and whether such principles are appropriated to serve specific rabbinic theological positions.<sup>450</sup> One way of augmenting these previous studies is to explore how the rabbis associate divine legal procedure with the exalted position Abraham enjoys in these midrashim. In a sense, Abraham's advocacy skills, his ability to plead before the divine judge, derive largely from his rabbinically constructed qualifications as a preeminent sage. The intercessory role of an advocate, for the rabbis, requires a moral and intellectual acumen that may prove inaccessible even to the most learned and skilled Torah exegetes. Abraham's qualifications, finally, while considered by the rabbis in light of advocacy for Sodom, are applied by the rabbinic exegetes to the enduring salvation of Israel.

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<sup>449</sup> Joseph Blenkinsopp, "The Judge of all the Earth: Theodicy in the Midrash on Genesis 18:22-33," *JJS* 41, no. 1 (1990): 1-12; J.A. Loader, *A Tale of Two Cities: Sodom and Gomorrah in the Old Testament, Early Jewish, and Early Christian Traditions* (Kampen, Netherlands: J.H. Kok, 1990), 104-16; Anson Laytner, *Arguing with God: A Jewish Tradition* (Northvale, NJ: Jason Aronson INC, 1990), 45-49; Timothy D. Lytton, "Shall Not the Judge of the Earth Deal Justly?": Accountability, Compassion, and Judicial Authority in the Biblical Story of Sodom and Gomorrah," *JLR* 18, no. 1 (2002-2003): 31-55.

<sup>450</sup> Richard Hidary, *Rabbis and Classical Rhetoric: Sophistic Education and Oratory in the Talmud and Midrash* (Cambridge: Cambridge University Press, 2017), 251-254.

Before a critical exegesis of the legal and theological claims of Genesis Rabbah 49 may proceed, a few important features of the text should be kept in mind. To begin, the rabbis exploit Abraham's advocacy for Sodom, despite the city's representing the archetypal disobedient Gentile collective, as a means of affirming Israel's ongoing election.<sup>451</sup> Abraham's meritorious actions provide atonement for the people of Israel, both individually and collectively; such atonement is not generally substitutionary in the sense that the prophet suffers what the guilty should rightly suffer, but rather it emerges through intercession and is transferrable by virtue of the merits of the righteous overpowering the demerits of the wicked. Abraham's advocacy skills, moreover, reflect a certain merger between the rabbis view of superior righteousness and the specialized skills belonging to Abraham as a polished interlocutor. Merit does not derive from righteousness alone, but also from the art of proper speech.<sup>452</sup> Such eloquent speech, moreover, discoverable in the various appeals Abraham pleads on behalf of Sodom, is inseparable from the rabbinic conception of the patriarch as a preeminent Torah scholar. Abraham therefore ranks among the few people qualified for inclusion within the divine court. Finally, Abraham's advocacy for Sodom reflects to some degree the tension between strict and flexible forms of retributive justice that the rabbis must negotiate in their ongoing effort to vindicate the creation, given that human nature can rarely aspire to the perfect justice associated with the divine realm.

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<sup>451</sup> This view is fundamentally in agreement with that of Martha Himmelfarb, "Abraham and the Messianism of Genesis Rabbah," in *Genesis Rabbah in Text and Context*, ed. S.A. Gribetz, D.M. Grossberg, Martha Himmelfarb, and Peter Schäfer, TSAJ 166 (Tübingen, Mohr Siebeck, 2016), 105, where it is stated that in *Genesis Rabbah* "it is Abraham more than the other forefathers who is responsible for the salvation of his descendants." While Himmelfarb has applied this phenomenon to the Akedah, circumcision, and the "call of Abraham" (Gen. 12:1-3), with particular interest in engagement with early Christology, I see less evidence of substitutionary suffering on Abraham's part in Genesis Rabbah 49 than there is divine mediation and intercession. I also view the relationship to the Gentiles in the Sodom passages as far more hostile than the passages Himmelfarb treats in Genesis Rabbah 39.

<sup>452</sup> This representation of Abraham can be loosely compared to Philo's notion of the relationship between the virtuous residing of pure thought in the human mind (ἐνδιαθέτω) and clear speech (προφορικώς). For Philo, higher virtue enables the utterance of the proper words.

The discussion begins by an assessment of the first point of legal inquiry established in Genesis 18:16, namely the divine observation of the city and the deliberative question Yahweh poses concerning Abraham's right to participate in the divine judgment of Sodom: הַמְכַסֶּה אֲנִי /מֵאַבְרָהָם אֲשֶׁר אֲנִי עֹשֶׂה "Should I conceal from Abraham what I am about to do?" The ensuing biblical verses establish Abraham as the ideal transmitter of justice and righteousness among his descendants, a task for which Yahweh considers his servant eminently capable. The biblical burden charged to Abraham on behalf of his descendants provides grounds for the rabbis to elevate him to the advocate of collective salvation for Israel.

Regarding the two angels' looking out over Sodom from a distance, which appears to signal the formal announcement of a divine inquiry, the midrash is strangely silent. The aggadic discussion concerning the judgment of Sodom does not officially begin until Genesis Rabbah 49.1. The rabbis first examine the significance of God's reluctance to conceal from Abraham the imminent judgment facing the city. This question is accompanied by posing a distinction between Israel and the rest of the nations. In the biblical story, Yahweh's rhetorical question can be seen as a natural consequence of the two angels looking out at Sodom. An observation has taken place from an elevated vantagepoint, and the question raises concerns whether the divinely elected servant enjoys the privilege of participating in the divine judge's verdict. The rabbis exploit this passage as a means of distinguishing between the blessing of the righteous, namely the blessing conferred on the collective of Israel, and the cursing of the wicked. The basis for this distinction is on the grounds of the revelation of God's judicial intentions to Abraham. God's promise to make Abraham into a great nation amounts to the blessing of every single Israelite. The blessing, moreover, pertains to both the individual and the collective.

וה' אמר המכסה אני מאברהם (בראשית יח, יז) רבי יצחק פתח (משלי י, ז) זכר צדיק לברכה ושם רשעים ירקב אמר רבי יצחק כל מי שהוא מזכיר את הצדיק ואינו מברכו עובר בעשה מה טעמיה זכר צדיק לברכה

וכל מי שהוא מזכיר את הרשע ואינו מקללו עובר בעשה

The Lord said, “Should I conceal from Abraham? (Gen. 18:17)” Rabbi Isaac opened the discussion: “Let the memory of the righteous be blessed, but let the name of the wicked rot away” (Prov. 10:7). Rabbi Isaac [further] said, “Regarding anyone who mentions the righteous but does not bless him, he transgresses a positive commandment.” What is the reason? “Let the memory of the righteous be blessed.” And concerning anyone who mentions the wicked and does not curse him, he also has transgressed a positive commandment. What is the reason? ‘Let the name of the wicked rot.’<sup>453</sup>

The midrash broadens the boundaries of the opening scripture from Proverbs 10 by arguing that “to rot” (רקב) signifies that the names of the wicked will fade into obscurity, leaving them no legacy, no share in any future divine inheritance comparable to that coming to Abraham’s progeny. Rather than accept the plain meaning of “all the nations of the earth shall be blessed through him” (וַנְּבָרְכֶוּ בְּךָ לְכָל גּוֹי הָאָרֶץ, Gen. 18:18), the rabbis have redrawn the boundaries of those represented by either the blessed or the cursed. One might presume at this juncture that the wicked refers to the people of Sodom, but subsequent passages in the midrash would appear to indicate otherwise. The focus on blessed descendants versus the cursed names of the wicked, whose identities will recede, signals a strict differentiation between Israel and the larger category of the unrighteous. Israel is not only the source of both individual and collective blessings; she is the original and enduring beneficiary.

אמר רבי שמואל בר נחמן מצינו שהקדוש ברוך הוא מזכיר שמן של ישראל ומברכנו, שנאמר (תהלים קטו, יב) ה' זכרנו יברך. רב הונא בשם רב אחא אמר אין לי אלא ששים רבוא, מנין שכל אחד ואחד מישראל שהקדוש ברוך הוא מזכיר שמו ומברכנו, שנאמר: וה' אמר המכסה אני מאברהם אשר אני עשה, ואברהם היו יהיה לגוי גדול ועצום, לא היה צריך קרא למימר אלא ויאמר ה' זעקת סדם ועמרה כי רבה, אלא אמר הקדוש ברוך הוא הזכרתי את הצדיק ואיני מברכנו, ואברהם היו יהיה לגוי גדול

Rabbi Samuel bar Nahman said, “We find that [whenever] the Holy One, blessed be He, mentions the name of Israel, he blessed them. As the Scripture states, ‘The Lord has remembered us; He shall bless us’” (Ps. 115:11). Rab Huna, in the name of Rab Aḥa, said, “I am only aware of this [in terms of] six-hundred thousand. From where [is it derived that, concerning] every single member of Israel, when the Holy One, blessed be He, mentions his name he blesses him?” As the Scripture states, “The Lord said, ‘Should I conceal from Abraham what I am about to do? Abraham shall surely become a great

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<sup>453</sup> *Gen. Rabb.*, 49.1

and mighty nation.” Now the Scripture need only have said, “The Lord said, ‘The outcry of Sodom and Gomorrah is indeed great.’” Instead, the Holy One, blessed be He, said, “I have mentioned the righteous man. Should I not bless him?” [It follows that] “Abraham shall indeed become a great nation.”<sup>454</sup>

This rather cryptic discussion appears to claim that, since Abraham was exemplary in his righteousness, the mention of his name invokes a divine blessing, and because Abraham was destined to “become a great nation,” that the nation he founded and represents, namely Israel, shall also be blessed throughout its membership at the mention of her own name. The rabbis, furthermore, understand the scripture as preserving an important moment in the history of Israel, whereby the blessing of the righteous ancestor has conferred blessing both onto the individual Israelite and the collective. Note, however, there is no clear indication that this blessing automatically transfers to the non-Israelite individual or collective, as might be inferred from the biblical text.

After establishing Israel’s inheritance of individual and collective blessings through the mention of Abraham’s name, the midrash maintains the grounds by which Abraham merits access to the divine judge’s decision-making process, principally on the basis of the patriarch’s fear of the Lord, his righteousness, and his status as a prophet. Each qualification receives scriptural support from Psalm 25:14: *סוד יְהוָה לִירְאָיו וּבְרִייתוֹ לְהוֹדִיעֵם* / “The secret [counsel] of the Lord [comes] to those who fear Him. He reveals his covenant to them.” According to the midrash, the specific covenant revealed here was that of circumcision: *אֵיזָהוּ סוּד ה' זֶה מִיֵּלָה* / “What [specifically] is this secret of the Lord? It is [the covenant of] circumcision.”<sup>455</sup> The rabbis then

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<sup>454</sup> Ibid.

<sup>455</sup> Ibid., 49.2. For further discussion of the salvific role of circumcision in rabbinic midrash, Martha Himmelfarb, “The Ordeals of Abraham: Circumcision and the Aqedah in Origen, the *Mekhilta*, and Genesis Rabbah,” *Henoah* 30 (2008): 289-310.



appeal to numerology as a means of interpreting the significance of the term, “secret” (סוד), which will be used to explain the instituting of elders from the time of Moses.

אמר לו הקדוש ברוך הוא אם תמול תטל סוד ה', מה סוד ה', ס' ששים, ו' ששה, ד' ארבעה, הרי שבעים, שבעים אני מעמיד ממך בזכות המילה, שנאמר (דברים י, כב): בשבעים נפש ירדו אבתך, מעמיד אני מהם שבעים זקנים, שנאמר (במדבר יא, טז): אספה לי שבעים איש מזקני ישראל, ומעמיד אני מהן משה שהוא הוגה 'בתורה בשבעים לשון, שנאמר (דברים א, ה): הואיל משה באר וגו', בזכות מי בזכות המילה, שנאמר: סוד ה ליראיו

The Holy One, blessed be He, said to him, “If you become circumcised, you shall receive the secret of the Lord.” What is the secret of the Lord? [The letter] *sameh* [represents] sixty, *waw* [represents] six, and *daleth* [represents] four. Behold, [they amount to] seventy. I shall [therefore] raise up seventy among you by the merit of [the covenant of] circumcision. As the Scripture states, “As seventy people your ancestors descended, etc.” (Deut. 10:22). And I shall raise up among them seventy elders; as the Scripture states, “Gather unto me seventy men among the elders of Israel” (Num. 11:16). And I shall raise up among them Moses, for he shall study the Torah in seventy languages. As the Scripture states, “Moses began to expound [this Torah], etc.” (Deut. 1:5). By the merit of what [has this come to pass]? By the merit of circumcision, as the Scripture states, “The secret of the Lord comes to the one who fears him.”<sup>456</sup>

The proposed relationship between a divine secret revealed to Abraham, the number seventy, and the collective memories associated with the emergence of the Torah demonstrates a substantial reconstruction of biblical history and covenant promise. The rabbis are addressing the basis for Abraham’s access to and inclusion within divine judgment. Access to divine counsel, on the basis of Psalm 25:14, is likened to privileged information associated with the deeper revelation of the divine covenant. The secret’s connection to circumcision enables the rabbis to employ gematria values toward arriving at the religiously significant value of 70. The number possesses essential Jewish identity markers: the legendary number of Hebrews who first settled in Egypt (Deut. 10:22) and the archetypal Israelite legal assembly (Num. 11:16-17). The original Israelite Judicial body, therefore, that of Moses as judge supported by seventy qualified elders, owes its foundation to the merit of Abraham embodied in the mystery covenant of circumcision.

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<sup>456</sup> *Gen. Rabb.*, 49.2

Abraham's qualifications to sit at the divine court are thus inseparable from fundamental Jewish teachings such as circumcision, a seventy-seat judicial assembly, and Moses' study of the Torah in "seventy languages" (בשבעים לשון). The idea of Moses meditating on the Torah in several languages perhaps even suggests dissemination of Jewish instruction far beyond its Jewish milieu and a potential response to the far-reaching evangelism of the fourth century. Establishing the connection between circumcision, the institution of seventy elders, and the emergence of Moses as an exemplary Torah scholar belongs to the larger project of presenting Abraham as intimately involved in the most privileged revelations of the Torah. His access to the divine court is inseparable from the celebration of Torah study and many of its most cherished institutions.

The midrashic argument that the covenant with Abraham merits his inclusion and participation within the divine counsel is further strengthened by Abraham's merit exceeding that of either Adam or Noah:

אמר רבי יהודה ברבי סימון למלך שהיו לו שלשה אוהבים ולא היה עושה דבר חוץ מדעתו, פעם אחת בקש המלך לעשות דבר חוץ מדעתו, נטל את הראשון וטרדו והוציאו חוץ לפלטין, שני חבשו בבית האסורים, ונתן ספרגים שלו עליו, שלישי שהיה חביב לו יותר מדאי אמר איני עושה דבר חוץ מדעתו. כך, אדם הראשון (בראשית ג, כד): ויגרש את האדם. נח (בראשית ז, טז): ויסגר ה' בעדו. אברהם שהיה חביב עליו יותר מדאי, אמר מה אני עושה דבר חוץ מדעתו

Rabbi Yehudah said in [the name of] Rabbi Simon, "This is like a king who had three close friends, and he would not do anything without their knowledge. On one occasion the king did seek to do something without their knowing. As for Adam, therefore, 'He (God) banished the man' (Gen. 3:24). As for Noah, 'The Lord shut him in' (7:16). As for Abraham, because he was most beloved to him, he said, 'How can I do anything without his knowledge?' He took the first man and banished him, and he sent him out of the palace. He imprisoned the second man in the jail, and placed his seal on it. As for the third man, because he was beloved to him beyond measure, he said, "I cannot do anything absent of his knowledge."<sup>457</sup>

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<sup>457</sup> Ibid.

Abraham acts as the God of Israel's most treasured friend, without whom no decision, however great or small, can come to fruition. God is compared in this discussion to a king in possession of his most trusted advisor: "משל למלך שיהיה לו סנקתדרים אחד ולא היה עושה דבר חוץ מדעתו" "It is like a king who had a certain associate,<sup>458</sup> and he would not do a thing in the absence of his knowledge."<sup>459</sup> This notion is also applied to a landowner wishing to fell down five non-fruitful trees bequeathed to his friend. The trees' elimination, although well within the king's legal rights, still requires that friend's consent. Abraham, reigning as the father of many nations, must be consulted in the event of any nation's judgment, since a father should be informed concerning the judgment of his own son.

Abraham's qualifications for privileged access to the judgments of the heavenly court are further warranted by his intimate connection with both the revealing of the Torah and the nature of Gehinna: "מתן תורה, גליתי לו. גיהנם, גליתי לו. I have revealed to him the giving of the Torah, I have revealed to him [the judgment associated with] Gehenna."<sup>460</sup> These two merits most likely are allusions to Abraham's access to the places of salvation and condemnation. Abraham, moreover, stands as the first to receive knowledge of the laws of the common courtyard (עירובי), as well as the special designation for Jerusalem, the throne of the Lord (כסא יהוה), derived from Jeremiah 3:17. The patriarch even receives updates on the daily legal innovations respecting the divine court:

. . . . . אין יום שאין הקדוש ברוך הוא מחדש הלכה בבית דין של מעלה . . . . .  
. . . . . אפלו אותן הלכות היה אברהם יודע

There is not a single day that the Holy One, blessed be He, does not update Halakhah in the divine court . . . . . Even these [legal innovations] Abraham would have known.

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<sup>458</sup> Hebrew, סנקתדרים/סנקתדרים, from Greek, συγγαθεδρος, meaning assessor, colleague, associate.

<sup>459</sup> *Gen Rabb.*, 49.2

<sup>460</sup> *Ibid.*

Abraham participates not only in the revelation of the Torah to Israel, but also in the ongoing process of innovating and refining the divine instruction, whose source is perceived as existing within the heavenly courtroom. The rabbis, therefore, designed a set of criteria Abraham had fulfilled in order to receive access to the “divine court” (בֵּית דִּין שֶׁל מַעְלָה). In consideration of these standards and their close connections with the blessings and divine favor conferred on Israel, Abraham’s appeals on behalf of Sodom, as this discussion argues, belong to the rabbinic conception of his privileged access to the divine court, and to how that access confers special blessings for the people of Israel. Expressed another way, the midrash views Abraham’s advocacy for the unrighteous as secondary to the patriarch’s qualifications as a preeminent sage, prophet, God-fearer, and legal expert. The aggadic exegesis of Genesis 18 is essentially about the election of Israel and less about the hypothetical redemption of Sodom.

The next portion of the Genesis narrative and its accompanying midrash address the divine inquiry regarding the complaint against Sodom and whether a verdict of condemnation is warranted. The contention against the city involves two areas of immediate concern: the magnitude and severity of “the outcry against Sodom” (Gen. 18:20) and the formal announcement of a legal inquiry into the authenticity of the complaint (18:21). The rabbis address the formal announcement of the legal inquiry: אֲרִדָּה־נָא וְאֶרְאֶה הַכְּצַעְצְמֹתָה הַבָּאָה אֵלַי עָשׂוּ כָלֵהּ. “I shall therefore descend and see if the outcry that has come to me is altogether in accordance with what they have done. If this is not the case, I shall know” (Gen. 18:21). The midrash claims that the outcry kept increasing (רבה והולכת), and secondly that the generation of the flood and the people of Sodom suffered similar punishments, given that destruction by flood also includes fire, while destruction by fire also includes flooding. The legal inquiry itself is

characterized as “one among ten [episodes of divine] descent in the Torah.”<sup>461</sup> The purpose of the descent, according to the midrash, is at once to determine liability for offense, allow the possibility for repentance, and in either case make the world aware of God’s strict principles of justice.

אמר רבי אבא בר כהנא מלמד שפתח להם המקום פתח של תשובה, שנאמר: ארדה נא ואראה הכצעקתה הבאה אלי עשו כלה, כליה הן חיבין, ואם לא אדעה, אודיע בהן מדת הדין בעולם

Rabbi Abba bar Kahana said, “This teaches us that He (God) opened for them a place at the entrance of repentance. As the Scripture states, ‘I shall go down and see now if they have acted entirely according to her outcry which has come to me’ (Gen. 18:21), [in which case] they are accountable for annihilation; and if not I shall know, [that is] I shall make known through them the principle of justice throughout the world.”<sup>462</sup>

Before Abraham begins his pleas on behalf of the alleged righteous of Sodom, an outrage is witnessed during the divine descent which, according to the rabbis, prevents God from “keeping silent.” According to the midrash, the Sodomites prohibit the most rudimentary exchange of food and water among female friends, such that the penalty consists of burning the offending woman alive. No longer is the outcry against Sodom referring to an unspecified group of victims, but now it pertains to one particular girl who gave up her food supply to her companion who had none. In the event there remains any lingering doubt regarding Sodom’s guilt, the rabbis state that God brought trembling mountains and earthquakes upon the city for twenty-five years for the purpose of eliciting repentance, which never took place. This tradition, found elsewhere in late ancient Jewish literature,<sup>463</sup> confirms for the rabbis that God has indeed acknowledged the

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<sup>461</sup> Ibid., 49.6

<sup>462</sup> Ibid., 49.5.

<sup>463</sup> See Targum Jonathan 18:20: “The Lord said to the ministering angels, ‘The outcry of Sodom and Gomorra, on account of their oppression of the poor, and their decreeing that anyone giving a morsel to the poor shall be burned by fire, is great, and their guilt exceedingly severe.’”

charge of wrongful execution; and this despite the extended time allotted to Sodom in which to repent.

Sections 49.6-8 address how an advocate might properly approach the God of Israel, as the rabbis strive to interpret more accurately how the verb, נִגַּשׁ, demonstrates specific intentions of preventing conviction of the innocent alongside the guilty. It should be noted that the discussion opens with the observation that the phrase, וַאֲבְרָהָם עֹדְנֵנוּ עֹמֵד לְפָנַי יְהוָה, “And Abraham continued standing in the presence of the Lord,” is thought not entirely accurate but rather indicates a “scribal emendation” (תְּקוּן סוּפְרִים). Rabbi Simon argues that it was the “the divine presence” (הַשְּׂכִינָה) that was instead waiting upon Abraham. This interpretation conforms to the general rabbinic perception in this midrash that God encourages Abraham to approach him and plead for the condemned. According to this view, God desires that his servants plead for justice and exhaust all possible avenues for repentance prior to divine condemnation. This principle being confirmed by the opinion of Rabbi Simon, the rabbis can offer their various arguments concerning the meaning of וַיִּגַּשׁ אֲבְרָהָם “Abraham approached” (Gen. 18:23). The different meanings range from advancing toward God “for war” (לְמַלְחָמָה), “for the purpose of persuasion” (לְפִיוּס),<sup>464</sup> or for “prayer” (לְתַפְלָה). The opinion of Rabbi Eliezer attempts to reconcile all three interpretations: רַבִּי אֱלִיעֶזֶר פִּשְׁטָא לֵה אִם לְמַלְחָמָה אֲנִי בָא, אִם לְפִיוּס אֲנִי בָא, אִם לְתַפְלָה אֲנִי בָא “Rabbi Eliezer expanded [on the meaning of וַיִּגַּשׁ]: ‘If [it means] for war, I am entering; if [it means] for persuasion, I am entering; if it means for prayer, I am entering.’”<sup>465</sup> In other words, Abraham was prepared to accept all three possibilities. While each possibility reveals specific areas of

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<sup>464</sup> While לְפִיוּס could also mean “conciliation,” “appeasement,” or “comfort,” the juridical context of the passage suggests an attempt to persuade the divine judge. This is further evidenced by the scriptural passage the rabbis appeal to for support (Josh. 14:6), where the Judahites, represented by Caleb, persuade Joshua to grant them Hebron as an inheritance.

<sup>465</sup> *Gen. Rabb.*, 49.6

disagreement among the rabbis, they are unanimous in vindicating God's character in order that he not be accused of administering justice unfairly. The possibilities of approaching for either war, persuasion, or prayer, moreover, aptly reflect the midrash's elevated perception of Abraham as a divinely appointed figure, as he embodies the bravery of a warrior, the piety of a sage, and the rhetorical acumen of an advocate.

The rabbinic explanation for the possible joint punishment of both the righteous and the wicked marks the starting point for comparisons between Abraham and Job, largely in terms of their skills in mounting a proper legal defense. Job and Abraham's qualifications as defendants, the one on his own behalf and the other on behalf of the wicked, are further evaluated with regard to the control of anger, a marker of righteousness which Job has not fulfilled.

רב הונא בשם רב אחא, (בראשית יח, כג): האף תספה, אתה גודר את האף והאף לא יגדרך. אמר רבי יהושע בר נחמיה, אף שאתה מביא לעולמך אתה מכלה בו את הצדיקים ואת הרשעים, ולא דיך שאתה תולה הרשעים בשביל הצדיקים, אלא שאתה מכלה את הצדיקים עם הרשעים. רבי ורבי יונתן, רבי אומר בשר ודם חמה כובשתו, אבל הקדוש ברוך הוא כובש את החמה, שנאמר (נחום א, ב): נקם ה' ובעל חמה. רבי יונתן אמר בשר ודם קנאה כובשתו, אבל הקדוש ברוך הוא כובש את הקנאה, שנאמר (נחום א, ב): אל קנוא ונקם ה'

Rab Huna in the name of Rab Acha [opened up the discussion of the next Scripture]: “‘Would you also sweep away [the righteous along with the wicked]’ (Gen. 18:23)? [This means, according to Abraham, that] ‘You ward off the wrath; the wrath does not ward off you.’” Rabbi Yehoshua bar Nechemyah said [that Abraham is claiming that], “‘Regarding the wrath you bring to your world, you destroy with it both the righteous and the wicked, and it is not sufficient for you that you do not suspend [the verdict] of the wicked for the sake of the righteous, but that you destroy the righteous along with the wicked.’” Rabbi and Rabbi Yonathan [interpret the Scripture as follows]: Rabbi says, “As for a Flesh and blood mortal, anger overpowers him; but the Holy One, blessed be He, He conquers anger, as the Scripture states, ‘The Lord is vengeful and the master of fury’” (Nahum 1:2). Rabbi Yonathan said, “As for a mortal, jealousy overpowers him, but the Holy One, blessed be He, overpowers jealousy, as the Scripture states, ‘The God of Jealousy, and vengeful is the Lord’”<sup>466</sup>.

At first Abraham's claim appears irreverent and risky, in the sense that the rabbis have him arguing that God not only refuses to suspend judgment of the wicked for the sake of the

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<sup>466</sup> Ibid., 49.8

righteous, but that he also sentences the righteous along with the wicked, suggesting that God issues verdicts in the exact opposite way Abraham would expect. The alternative interpretation, according to “Rabbi” and Rabbi Yonathan, is that the God of Israel overcomes anger, unlike an ordinary mortal. The response appears woefully inadequate in proportion to Abraham’s complaint, almost a deflection from the seriousness of the apparent injustice; that is, how can an assertion of God keeping anger in check militate against the real possibility that the righteous must suffer the same punishment as the wicked?<sup>467</sup>

A solution only arrives in Abraham’s exchange with Yahweh over Sodom in 49.9, where a series of comparisons between Abraham and Job illustrate the superiority held by the former within the activity of intercessory pleading. Here one finds a contrast between uncontrolled human anger and the maturity of Abraham’s oratory. At stake is Abraham’s appeal to Yahweh in Gen. 18:25 that it would be contrary to God’s character to have the righteous be judged alongside the wicked. Before addressing the differences between Abraham and Job, the midrash offers a brief exposition on the meaning of הַלְלֵךְ, in terms of both its simple and broader senses. Interpretations include (1) that the act of judging the righteous and the wicked together is beyond God’s nature, a “desecration of the name of heaven;” (2) judging the righteous and the wicked together represents an action so intolerable that actions less severe yet similar likewise cannot be tolerated; and (3) regarding this action foreign to God’s ways, Abraham was pleading in a manner similar to Job; but in the patriarch’s case he turns out to be the far greater advocate in terms of both piety and oratory skills.

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<sup>467</sup> Some scholars have attempted to explain these comments concerning restrained anger as a rabbinic response to Gnostic claims concerning a wrathful God of the Hebrew Bible, but the text provides little additional context through which to support such a claim. See Laytner, *Arguing with God*, 43.



In celebrating Abraham's act of supplication on behalf of Sodom, the midrash compares Abraham's argument to something powerful and graceful (גְבוּרוֹת וְחַיִּין עֲרֵכוֹ, Job 41:12). The objective is one of likening Abraham's words to those of Job, and through this refinement of Job's statements, to present God as adopting silence in the presence of supplications issued through his elect prophets, such as Abraham, Moses, Joshua, and David. The righteous who repent have acknowledged God's punishment and vow to no longer to offend God.<sup>468</sup> The main difference, however, between Abraham and Job is a variation on what God should examine within the petitioner. Regarding Job, the midrash follows the biblical text of Job 34, and the divine examination pertains strictly to Job's actions, without any attention to Job's skill or eloquence as a speaker. Regarding Abraham, by contrast, the divine examination involves his capacity to speak and judge correctly and thus places him, as with many of the midrashic comparisons, on a higher bar than Job. Another interpretation, this time of Job 9:22, includes an agricultural allusion contrasting what is ripe (בְּשׂוּל) with what is underdeveloped fruit (פְּגָה). This pertains to the delivery of speech adopted by the advocate. How Job employed his speech (אֵיבֹב (אֶמַר פְּגָה) refers to speaking in haste, that is, "prematurely" out of anger, prior to his ability to develop the proper thoughts and delivery appropriate to his defense. Abraham, on the other hand, delivered mature spoken words that were sufficient to bear fruit, words that were ripe with the maturation of his thoughts and delivery and thereby appropriate to the occasion. The outcomes of these two approaches, according to the aggadic interpreters, result in less divine favor for Job. His apparent oversight consisted of declaring outright the inequitable process of judgment issuing from his God, representing an inferior form of testimony in that God's justice and character have come under assault. Abraham appealed to what he perceived as the deity's

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<sup>468</sup> Since Sodom did not repent, it is more likely that Abraham's pleading rather serves as a model for how Israel should repent.

intrinsically good nature, its incompatibility with sweeping away the righteous alongside the wicked. The midrash imagines God abiding by the terms of Abraham's claim; should there exist any righteous people in Sodom, the wicked will benefit by their vindication and not be subjugated to their proper penalty. The reversal would have taken place, provided any righteous people ever existed in Sodom, a possibility the rabbis deny due to their belief that even the best that city could offer amounted to inferior-quality righteous men (צדיקים גבלי).

Additional explanations of Abraham's superiority over Job, presented in Genesis Rabbah 49.10, consist of scriptural references pertaining to whenever Job pleads for an improved divine procedure for the dispensation of justice. Abraham's methods of appeal, however, demonstrate a more conscientious means of eliciting both a divine response and, as a result, superior divine favor. The immediate foreground of the distinction comes from Gen. 18:26: **אם אמצא בסדם חמשים** / "If I should find in Sodom fifty righteous people in the midst of the city, I shall acquit the entire place for their sake." Having established the number fifty as adequate, a basis for the difference between Abraham and Job derives from Job 34:31, where Elihu counsels Job on the unjustified nature of his complaints directed against the divine: **כי אל-אל האמר נשאתי לא אהבל** / "For has anyone said to God, 'I have endured [my punishment], I shall no longer offend?'" In the Job passage the plaintiff actually endures the prosecutorial pronouncements of Elihu, suggesting that the rabbis have used as their basis for comparison one who mounts their own legal defense but falls short.

(איוב לד, לב): **בלעדי אהנה, בר מני זיל פשפש דינא, ואם טעיתי (איוב לד, לב): אמה הרני, ואם און**  
**פעלתי עם הראשונים, לא אסיף עם האחרונים**

[As for Job]: "Regarding what I do not see" [instruct me. If I have committed iniquity, I shall not continue"] (Job 34:32). [As for Abraham, on the other hand], "Beside me, proceed to examine my judgement; and if I have erred, you [may] instruct me. And if I

have done wrong, [that is], “with the earlier/former [judgements], I shall not continue [to do wrong] with the latter ones.”<sup>469</sup>

Abraham’s statement, a completely midrashic invention, characterizes him as one capable in legal judgment yet possessing the humility to request divine guidance should he issue judgements errantly. Each of these favorable representations of Abraham have the cumulative effect of transforming him into the consummate rabbinic sage having access to the God’s court of discussion and appeal.

Abraham’s advocacy for Sodom also addresses the tension between strict divine justice and its ideally less rigid human manifestations, where flexibility in judgment should be maintained on account of inherent human imperfections. One alternative rabbinic perspective, addressed earlier in this study, constructs the divine court as absent of advocates, unlike the workings of the human world, where men in positions of authority can influence the judgment of the worldly king. Abraham presents this problem before God, reminding him that there exists no entity qualified to stay the heavenly judge’s hand, and that therefore God must remember to act with a far greater degree of compassion and accountability.

אמר רבי יהודה ברבי סימון כך אמר ליה אברהם, מלך בשר ודם תולין לו אנקליטון מדוכוס לאפרכוס, מאפרכוס לאסטריטוס, ואת בשביל שאין לך מי שיתלה לך אנקליטון, לא תעשה משפט. אמר רבי יהודה ברבי סימון כשבקשת לדון את עולמך מסרת אותו ביד שנים, רומוס ורומילוס, שאם בקש אחד מהם לעשות דבר חברו מעכב על ידו, ואת בשביל שאין לך מי שיעכב על ידך לא תעשה משפט

Rabbi Yehuda, in the name of Rabbi Simon, said, “Thus spoke Abraham to God, ‘[Regarding] a king of flesh and blood, an appeal may be made against him from a provincial governor<sup>470</sup> to an army commander.<sup>471</sup> As for you, since you have no one who may announce an appeal to you, will you not do justice?’” Rabbi Yehuda, in the name of Rabbi Simon, said, “When you wished to judge your world, you entrusted it by the authority of two people, Remus and Romulus, with the result that if one of them sought to

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<sup>469</sup> *Gen. Rabb.*, 49.10

<sup>470</sup> Hebrew deriving from the Greek, ἑπαρχος, Lat. *praefectus*, in the sense of a provincial governor.

<sup>471</sup> Hebrew deriving from Greek, στρατηλάτης, Lat. *magister militum*, meaning an army commander.

commit an act [that was unjust] his colleague would prevent him. But as for you [Lord], since you have no one to stay your hand, will you not act justly?"<sup>472</sup>

The midrash argues that checks and balances exist for preventing unjust verdicts in the mortal world. In contrast, the God of Israel is not accountable to any other governing authority and thereby must adhere, according to Abraham, to a much stricter standard of judgment. Illustrating this argument are the references to not only mythological Roman authorities representing the two-figure rule of the early Roman consulship, but also contemporary titles belonging to imperial authorities in the provinces.

This understanding of the mortal world involves a less strict application of the law, since human imperfection forbids it, while the divine court, when judging humanity, must maintain this flexible standard of judgment in light of the fallible nature of God's creation.

אמר רבי לוי (בראשית יח, כה): השפט כל הארץ לא יעשה משפט, אם עולם אתה מבקש אין דין, ואם דין אתה מבקש לית עולם, את תפיס חבלא בתרין ראשין, בעי עלמא ובעי דינא, אם לית את מותר צבחר, לית עלמא יכיל קאים. אמר לו הקדוש ברוך הוא אברהם (תהלים מה, ח): אהבת צדק ותשנא רשע, אהבת לצדק את בריותי ותשנא רשע, מאנת לחייבן, (תהלים מה, ח): על כן משחך אלהים אלהיך שמן ששון מחבריך

Rabbi Levi said [that Abraham pleaded as follows]: “Shall the judge of all the earth not act justly? If you desire a world, there cannot be the letter of the law. And if you desire the strict letter of the law, there can be no world. You are wielding a rope at two ends: You desire a world yet you desire strict legal justice. If you cannot ease up a little, there will be no world.’ The Holy One, blessed be He, said to Abraham, ‘You love justice and you hate wickedness.’ ‘You love,’ [meaning] you love to justify my creations. ‘You hate’ [meaning] you refuse to declare them guilty. ‘Therefore, the Lord your God has anointed you with oil of joy, [distinguished] among your peers.’”<sup>473</sup>

Abraham's distinction between the strict and realistic administering of justice could be interpreted as a theological explanation for why advocates are required in the heavenly court but not within the earthly system. Hidary has argued quite reasonably that the lack of clarity in human legal systems indicated, for the rabbis, the dangers of formally trained legal advocates,

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<sup>472</sup> Ibid., 49.9.

<sup>473</sup> Ibid.

who could easily manipulate the uncertainties in the laws toward the advantage of those with superior argumentative skills, while the truly just principles of the law might evade the judge's verdicts.<sup>474</sup> Conversely, because the God of Israel maintains such a strict standard of justice, the presence of heavenly advocates serves to encourage God's mercy, given an imperfect creature's inability to fully comply with a perfect set of laws. The discourse between God and Abraham above would ostensibly support these conditions, as Abraham reminds Yahweh of the impossibility of his own creation to observe the law according to divine standards. This argument should perhaps be qualified when interpreting Genesis Rabbah 49, since the advocate in question, Abraham, pleads for his people while still living on earth and enjoys full access to divine decision-making. It is true that the court originates in the heavens, but the advocate both resides on earth and conducts a dialogue demonstrating a bridge between the two regions. By virtue of his special qualifications, Abraham ranks among the few mortals permitted to play an active role in framing God's judgments. He ranks as an earthly advocate in the heavenly court. In this case, Abraham's merit derives from his refusal to condemn his fellow creatures and his passion to vindicate them. This level of righteousness warrants Abraham's divine anointing, a merit so select that it cannot be said to have been extended to any figure from the days of Noah until the migration of Abram from his native land.

The closing events involving Abraham's advocacy for Sodom assume the atmosphere of an actual worldly trial, marked by the agreed number of ten righteous men required for reversal of the verdict, the unremarkable departure of Yahweh, and the entrance of the prosecutor. Quite compelling in this instance are specific aspects of late ancient Greek or Roman trials merged with Jewish conceptions of the heavenly court.

אולי יחסרון חמשים הצדיקים חמשה (בראשית יח, כח), אמר רבי חייא בר אבא בקש אברהם לירד לו מחמשים

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<sup>474</sup> Hidary, *Rabbis and Classical Rhetoric*, 253.

לחמשה, אמר לו הקדוש ברוך הוא חזר בכך למפרע. אמר רבי לוי לחלף סרדה מלאה מים, כל זמן שהיא מלאה מים הסניגור מלמד, פעמים שהדין מבקש שילמד סניגוריא הוא אומר הוסיפו בתוכה מים

“Suppose the fifty righteous men should lack five” (Gen. 18:28). Rabbi Chiya bar Abba said, “Abraham sought to go down from fifty [righteous people] to five. The Holy One, blessed be He, said to him, ‘[State your appeal] going backwards.’” Rabbi Levi said, “[An analogy may be made] to a clepsydra<sup>475</sup> full of water. However long it is full of water, the advocate continues arguing [on behalf of the defendant]. At times the judge does request that the advocate argues further. He states [in this regard], ‘Add more water [to the Clepsydra]’”<sup>476</sup>

The rabbis are keenly aware that a human court would administer time limits restricting the length of the advocate’s argument. The divine court they construct has God buying Abraham time by skipping forward to the end-game of Abraham’s proposal, namely, what is the bare minimum of righteous people Abraham will settle at which will justify God’s reversal of Sodom’s condemnation. I would argue that the purpose of this analogy is not to suggest that God uses a timer when entertaining arguments in the divine court; rather, skipping to the minimum number of righteous people required for corporate salvation demonstrates God’s encouragement of Abraham’s argument and the deity’s willingness, were there time constraints, to ensure that his servant would receive the properly allotted time to deliver the full weight of his argument. The final sections of Genesis Rabbah<sup>49</sup> support these circumstances on two fronts. First, on the level of salvation, and secondly in terms of drawing a further analogy to an advocate’s appeals within a human courtroom.

When attempting to understand why ten was the lowest number agreed upon worthy of delivering salvation to Sodom, the midrash establishes a more merciful condition of salvation, but only for the congregation of Israel. This bypassing of the wicked Gentile city and ultimate

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<sup>475</sup> Greek, κλεψύδρα, translated in Hebrew as תּלֵף קְרָדָה, meaning a water-clock, used for determining fixed time intervals allotted to speeches in the ancient Greek courtrooms.

<sup>476</sup> GR 49.12

focus on Jerusalem again indicates that Abraham's appeals for Sodom are more representative of advocacy for Israel, since Sodom would never show any hope of being redeemed. Ten righteous men, for the rabbis, could indicate either a praying assembly (כניסה) interceding for the community as a whole, a two-person increase from the supposed eight righteous found before the great flood, or Abraham's determination of the number of people in Lot's household. Yet the rabbis believe, that in the case of Jerusalem, even a single righteous man would warrant the salvation of the entire city: "Here ten [righteous people were required], but in Jerusalem even one [would suffice]."<sup>477</sup> Consistent with numerous examples of advocates before the God of Israel, the end-game centers on the ultimate deliverance of Israel through the skill and merit of a single spokesperson.

The midrash closes with a few important analogies between God departing from Abraham at the close of the argument and the worldly judge who departs at the end of an advocate's statements.

הדין הזה כל זמן שהסניגור מלמד הוא ממתין, נשתתק הסניגור עמד לו הדין, כך וילך ה' כאשר כלה לדבר אל אברהם, הסניגור הזה כל זמן שהדין מסביר לו פנים הוא מלמד, עמד לו הדין נשתתק הסניגור, כך וילך ה' כאשר כלה לדבר אל אברהם, וכתוב (בראשית יח, לג): ואברהם שב למקומו. הקטיגור הזה כל זמן שהסניגור מלמד והדין מסביר לו פנים ממתין, עמד לו הדין נשתתק הסניגור והמקטרג הולך לעשות שליחותו, כך וילך ה', וכתוב (בראשית יט, א): ויבאו שני המלאכים סדמה בערב

As for this judge, as long as the advocate keeps pleading, he waits. When the advocate becomes silent, the judge rises. Thus, "The Lord left when he had finished speaking to Abraham." As for this advocate, as long as the judge shows him encouragement, he continues pleading. When the judge rises, the advocate grows silent. Thus, "The Lord left when he finished speaking with Abraham." And it is written, "Abraham then returned to his place" (Gen. 18:33). As for this Accuser, as long as the Advocate continues pleading and the judge encourages him, he waits. When the judge rises and the Advocate goes silent, the Accuser initiates his assignment. Thus, "The Lord departed." And then it is written, "The two angels entered Sodom in the evening" (Gen. 19:1).<sup>478</sup>

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<sup>477</sup> Ibid., 49.13

<sup>478</sup> Ibid. 49.14

Unlike some of the accuser/advocate situations found in rabbinic midrash concerning Moses, there appears to be no feuding between the two parties in the closing of this midrash on the fate of Sodom. What is telling here is the continued representation of an impending divine judgment in terms of a worldly trial where an accuser, advocate, and judge preside. Equally informative is the lack of concern on the rabbis' part for the apparent favor that the judge affords to the advocate (מסביר לו פנים). While earlier rabbinic passages warn against any favor being shown by the judges, in this case Abraham merits the favor without comment. Finally, the accuser does not offer arguments against Sodom but merely waits until the advocate has concluded with his testimony. The outcome of the angels entering Sodom signals that the judge has issued a verdict of condemnation based on the conditions Abraham put forth for salvation.

#### **7.4 Conclusion**

The Genesis Rabbah account of Abraham pleading for Sodom expands the theological scope of the biblical narrative by transferring the objective of the appeals to Israel's deliverance through a transformed Abraham, molded in the rabbinic image of a polished orator, Torah master, legal consultant, and prophet enjoying privileged access to the divine court. Several terms and analogies are employed denoting pleading, advocacy, and accusation in order to illuminate Abraham's project of defending a hopelessly reprobate city. The final section of the midrash, where the judge rises at the conclusion of the advocate's testimony, thereby enabling the accuser to initiate condemnation, demonstrate once again the strong legal representation of salvation and condemnation when an entire community is in jeopardy. The rabbinic construction of Abraham the advocate defending Sodom ultimately centers on legitimizing the divine election of the congregation of Israel. Abraham emerges as the illustrious Torah sage who participates in



the judgment chambers. To support this version of the patriarch, his advocacy is demonstrated as superior to the pleading of Job, who is perceived as insolent in his outcries over divine injustice. Abraham embodies the heights of both righteousness, eloquent oratory, and ethical behavior. By expressing Israel's election through the supporting speech of Abraham, the rabbis subtly lay claim to the divine gifting of salvation. If the renowned patriarch exhibits the skills and piety of the consummate sage, it follows that the scholarly environment of the rabbis participates in the salvation of Israel, just as the rabbis might participate in the administration of law and liturgy.

## Chapter 8: Moses as Advocate in the Talmud and Midrash Rabbah

### 8.1 Introduction

Rabbinic representations of Moses as advocate have a strong connection to the infamous golden calf episode of Exodus 32. The method of Exodus Rabbah is mainly one of both reversing any curses associated with the transgression as well as preserving Israel's status of divine election. The urgency of absolving Israel for this sin can be attributed in part to the belief that its severity resulted in derivative sins and extended penalties. While some midrashim have attempted to partially absolve Israel of blame for the golden calf incident, many rabbinic exegetes have argued that this sin embodies the archetype of Israel's disobedience, having led not only to eventual exile but also to a host of numerous other transgressions. One rabbinic response to the seriousness of the golden calf incident was to preserve Israel's divine election through the representation of Moses as advocate before the divine court. This approach enabled rabbinic interpreters to maintain the centrality of the sin while celebrating the reversal of condemnation through Moses' appeals before the heavenly judge. While Moses' arguments vary in their degree of persuasiveness and do not always impress the divine judge, they consistently evoke mercy and forbearance, despite that the sin itself is considered technically unforgivable according to the letter of the law. These rabbinic advocate passages further illustrate that rabbinic Judaism, in terms of divine election, retained its own unique conceptions of collective unworthiness, with redemption sometimes only occurring through a propitiatory figure standing in the breach between humanity and God.

This chapter will analyze advocate passages pertaining to Moses within the rabbinic corpus, mainly within the context of the reception of Torah and the golden calf incident. I will argue that the confrontations between accuser (קטיגור) and advocate (סניגור) within the heavenly court

provide the proper setting within which to situate Moses' soteriological functions as an advocate, spanning from his prophetic career to his post-mortem preservation of Israel's merit, and ultimately to his foreseen role in Israel's vindication at the arrival of the eschaton. The golden calf passages drawn from rabbinic literature will further demonstrate a theological principle, by no means universal, that in the midst of an urgent crisis brought on by a serious covenant breach, the necessity emerges for an advocate before the divine court. But this is not any advocate; it is more specifically a speaker who can articulate, like Abraham, the sophisticated arguments of an advanced rabbinic sage.

## 8.2 Background to Moses as Advocate in the Divine Court

Some text traditions from the late Second Temple period illustrate the ascendancy of Moses to unprecedented levels of intercessory power, suggesting that rabbinic views of Moses as mediator and advocate did not emerge in a vacuum but belong to a long chain of traditions that centuries earlier were gaining currency. When confronting the end of Moses' prophetic career, the first-century Jewish historian, Josephus, gives voice to a concern regarding the uncertainties soon to confront the Israelites. In the absence of their prophetic lifeline to the God of Israel, no person would be able to so effectively bridge the divine between humanity and God.

... καὶ δυσελπιστοῦντες περὶ τῶν μελλόντων ὡς οὐκ ἐσομένης ἄλλης ἀρχῆς τοιαύτης, ἧττόν τε τοῦ θεοῦ προνοησομένου διὰ τὸ Μωυσῆν εἶναι τὸν παρακαλοῦντα.

... they despaired concerning their future, [believing] there would never be another ruler of his caliber, and that God would provide less [for them] by virtue that Moses used to always intercede for them.<sup>479</sup>

Josephus was hardly alone among Jewish writers of the Second Temple period, when Moses' role as mediator for and defender of Israel broadened considerably within Rewritten Bible and

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<sup>479</sup> *Jewish Ant.* IV.194.

other homiletical sources. So strong was the emphasis on Moses as intercessor in late Second Temple Judaism, that in the perceived absence of an equally capable prophet, Moses sometimes retained his office post-mortem, enduring as a perpetual intercessor and advocate, as is testified for example in Pseudo-Philo.

And now your staff with which these signs were performed will be a witness between me and my people. And when they sin, I will be angry with them but I will recall your staff and spare them in accord with my mercy. And your staff will be before me as a reminder all the days, and it will be like the bow with which I established my covenant with Noah when he went forth from the ark, saying, *I will place (Gen 9:13,15) my bow in the cloud, and it will be for a sign between me and men that never again will the flood water cover all the earth.*<sup>480</sup>

According to this tradition, the God of Israel preserves Moses' rod as an ongoing reminder to exercise mercy and restraint, to always resist the urge to annihilate the people, despite the likelihood that Israel will violate the covenant in the future. As discussed above, the Book of Jubilees, recognizing the reality of Israel's ongoing sin, has God forewarning Moses that Israel will repeatedly stumble and suffer divine retaliation, until Moses establishes himself as the community's advocate, pleading that the "spirit of Belial" not be permitted to mislead the congregation, whereby the enemy would have grounds to formerly accuse it before God.<sup>481</sup> Not to be outdone, the *Testament of Moses* conceived of Moses' intercessory role as divinely instituted at the creation of the world, such that Moses takes his place alongside preexistent divine wisdom itself.<sup>482</sup>

What these pre-rabbinic sources further illustrate is that Moses' office as both intercessor and advocate had long been operative within three different spheres of time: the past period of his

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<sup>480</sup> *LAB* 19.11. OTP 2, trans., D. J. Harrington.

<sup>481</sup> *Jub.* 1.18-21

<sup>482</sup> *T. Moses*, 12.6.

prophetic career, his post-mortem state as intercessor, and upon the resurrection of the dead. All three temporal settings for Moses' mediatory role likewise remained relevant within a broad range of rabbinic literature, which developed its own intercessory constructions of Moses, largely by augmenting the sophistication and eloquence of his arguments before God. .

Wayne Meeks, in his compelling study of Moses and Johannine Christology, observed when discussing Moses' role in Jubilees I, that

“It is significant that Moses' intercession in this passage stands over against the possibility that ‘the spirit of Beliar’ may ‘accuse’ the Israelites before God. In such a contest between accuser and defender before the seat of judgment Otto Betz finds the original *Sitz im Leben* of the concept of a ‘Paraclete.’”<sup>483</sup>

Of course this paradigm was fluid, in the sense that Betz recognized that the Paraclete, as mentioned above, could also embody the identity of an accuser and reverse the normal setting of satanic accuser and prophetic advocate squaring off before the heavenly judge.<sup>484</sup> The development of the divine advocate-intercessor, as one who both defends and convicts within the heavenly court, seen earlier in the Spirit-Paraclete portions of the Johannine farewell discourses, was quite relevant to theologies of Moses as well. Note how the Johannine tradition has already established Jesus as the supreme savior whose divine status has appreciably increased as compared with the Synoptic Jesus. John's Gospel, having established Jesus as the apex divine prophet, now appoints the spiritual advocate, the Paraclete, to preserve the community of the elect in the extended intermediary period between past prophetic career and eschaton. Moses in many ways assumed similar roles within the rabbinic corpus, and representations of him in opposition to divine accusers amplify the drama of his expansive historical reach as a prophetic

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<sup>483</sup> Wayne Meeks, *The Prophet-King: Moses Traditions and the Johannine Christology* (EJ Brill, 1967), 160.

<sup>484</sup> Otto Betz, *Der Paraklet. Fürsprecher im häretischen Spätjudentum, im Johannes-Evangelium und in neu gefundenen gnostischen Schriften* (Leiden: E.J. Brill, 1964), 19, 54-55.

advocate. Within this environment, the representation of an advocate is hardly negative and very much in play for the redemption of Israel.

Karla Suomala's study of the reception of Exodus 32-34 observes that "Moses' remarkable struggle to rescue the Israelites in MT Ex. 32-34 is considered by the Rabbis to be the most important of his career."<sup>485</sup> While this claim is possibly overstated, it acknowledges the numerous rhetorical exchanges between God and Moses in the midrashic literature that pertain in large measure to Moses' advocacy for the Israelites in Exodus 32. Renee Bloch's important essay on rabbinic constructions of Moses also notes the importance of rabbinic advocacy narratives.

Die Haggada in nicht geringerem Maße als die Bibel verkennt in ihm nicht den Vertrauten Gottes, den Gesprächspartner Gottes, den Mann der Betrachtung, der Gotte nahe ist und sich 'am Glanz der Shechina ergötzt,' die er durch sine Heiligkeit auf die Erde zurückgeführt hat. Aber sie sieht weniger auf seine persönliche Heiligkeit als auf seine Eigenschaft als 'Vertreter des Volkes bei Gott,' als welchen ihn Jethro in der Bibel definiert.

The aggadah, no less than the Bible, recognizes him as the confidante of God, God's interlocutor, the man of observation, who is close to God and who delights in the glory of the divine presence, which he has brought back to earth through his holiness. It (the aggada), however, looks less at his individual holiness than to his attribute as the "representative of the people to God," as Jethro defines him in the Bible.<sup>486</sup>

It is through, as Bloch states, Moses' function as representative, closest adviser, dialogue partner, and intercessor that his credentials as a defender of Israel are deemed legitimate. This identity as chief representative shares certain features with the rabbinic Abraham in Genesis Rabbah 49. In

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<sup>485</sup> Karla R. Suomala, *Moses and God in Dialogue: Exodus 32-34 in Postbiblical Literature* (New York: Peter Lang, 2004), 91.

<sup>486</sup> Renee Bloch, "Die Gestalt des Moses in der Rabbinischen Tradition," in *Moses in Schrift und Überlieferung*, ed. Henri Cazelles (Dusseldorf: Patmos, 1963), 128. Bloch stated further (121), „Als Mittler zwischen Gott und seinem Volk war Moses hauptsächlich Israels wegen ausserwählt worden, um das Volk aus der Knechtshalf zu befreien, es in das Gelobte Land zu führen und ihm das kostbarste Gut zu übermitteln, die Thora, Dieser Aspekt der Mosesgestalt gehört zu den Grundthemen in allen Rabbinischen Betrachtungen und Kommentarem.,,

both cases, the arguments which the rabbis invent between the advocate and God are situated in a theological world imposing the scriptural past on Israel's present.<sup>487</sup> Each textual tradition also elevates the biblical man of renown to the status of consummate rabbinic sage, whose mastery of halakhah and polished oratory designates him as a savior cast in a rabbinic mold. But while Abraham's advocacy for Sodom served the purpose of redirecting all arguments to the ongoing election of Israel, the aggadic passages depicting Moses as a supporting speaker for the people of Israel position him as vital to Israel's deliverance, without which the people would have stood no chance of evading God's condemnation. Here the advocate focuses directly on the failures of Israel and must defend the nation's ongoing right to divine election.

As Michael Graves has observed regarding the Exodus Rabbah passages showing Moses as advocate, "In Exodus Rabbah, Moses emerges as a great man, although still a mere mortal, who studies and teaches Torah to Israel like a scholar and who also serves as Israel's advocate before God."<sup>488</sup> The ability to apply Torah principles to defense arguments distinguishes Moses in these passages as the amalgamation of prophet, teacher, and legal representative, in some respects the rabbinic sage wandering considerably close to the status of savior. Moses' intercessory functions, as articulated by Rabbi Simlai in *Bavli Sotah*, conjure up associations with Isaiah's suffering servant figure.

אמר לו הקדוש ברוך הוא כלום אתה מבקש אלא לקבל שכר מעלה אני עליך כאילו עשיתם שנאמר לכן אחלק  
לו ברבים ואת עצומים יחלק שלל תחת אשר הערה למות נפשו ואת פושעים נמנה והוא חטא רבים נשא ולפשעים  
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<sup>487</sup> Neusner and Chilton express this converging of biblical past and rabbinic present in their assessment of historical events in Leviticus Rabbah. See Jacob Neusner & Bruce Chilton, *The Intellectual Foundations of Christian and Jewish Discourse: The Philosophy of Religious Argument* (London: Routledge, 1997), 109: "The catalogues of exemplary heroes and historical events serve a further purpose. They provide a model of how contemporary events are to be absorbed into the biblical paradigm. Since biblical events exemplify recurrent happenings, sin and redemption, forgiveness and atonement, they lose their one-time character. At the same time and in the same way, current events find a place within the ancient, but eternally present, paradigmatic scheme."

<sup>488</sup> Michael Graves, "Scholar and Advocate: The Stories of Moses in Midrash Exodus Rabbah," *Bulletin for Biblical Research* 21, no 1 (2011): 2-3.

The Holy One, blessed be He, said to him, ‘Are you seeking [to fulfill the commandments in Israel] for any other reason than to receive a reward? I am going to credit your account as if you have performed them, as the Scripture states, “Therefore, I shall assign him a portion among the great ones, and he shall divide the spoil with the strong, because he poured out his spirit to the death, and he was reckoned among the transgressors, yet he took on the sin of the many, and interceded for the transgressors”’ (Is. 53:12).<sup>489</sup>

Rabbi Simlai elaborates on this interpretation, finding it honorable that Moses was reckoned among those who would perish in the wilderness, that he “atoned’ (כיפר) for the golden calf incident, that he interceded “by pleading for divine mercy concerning the transgressions of Israel, so they would perform repentance” (שבִּיקֶשׁ רַחֲמִים עַל פֹּשְׁעֵי יִשְׂרָאֵל שִׁחְזָרוּ בַתְּשׁוּבָה). Such passages reveal that the rabbinic corpus not only continued the Second Temple tradition centered on Moses’ intercessory skills as defender of and mediator for Israel, but they further adapted such traditions to both absolving Israel of sins, both past and present, consequently restoring Israel to an enduring state of divine election. Such rabbinic approaches to advocacy, however, normally did not universalize Moses’ intercessory office, as was common among early Christians who perceived Jesus’ propitiatory function as global in scope. The rabbis generally reserved Moses’ intercessory activity for pleas to God on behalf of the congregation of Israel. Moses’ defense against accusations in the divine court, therefore, while not overtly hostile to those outside the congregation, remained Israel-centric.

It is within the context of advocate-accuser exchanges in Exodus Rabbah that the advocate Moses defends and preserves Israel’s election and vindication, a project spanning from the biblical past as far as the eschatological future. Moses’ legal arguments pertain to his identity as a propitiatory agent, having a close eye to the current status of Israel as suffering ongoing exile, yet in need of divine assurances of her preserved state of election. Such advocate-accuser

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<sup>489</sup> *b. Sotah*, 14a.



discourses also represent and look forward to the ultimate consummation of legal judgment at the eschaton. Moses, standing in the breach between God and his ever-wayward covenant unfaithful, serves as the model of how an advocate should confront and overcome the accuser and thus confirm the world to come.

Rabbinic traditions on Moses' prophetic career consistently emphasize his pleas on behalf of others, disregard for his own interests, invoking of ancestral merit, and his overall individual merit.

His confrontations with God occur throughout the course of his prophetic career and end only upon his death. Like Abraham, he rarely argues for himself, but rather mostly on behalf of others, usually for the purpose of averting proposed divine punishments of death.<sup>490</sup>

Moses is recounted as one who pleaded before God by invoking the covenant with the patriarchs, a brief argument in Exodus 32:13 which formed the basis for defending Israel's repeated episodes of covenant breach. On the other hand, the rabbis frequently interpret such appeals as demonstrative of Moses' own individual merit.

משה תלה בזכות אחרים, שנאמר: "זכר לאברהם ליצחק ולישראל עבדיך". תלו לו בזכות עצמו, שנאמר: "ויאמר להשמידם לולי משה בחירו עמד בפרץ לפניו להשיב חמתו מהשחית"

Moses grounded [his appeal] on the merit of others, as the Scripture states, "Remember, Abraham, Isaac, and Israel your servants" (Ex. 33:13). [Yet his appeals] rested on his own merit: "He said He would have destroyed them had not Moses, his elect, stood in the breach before him to turn back his rage from committing destruction" (Ps. 106:23).<sup>491</sup>

Within the scheme of Moses as the wise and selfless advocate for Israel, important concerns occur consistently within the rabbinic literary corpus. These include, first, Moses' argument within the heavenly court regarding why humankind merits reception of the Torah as opposed to

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<sup>490</sup> Janet Jerrow, "Arguing with God in the Wake of the Golden Calf Episode: The Rabbis Read Exodus 32," PhD diss., (Dedman College, Southern Methodist University, 2005), 45.

<sup>491</sup> *b. Berakhot*, 10b.

angels (*b. Shabbat*, 88b), who in this narrative function as accusers and sometimes even as destroyers. A second topic involves Moses both interceding for and being numbered among the transgressors in the wilderness who were denied entry into Israel (*b. Sotah*, 14a). In this case Moses emerges as a propitiatory figure analogous to the suffering servant of Deutero-Isaiah. Finally, the Golden Calf episode, which necessitated a much larger rabbinic defense of Israel's continued status as God's covenant people, shows the highest volume of advocacy occurrences and merits an extended treatment.

### **8.3 Israel's Right to Inherit the Torah**

The legal case presented by Moses regarding Israel's right to receive the Torah is well stated in *b. Shabbat* 88b, which recounts a dispute between Moses and the ministering angels acting as accusers. They argue that they are more entitled than people to the divine favor and merit that presupposes reception of the Torah. The privilege, in the angels' estimation, derives from their divine nature and much longer duration of existence. And should Israel counter that claim, her worship of the Golden Calf automatically disqualifies her from the inheritance. While the setting might be the divine courtroom, Moses' argument will center on the celebration of human merit, uniquely qualifying humanity to inherit the Torah on account of the very imperfections the angels argue are grounds for Israel's rejection. Moses, therefore, in presenting Israel's case before the divine judge, will subvert the accusers' evidence, claiming it to be exonerating rather than exculpatory. Equally illuminating is the outcome of this confrontation as understood by the rabbis, who view Israel's redemption and right to the Torah in past, present, and eschatological terms.

The larger context for the dispute between Moses and the angels involves what specific day on the sacred calendar Israel received the revelation at Sinai. Naturally at stake is the receiving of the Torah itself, as recounted in Exodus 19-23. This text, as with midrashic traditions related to Abraham's pleas for Sodom, also attends to several matters concerning the periodic ascent and descent of Moses from the mountain of God. At a certain point in the presentation of rabbinic opinions on the date of the Sinai revelation, the issue of performing God's commandments, and not merely hearing them, enters the discussion.

דרש רבי סימאי: בשעה שהקדימו ישראל "נעשה" ל"נשמע" באו ששים ריבוא של מלאכי השרת, לכל אחד ואחד מישראל קשרו לו שני כתרין, אחד כנגד "נעשה" ואחד כנגד "נשמע". וכיון שחטאו ישראל, ירדו מאה ועשרים ריבוא מלאכי חבלה ופירקום, שנאמר: "ויתנצלו בני ישראל את עדים מהר חורב". אמר רבי חמא ברבי חנינא: בחורב טענו, בחורב פרקו. בחורב טענו — כדאמרן, בחורב פרקו — דכתיב: "ויתנצלו בני ישראל וגו'". אמר רבי יוחנן: וכולן זכה משה ונטלן. דסמיך ליה: "ומשה יקח את האהל". אמר ריש לקיש: עתיד הקדוש ברוך הוא להחזירן לנו, שנאמר: "ופדויי ה' ישבון ובאו ציון ברנה ושמחת עולם על ראשם" — שמחה שמעולם על ראשם

Rabbi Simai offered the following interpretation: "At the moment that Israel gave preference to 'We shall do' [the commandments] over 'we shall obey,' sixty myriads of the ministering angels came and joined two crowns to every single person belonging to [the community of] Israel: one corresponding to 'we shall do,' and the other corresponding to 'we shall obey.' And when Israel transgressed [the Torah], one-hundred and twenty myriads of angels of destruction descended and removed [the crowns from their heads]. As the Scripture says, 'Thus the Israelites stripped themselves of their ornaments from the point of Mount Horeb'" (Ex. 33.6). Rabbi Hama said in the name of Rabbi Hanina, "At Horeb they packed [their ornaments], [and] at Horeb they removed [them]. [How do we know that] at Horeb they packed them? [It is] in accordance with what we have stated [previously]. [And how do we know that] at Horeb they removed them? As it is written, 'And the Israelites stripped themselves, etc.'" Rabbi Yohanan said, "Moses merited all [the crowns] and took them. [How do we know]? Since alongside [this verse the Scripture states], 'Moses would pitch the tent'" (33.7). Resh Lakish said, "In the future, the Holy One, blessed be He, shall restore [these crowns] to us, as the Scripture states, 'Thus the ransomed shall return and enter Zion with singing, and everlasting joy shall be upon their heads' (Is. 35:10). The former joy [shall again] be upon their heads."<sup>492</sup>

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<sup>492</sup> *b. Shabbat*, 88a.

This passage marks the first mention of the “ministering angels” within the larger discussion of the revelation at Sinai in *Bavli Shabbat*. The progression of both the legend and rabbinic opinions reveals a few important principles. First, Israel’s preference for the act of performing rather than listening to Torah commandments initiates the arrival of the angel accusers, whose crowns with which they endow Israel will be in a short time reclaimed. Second, the acts of doing and hearing the commandments each produce their own crown for every member of the congregation, such that both the act of hearing (obeying) and performing the commandments are equally deserving of a divine crown, and one can extrapolate from that claim that both acts are equally meritorious if not inseparable in the observance of God’s commandments. It is clear, moreover, that the angels act as enforcers of divine penalties when they remove the royal signs of divine approbation. The crowns also represent the ornaments that the Israelites dispensed with at Mount Horeb following the Golden Calf incident. In the interim between the confiscation of the crowns and the eventual return of them to the community of Israel, Moses still merits these articles and functions as the safekeeper until the time of their renewal. Finally, the preservation of these crowns by Moses reaches consummation at the eschaton, when Israel will again merit their restoration. In that sense, the narrative has already established how Israel exists within a temporary holding period, and that the prophetic advocate remains the nation’s representative and preserver of merit until the final judgment of the earth, when Israel shall be vindicated.

As the discussion of the revelation at Sinai continues, the rabbis argue that the preference for doing over hearing actually accords with the ways of the ministering angels, citing the Psalmist as evidence: *בְּרַכּוּ יְהוָה מִלְאֲכָיו גִּבּוֹרֵי כֹחַ עֹשֵׂי דְבָרוֹ לְשֹׁמְעֵי בְּקוֹל דְּבָרוֹ* / “Bless the Lord, you, his angels, valiant ones of power, who perform his word and obey his proclamations” (Ps. 103:20). God, in fact, is interested in knowing how mortals became aware of this procedure of prioritizing action

over listening, an approach to fulfilling commandments that is not necessarily condemned. In fact, bitter opposition to it is represented by a heretic (מִינָא), who accuses Israel of behaving like an “impetuous nation” (עֲמָא פְּזִיזָא). He advises them to accord precedence to listening so that the people can determine whether they are capable of observing commandments before attempting to perform them. An extended argument ensues, Israel being defended as one who, despite only viewing the commandments with one eye, is destined to arrive at that stage where both eyes are used in their fulfillment. Even though the Golden Calf incident is compared to an egregious act of adultery, God’s loving favor is preserved for Israel (ועדיין חביבותא היא גבן).

The issue of Israel’s right, worthiness, and continued privilege of receiving the Torah then becomes the central topic of discussion, leading to the return of the ministering angels.

ואמר רבי יהושע בן לוי: בשעה שעלה משה למרום אמרו מלאכי השרת לפני הקדוש ברוך הוא: רבונו של עולם, מה לילוד אשה בינינו? אמר להן: לקבל תורה בא. אמרו לפניו: חמדה גנוזה שגנוזה לך תשע מאות ושבעים וארבעה דורות קודם שנברא העולם, אתה מבקש ליתנה לבשר ודם? “מה אנוש כי תזכרנו ובן אדם כי תפקדנו?” “ה’ אדנינו מה אדיר שמך בכל הארץ אשר תנה הודך על השמים”

Rabbi Yehoshua ben Levi said, “When Moses ascended on high, the Ministering Angels said before the Holy One, blessed be He, ‘Lord of the Universe, what is one who is born of a woman [doing here] among us?’ He said to them, ‘He has come to receive the Torah.’ They said before him, ‘[But the Torah] is a precious treasure preserved by you nine-hundred and seventy-four generations prior to the creation of the world; [yet] you seek to grant it to flesh and blood?’ “What is Man that you should be mindful of him, or the Son of Man that you should show him concern?” “Lord our God, how mighty is your name throughout all the land that you have set your majesty above the heavens.”<sup>493</sup>

The angelic contention before the throne of God has actually taken place prior to the fastening and removal of the crowns from the Israelites, but it does not textually precede the golden calf incident. Moses must defend Israel’s right to receive the Torah. This tradition, as scholars have recognized, is inseparable from Mosaic ascent narratives, where the angels oppose Moses’ access

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<sup>493</sup> b. *Shabbat* 88b.

to the divine territory and demonstrate a general contempt for humanity.<sup>494</sup> The angels' principle argument is that the Torah has never been revealed openly to humanity, despite having existed so long, and owing to its antiquity it should have remained concealed. Moreover, were the Torah to be revealed, it appears odd to the angels that mere humans should merit its reception. As is customary, the evidence for claims before the divine judge consists of scriptural passages, in this case from specific Psalms that apparently glorify God's heavenly attributes and call to question his regard for mortals. These arguments mark the heart of the accusation, namely that Israel does not deserve the inheritance of the Torah, since its fundamental attributes are heavenly and preexist the appearance of Israel by hundreds of generations. Moreover, no human, saddled in imperfections, should enjoy the privilege of so exalted a divine treasure.

An earlier tradition from Mekhilta d'Rabbi Yishmael had already clarified the tenuous state of Israel's reception of the Torah, that no matter the degree of deviation from the original commandments, the people of Israel would ultimately find their way back through repentance.

ומה ת"ל ויהי להם למושיע, אלא לא הושיען כבני אדם שהם עתידין להכעיס, אלא כבני אדם שאינם עתידין לבגוד בו עולמית

And what does the Torah teach [when saying] "I will be their salvation?" God did not deliver them as people that in the future would anger him; rather, as people who were not destined to betray him forever.<sup>495</sup>

The giving of the Torah in a wide open space immediately demonstrated, according to this tradition, that the divine gift was an open opportunity.

נתנה תורה דימוס פרהסייא במקום הפקר, שאלו נתנה בארץ ישראל, היו אומרים לאומות העולם אין להם חלק בה, לפיכך נתנה במדבר דימוס פרהסייא במקום הפקר, וכל הרוצה לקבל יבא ויקבל

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<sup>494</sup> Joseph P. Schulz, "Angelic Opposition to the Ascension of Moses and the Revelation of the Law," *JQR* 61, no. 4 (1971): 287; Christine Hayes, "The Torah was not Given to Ministering Angels": Rabbinic Aspirationalism," in *Talmudic Transgressions: Engaging the Work of Daniel Boyarin*, ed. Charlotte Fonrobert, Ishay Rosen-Zvi, Aharon Shemesh, and Moulie Vidas (Leiden: Brill, 2017), 147.

<sup>495</sup> MDRI, 19.2

The Torah was given publicly, in an open place, for if it had been given in the Land of Israel, they would have said to the nations of the world, “You have no share in it.” Accordingly, it was given in the desert, to the people publicly, in an open place, and all who want to receive it may come and receive it.

Scholars have discussed passages of this nature in relation to a form of rabbinic universalism that viewed the original Torah revelation being open to all peoples. Marc Hirshman, for instance, insists that “The Mekilta is adamant in its claim that Israel not delude itself into thinking that the Torah was intended only for Jews. The giving of the Torah in the desert—a no-man's land—was a clear signal that the Torah was not the property of one nation but was intended for all peoples.”<sup>496</sup> The claim that Israel was the sole nation willing to accept the Torah added further merit to her ongoing relationship with her God, in spite of the repeated instances of covenant violation that would compromise but not nullify her divine election.

In the Bavli Shabbat tradition, Moses’ defense against this accusation entails a broader act of advocacy for Israel that goes beyond willingness among the nations to accept the Torah. With God actually encouraging Moses to mount a defense, he challenges the angel-accusers by identifying human imperfection as the very cause for entitlement to the divine gift and its accompanying promises.

אמר לו הקדוש ברוך הוא למשה: החזיר להן תשובה. אמר לפניו: רבוננו של עולם, מתיירא אני שמא ישרפוני בהבל שבפיהם. אמר לו: אחוז בכסא כבודי וחזור להן תשובה. שנאמר: “מאחז פני כסא פרשז עליו עננו”, ואמר רבי נחום: מלמד שפירש שדי מזיו שכינתו ועננו עליו. אמר לפניו: רבוננו של עולם, תורה שאתה נותן לי מה? כתיב בה? “אנכי ה' אלהיך אשר הוצאתיך מארץ מצרים”. אמר להן: למצרים ירדתם? לפרעה השתעבדתם? תורה למה תהא לכם! שוב: מה כתיב בה? “לא יהיה לך אלהים אחרים”. בין הגוים אתם שרויין, שעובדין עבודה זרה

The Holy One, blessed be He, spoke to Moses: “Counter them with an answer.” He (Moses) said before Him, “Lord of the Universe, I fear lest they burn me up with the breath of their mouths.” He said to him, “Grab hold of the throne of my glory and provide

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<sup>496</sup> Marc Hirshman, “Rabbinic Universalism in the Second and Third Centuries,” *HTR* 93, No. 2 (2000): 103. See further, Katell Berthelot, “The Torah Between Revelation and Concealment in Rabbinic Traditions Pertaining to the Conquest of the Land of Canaan,” in *Sharing and Hiding Religious Knowledge in Early Judaism, Christianity, and Islam*, ed. Mladen Popović, Lautaro Roig Lanzillotta, and Clare Wilde (Boston/Berlin: De Gruyter, 2018), 85-105.

them an answer, as the Scripture states, ‘He overlays the surface of his throne; He spreads upon it His cloud’ (Job 26:9).” Rabbi Nahum said, “[This] teaches that the All-Mighty spread out the radiance of His divine presence and cloud over him. Moses said before Him, ‘Lord of the universe, as for the Torah that you are about to give me, what is written inside it?’ [God said], “‘I am the Lord your God who brought you out from the Land of Egypt.’” So Moses said to the angels, “Have you ever gone down to Egypt? Were you ever enslaved to the Pharaoh? As for the Torah, why should it belong to you?” Moses responded further, “What is written in the Torah? ‘You shall have no other gods.’ Do you reside among the nations, who serve idols?”<sup>497</sup>

Moses must first acquire divine assurances that his accusers will not annihilate him, so he grasps onto the divine throne. Moses cannot, of course, be seated by the heavenly throne, as the general rabbinic attitude is one of postponing this entitlement until the resurrection of the dead at the eschaton.<sup>498</sup> The prophet’s access to the throne through physical touch, however, conforms to the general argument that Moses, as advocate and intercessor for Israel, secures all of Israel’s ultimate gifts for the world to come. He is in a sense the one entrusted with Israel’s guarantee, and his partial access to the throne serves as one further example of that pledge. Once protected by the throne, Moses then establishes the contents of Torah as the written evidence for supporting Israel’s right to the Torah. This maneuver resembles to some degree a defense attorney’s appeal to the contents of the written law as the basis for their argument.

When appealing to the written contents of the legal document itself, Moses identifies Israel’s imperfect human condition as the evidence by which Israel receives the right to receive the Torah. Unlike the divine angels, Israel has suffered slavery in Egypt, must not worship other gods when forced to live among idol worshippers, must labor six days each week, engage in business practices that might lead to speaking God’s name inappropriately, must serve and honor parents, and must not commit murder, adultery, and theft despite being endowed with the evil

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<sup>497</sup> *b. Shabbat*, 88b.

<sup>498</sup> *b. Hagigah* 14a.



inclination. The inherent difficulty of living up to divine expectations while dwelling within human limitations thus provides the grounds for Israel's meriting of the Torah. The argument will reappear in Exodus Rabbah as one basis for defending Israel following the golden calf incident, as the difficulty of fulfilling the strict requirements of divine law while living as flawed humans represents one of Moses' key articles of defense.

#### **8.4 Moses and the Golden Calf Incident**

While rabbinic interpretations of the golden calf episode are far from uniform, the current discussion focuses on Moses' legal defenses of Israel in the aftermath of the incident, specifically in cases where accusers are either clearly present, at least suggested, or else God himself plays the accuser role. The broader scope of rabbinic interpretation, however, does merit comment, for this demonstrates that the rabbis, as with most biblical events of gravity or otherwise, hardly argued in unison and therefore cannot have their views neatly placed within circumscribed theological boundaries. Many interpretations associate the calf with Israel's most dismal and shameful moments. Both *Mishnah Ta'anit* and the *Bavli Ta'anit* maintain that the tablets of the Ten Commandments were shattered on the seventeenth of Tannuz, thus associating the event with the collapse of the Jerusalem walls on the heels of the Second Temple's destruction.<sup>499</sup> *Lamentations Rabbah* similarly aligned the two biblical golden calf incidents (Ex. 32; 1 Kings 12) with the disaster of Israel and Judah being exiled, considering both apostasy and exile as events calling for collective mourning.<sup>500</sup> Both *Yerushalmi Ta'anit* and *Bavli Sanhedrin* share a similar tradition that, on the one hand, any instance of divine retribution against Israel

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<sup>499</sup> *m. Ta'anit* 4.6; *b. Ta'anit* 28b.

<sup>500</sup> *Lam. Rabb.*, 1.2.23.

includes a certain measure of reserved vengeance over the golden calf incident; while on the other hand, these same texts claim that the reckoning for Israel's sin stated in Exodus 32:34 came to fulfillment in the destruction of Jerusalem by Babylon.<sup>501</sup> Some rabbis, as noted above, have characterized the incident as a brazen act of adultery, given that Israel and Yahweh were at the time enjoying their early matrimony in the wilderness.<sup>502</sup> Other rabbis saw the golden calf incident as symptomatic of the larger Israelite propensity to worship a wide variety of idols.<sup>503</sup>

There are certainly some texts, such as *Leviticus Rabbah*, which have attempted to pardon the Israelites by claiming that the construction and worship of the golden calf had either been perpetrated by Egyptian proselytes or else incited by the enduring power of Egyptian divinities.<sup>504</sup> Yet in another passage from the same midrashic text, the rabbis shoulder the burden of guilt on Israel for worshiping the calf, claiming that Israel acted as a false witness against their God (6.1) by assuring him they would obey all his commandments and statutes (Ex. 24:7), only to declare the calf their god forty days later.<sup>505</sup> Nor does another interpretation place Israel in any more of a favorable light, namely that Aaron was declared righteous by building the calf so as to deflect the responsibility of the sin to himself rather than to Israel. While this view apologetically favors Aaron as the righteous high priest, it condemns Israel collectively by first claiming that

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<sup>501</sup> *y. Ta'anit* 4:5; *b. Sanhedrin*, 102a

<sup>502</sup> *b. Shabbat*, 88b, עלובה כלה מזונה בתוך חופתה /“Insolent is the bride who acts faithlessly within the bridal chamber.”

<sup>503</sup> *b. Avodah Zarah*, 53b: אלא מדפלו ישראל לעגל גלו אדעתיהו דניהא להו בעבודת כוכבים /“Rather, given that Israel worshipped the Calf, they revealed that their disposition was favorable toward idolatry.”

<sup>504</sup> *Lev. Rabb.*, 27.8: שוהו אלא הגרים שעלו עמהם ממצרים עשוהו /“Rather it was the proselytes who came up [from Egypt] with them that made it.” See further, *Pirkei de'Rab. Eliez.*, 46; *Ex. Rabb.*, 16.2, 20.6; *Num. Rabb.*, 15:24. For a detailed discussion of the Egyptian religious presence in rabbinic midrash, Rivka Ulmer, “The Egyptian Gods in Midrashic Texts,” *HTR*, 103, no. 2 (2010): 181-204.

<sup>505</sup> *Lev. Rabb.*, 6.1.

the people murdered Hur when he was ordered to build the calf.<sup>506</sup> Still another reading, found specifically within an instance of Moses advocating for Israel, has Moses claiming that it was on account of gold and silver, which God commanded to expropriate from the Egyptians just prior to leaving Egypt, that the Israelites were induced to sin.<sup>507</sup> Interestingly enough, God never concedes to this argument in spite of Moses' insistence.

At times the golden calf incident was treated by the rabbis as an archetype of transgression, in that its ramifications are evident in a host of derivative sins.<sup>508</sup> The diversity of interpretation generally shows that rabbinic approaches to the golden calf, in the main, hardly absolve the congregation of guilt. As will be shown in *Exodus Rabbah*, in keeping with the biblical text, the sin is considered so severe that only the intercessory activity of Moses prevents Israel's wholesale annihilation. The golden calf episode marks a long-standing precedent for subsequent post-Sinai traditions of the people's dissatisfaction and Moses' ongoing pleas on their behalf.<sup>509</sup> It is indeed a watershed moment in the biblical courtroom drama and exerts a notable influence on later post-biblical traditions. The effort to continually prevent God from destroying his people becomes an ongoing concern.

The early Church Fathers' appeal to the golden calf transgression as foundational evidence for Israel's rejection and the Church's election has been thought to have influenced some of the

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<sup>506</sup> *b. Sanhedrin 7a; Lev. Rabb.*, 10.3; *Pirkei de'Rab. Eliez.*, 45.3.

<sup>507</sup> *b. berahot*, 32a. Thus, the verse has Moses appealing before God: *בשביל כסף וזהב שהשפעת להם לישראל עד שאמרו די הוא גרם שעשו את העגל* / "On account of the silver and gold that you gave abundantly to them, to Israel, until they said, 'Enough!'" That is what caused them to make the calf."

<sup>508</sup> *b. Sanhedrin*, 102a.

<sup>509</sup> Jerrow, "Arguing with God," 8: "But there is another difference as well. In the pre-Sinai block, God, although impatient with Israel's murmuring, shows little interest in punishing the nation. In the post-Sinai block, however, God does resort to punishment and, appearing to have lost hope in the covenantal relationship, even threatens to destroy the entire people. It is to the pivotal golden calf episode that one must look to account for this change."

rabbinic interpretive material. To what degree this is possible remains difficult to determine, given that the rabbis rarely consider the golden calf in relation to non-Jewish interpretations. Smoler and Aberbach's essay argued, however, for the rabbinic response to early patristic commentary.

The rabbinic reaction was to undertake a massive defense and militant counterattack, the keystone of which was to assert defiantly the continued election of Israel and its continued status as God's beloved people. Israel's sinfulness—so frequently denounced by the Prophets—was considerably minimized by the rabbis, some of whom denied it altogether. This is particularly evident in the rabbinic treatment of the golden calf episode. While admitting the gravity of this offense and its serious consequences, the rabbis categorically denied that it had in any way impaired the loving relationship between God and Israel. God had never rejected Israel, which continued to be His chosen people.<sup>510</sup>

The current discussion challenges the argument that the rabbis' downplayed the golden calf apostasy. Through analysis of Moses' advocacy for the Israelites within the rabbinic corpus, the rabbinic recognition of how serious the transgression was is quite clear, so much so that there emerged the necessity for a prophetic intercessor who could reconcile the irreconcilable, namely God's holiness and Israel's corruption. Israel's sinfulness, as noted above, was hardly minimized, and in fact many traditions see Israel as deserving to perish had not Moses intervened. Noting, however, how strongly the early Church Fathers hyped the golden calf apostasy as a watershed moment in Jewish covenant forfeiture,<sup>511</sup> a potential rabbinic reaction to Christian polemics appears possible, even if rabbinic exegetes do not seem very interested, at least on the surface level, in the substance of what early church fathers had to say. The reaction,

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<sup>510</sup> Leivy Smolar and Moshe Aberbach, "The Golden Calf Episode in Postbiblical Literature," *HUCA* 39 (1968): 91. The authors stated further, "Thus inevitably the emergence of an apologetic literature, the basic tendency of which was to minimize the guilt of Israel in general, and of Aaron in particular" (92).

<sup>511</sup> Justin Martyr, *Trypho*, 20.3; 21.1; Irenaeus, *Adv. Haer.* IV.15.1; Andrew Radde-Gallwitz, "Justin Martyr and the Golden Calf: Ethnic Argumentation in the New Israel," in *Golden Calf Traditions in Early Judaism, Christianity, and Islam*, ed. Eric F. Mason and Edmondo F. Lupieri (Leiden/Boston: Brill, 2019), 227-37.

however, mainly retains the stark rebelliousness and egregiousness of golden calf worship, while at the same time finding a means of ultimately forgiving the preserved congregation of Israel. The major difference, therefore, between the rabbinic and patristic assessments centers not on the criminality of the act but rather on the long-term divine response. While the early Church Fathers oftentimes represented Jewish belief and practices as models of sin and false doctrine, one witnesses quite a different approach in the rabbinic corpus. The rabbis engaged in a much more internal Jewish discourse aimed at understanding both the best and worst aspects of Israel's covenant relationship with God.<sup>512</sup>

Moses' defense of Israel following the golden calf episode belongs within a long-standing tradition of Moses as apex prophet and intercessor. His defense wards off a permanent punishment that was thought deserved. While Moses at times assigns blame to God, these are rhetorical moves belonging to a larger arsenal of skilled arguments rather than indications of any legitimate belief in God's culpability. One noteworthy instance occurs when Moses claims it was God's endowment of the Israelites with Egyptian gold that led to the building and worshipping of the golden calf.<sup>513</sup> Moses attaches God's agency to Israel's sin and determines that clear limits restrict the boundaries of human autonomy. *b. Berahot* 32a, for example, starts from the premise that the human will to action lacks full autonomy. Rather, God exhibits agency in the human propensity to either commit or avoid sin, the central proof-text being Ezekiel 36:26-27:

וְהִסְרֹתִי אֶת לֵב הָאֲבָן מִבְּשָׂרְכֶם וְנָתַתִּי לָכֶם לֵב בָּשָׂר וְאֶת רוּחִי אָטַמְנוּ בְּקִרְבְּכֶם וְעָשִׂיתִי אֶת אֲשֶׁר-בְּחַקְלֵי תַלְכוּ

“I shall remove the heart of stone from your flesh and give you a heart of flesh.” I shall place my spirit in your midst, and I shall make you walk in my statutes.

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<sup>512</sup> The notion of a concerted rabbinic response against Christian claims to election does rely in some degree on inserting within the text what does not exist in substantive measure. This is not to disregard, however, the larger theological settings within which the rabbis existed and the possibilities that responses to Christian supersessionism need not be direct in order to be operative.

<sup>513</sup> *b. Berahot* 32b; *b. Yoma* 86b.

From this premise, the rabbis argue that God also exhibits agency in the case of Israel submitting to sin, as it was the abundance of gold and silver that was given to the Israelites just prior to leaving Egypt which induced them to build the Golden Calf:

ודי זהב אמרו דבי ר' ינאי אמר משה לפני הקב"ה רבוננו של עולם בשביל כסף וזהב  
שהשפעת להן לישראל עד שיאמרו דיי גרם להם לעשות להם אלהי זהב משל אין ארי דורס  
ונוהם מתוך קופה של תבן אלא מתוך קופה של בשר

[Regarding the place-name] *Di-zahab* (Deut. 1:1): The School of Rabbi Yannai has said, “Moses said before the Holy One, blessed be He, ‘Lord of the universe, [it is] on account of the silver and gold that you gave out in abundance to them, to Israel, until they said, “enough.” That caused them to make for themselves gods of gold. A parable [states], ‘A lion does not attack or roar over a pile of straw but rather over a pile of flesh.’<sup>514</sup>

Just as Moses has argued against the angels that they are not placed in environments inviting to sin, and therefore they are less deserving of inheriting the Torah than mortals, the prophet also claims that God purposefully establishes such circumstances and sometimes sets Israel up to fail. The rabbis have associated Moses’ argument within the general principle that, whenever God lavished Israel with abundance, she grew morally indifferent and depraved. Evidence comes from the prophet Hosea, who states that the abundance of silver and gold was dedicated to Baal. The satiety Moses appeals to as the cause of sin is therefore as much a judgment on Israel for being a people lacking faith and gratitude as it is a defense. God eventually concedes to Moses, but more out of respect for the reality that Israel cannot be showered with abundance: מנין שחזר “From where [do we learn] that the Holy One, blessed be He, [eventually] conceded to Moses? As the Scripture states, ‘As I made them rich in silver, as well as gold, they fashioned [it in devotion] to the Baal’” (Hos. 2:10).<sup>515</sup> The defense, therefore, does less to exonerate Israel than to argue that God should know

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<sup>514</sup> *b. Beraḥot* 32a.

<sup>515</sup> *Ibid.*

better, given his people's moral weakness in times of abundance, than to provide Israel with prosperity.

Another means of immediate defense occurs when Moses grabs hold of God, an act which is thought to immediately ward off divine retaliation. In the same *b. Berahot* text, God informs Moses that his majesty (גדולה) exists only for the sake of Israel, and that once they had corrupted themselves, Moses is no longer of value to God. Exodus 32:10 is then cited, where God advises Moses to let him alone in order that he might annihilate the Israelites.

וכיון שאמר "הרף ממני ואשמידם", אמר משה: דבר זה תלוי בי מיד עמד ונתחזק בתפלה ובקש רחמים

And as soon as He had said, "Let me alone so that I may destroy them," Moses said, 'This situation requires my intervention.' Immediately he began empowering himself with prayer, and pleaded for mercy.

After comparing Moses to a king's favorite (אוהבו), whose royal favor prevents the ruler from slaying his own sinful son, Rabbi Abbahu elaborates on the significance of the exchange between God and Moses.

מלמד שתפסו משה להקדוש ברוך הוא, כאדם שהוא תופס את חבירו בבגדו, ואמר לפניו: רבונו של עולם אין אני מניחך עד שתמחול ותסלח להם

This teaches that Moses grabbed hold of the Holy One, blessed be He, as a man might grab his friend by his garment, and said before him, "Lord of the Universe, I shall not leave you to yourself until you pardon and forgive them."<sup>516</sup>

When God counters by offering the extermination of Israel in exchange for a new nation governed by Moses (Ex. 32:10b), Moses responds that the combined merit of the three patriarchs could not endure God's wrath, so surely the merit of Moses alone would fall short in staying God's wrath in the future.

אמר רבי אלעזר: אמר משה לפני הקדוש ברוך הוא: רבונו של עולם, ומה כסא של שלש רגלים אינו יכול לעמוד לפניך בשעת כעסך. כסא של רגל אחד על אחת כמה וכמה

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<sup>516</sup> Ibid.

Rabbi Elazar said, “Moses said before the Holy One, blessed be He, ‘Lord of the universe, if a throne of three legs cannot endure before you in the hour of your wrath, as for the throne having one leg, how much more so!’”

Moses further claims that his own reputation will be tarnished among those who preceded him, given he sought his own glory at the expense of his people during their time of trouble. Such repeated arguments conducted while grabbing hold of the deity appear to call to mind Jacob’s persistence when wrestling with the angel.

Berakhot 32a draws a comparison between Moses’ prayer and Jacob’s wrestling match at the Jabbok (Gen 32:24–32): According to R. Abbahu Moses grabbed YHWH like a man, saying: “Sovereign of the Universe! I will not let you go until you forgive and pardon them” (Berakhot 32a). Instead of seeking a personal blessing, as Jacob does (Gen 32:26), Moses asks YHWH to forgive and turn from the disaster he planned (Exod 32:12–14). These later Jewish interpreters understood that prayers—even prayers that are contrary to YHWH’s will—can and do prevail.<sup>517</sup>

Ultimately, Moses argues that it is the oath God swore to the patriarchs that must be maintained, along with God’s reputation, while the integrity of the people of Israel themselves is never appealed to as a defense.

## 8.5 Moses Defends Israel in Exodus Rabbah

Among the rabbinic texts reconstructing Moses’ biblical role as Israel’s advocate following the golden calf incident, the early medieval<sup>518</sup> Exodus Rabbah contains the most extensive treatment of Moses defending the Israelites before the divine judge. As Jerrow puts the matter: “One can argue that these sages regarded God less as an omniscient, immovable, impassible, and

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<sup>517</sup> Michael J. Chan and Joshua C. Miller, “Prayer That Prevails,” *Word & World* 35, no. 1 (2015): 33.

<sup>518</sup> On the most common approaches to dating this large and diverse literary corpus, see Jerrow, “Arguing with God,” 17ff.: “Although the midrashim in Exodus Rabbah I were created during this earlier period, Exodus Rabbah I as a collection was not redacted before the tenth century, putting it in the middle period of midrashic aggadah (640-1000 C.E.); Scholars have generally dated Exodus Rabbah II to the ninth century, earlier than Exodus Rabbah I. See Strack and Stemberger, *Introduction to the Talmud and Midrash*, 308-309.



unchanging deity and more as one endowed with a very specific personality that includes in particular the character trait of enjoying a good argument.”<sup>519</sup> Due to the format of Exodus Rabbah being a compilation of several earlier traditions, the text’s attitude toward Moses as legal representative appears to be one of synthesizing the evidence drawn from aggadic traditions of both Late Antiquity and the early medieval period.<sup>520</sup> While the ER midrash does borrow from earlier rabbinic traditions, its consistent exchanges between God and Moses, with the latter persistent in its defense of the wayward Israelites in the wilderness, demonstrate an attempt to break the constraints of strict covenantal law and attain clemency for Israel regardless of her sins. The act of forming and presenting a sustained defense is strongly characteristic of Exodus Rabbah 42-44, and the theological perspectives inherent within such a defense demonstrate a well-developed theology of prophetic atonement. The advocate passages of Exodus Rabbah, in relation to the golden calf incident, reveal a strong sense of prophetic and ancestral substitutionary sacrifice, whereby the speech-acts of prophetic figures form an essential function in the larger scheme of corporate salvation.

Exodus Rabbah’s discussions of Moses defending Israel devote considerable attention to the Golden Calf incident, where several themes focusing on Moses’ role as Israel’s defense attorney converge. Moses’ first argument appears in 41.7, where the question of to whom specifically Israel belongs occupies the forefront. The immediate context involves the ending of Moses’ first stay on the mountain of God, when the deity instructs Moses to “Go and descend” (לְךָ יֵרָד, Ex. 32:7), a command God will repeat periodically within the midrash. Moses then receives

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<sup>519</sup> Jerrow, “Arguing with God, 4.

<sup>520</sup> Graves, “Scholar and Advocate,” 8, is illustrative: “Both units within ER borrowed extensively from the primary aggadic sources of Rabbinic Judaism up to the time of their final compilation. The editors, in turn, seem to have recast the materials that they inherited and probably added new sayings and stories of their own. Although precise dates cannot be established either for the parts or for the whole, a likely time frame for the final compilation of ER would be the 10th or 11th century.” See note 32 for a range of scholarly perspectives.

assistance from both God and the three patriarchs in neutralizing “five angels of destruction” (חמשה מלאכי חבלה), evidence again of the advocate’s initial task of removing the accuser(s)—in this case also the destroyers—from the heavenly court. The prophet is ordered a second time to descend, which triggers Moses’ response that the God of Israel should not be fair weathered concerning his claim that Israel are his people. If, when they sin, the people of Israel revert to being Moses’ people, but prior to that time they belong to God, then God is acting disingenuously and must be called to account. In addition to clarifying to whom Israel truly belongs, Moses strives for divine confirmation of Israel’s ultimate vindication at the time of the eschaton.

מיד אמר לו הקדוש ברוך הוא: רד, ירידה היא לך, אמר לו למה, (שמות לב, ז): ששחת עמך, אמר לו משה עכשו אתה קורא אותם עמי, אינן אלא עמך, (שמות לב, יב): שוב מחרון אפך והנחם על הרעה לעמך, אמר רבי שמעון בן יוחאי לא זו משה מתפלה עד שקראן הקדוש ברוך הוא עמו, שנאמר (שמות לב, יד): וינחם ה' על הרעה אשר דבר לעשות לעמו. אמר הקדוש ברוך הוא למשה בעולם הזה על ידי שהיה בהם יצר הרע עושין עבודת כוכבים, אבל לעתיד לבוא אני עוקר מהם יצר הרע ונותן להם לב בשר, כמה דאת אמר (יחזקאל לו, כו): והסרתי את לב האבן מבשרכם ונתתי לכם לב בשר

Immediately the Holy One, blessed be He, said to him, “Descend. [Their transgression] is your downfall.” Moses said to him, “Why?” [God answered], “because your people have corrupted themselves.” Moses said to Him, “So now you refer to them as ‘MY people,’ when they are none other than your people, [as the Scripture states], ‘Turn away from your raging fury and reconsider bringing disaster upon your people’” (Ex. 32.12).

Rabbi Shimon ben Yochai said, “Moses did not budge from his prayer until The Holy One, blessed be He, called them, ‘My People.’ As it is written, ‘Then the Lord relented concerning the evil which he had said he would exact upon his people’ (Ex. 32.14). The Holy One, blessed be He, said to Moses, ‘In this world, because of their having the Evil Inclination, they engage in idolatry, but in the future to come, I will uproot from them the Evil Inclination and give them a heart of flesh, as the Scripture states, “I shall remove the heart of stone and give you a Heart of Flesh”’” (Ezek. 36:26).<sup>521</sup>

God’s concession that Israel remains his people acknowledges that the current Israel, by virtue of its inclination to evil, will remain susceptible to idolatry, while the eschatological Israel will overcome this tendency. Just as *Bavli Shabbat* 88b envisioned Israel reclaiming her two crowns

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<sup>521</sup> *Exod. Rabb.*, 41.7.

representing the doing and hearing of the Torah, so the midrash prophecies a future where the “evil inclination” (יצר הרע) will depart from Israel and she will be vindicated at the eschaton. Moses does not merely advocate for Israel’s immediate pardon from idolatry, so as to escape annihilation, but holds fast to his defense until achieving Israel’s favor in the world to come.

The midrash again revisits the question of to whom Israel belongs. Now that the Israelites have risked destruction by building an idol, do they ultimately belong to God or to Moses? According to the midrash, the people have spoken lies against their God by associating the golden calf with God and attributing deliverance to both.

רבי חגי בן אלעזר אומר זה אלהיך אין כתיב כאן אלא (שמות לב, ד): אלה אלהיך, שתפו אותו עמהם, ואמרו אלוה והעגל פדה אותנו, ומכזבים בי, ואנכי אפדם והמה דברו עלי כזבים, אף אני אומר שאינם עמי, לכך נאמר: כי שחת עמך

Rabbi Ḥaggai ben Elazar said, “It is not written here, ‘This is your God,’ but rather, ‘These are your Gods’ (Ex. 32:4). They partnered God with it and said, ‘God and the Calf have redeemed us,’ and [therefore] ‘they have spoken falsehoods about me.’<sup>522</sup> I would redeem them, but they have spoken lies against me. I indeed declare they are not my people.’ Therefore the Scripture states, ‘For your people have become corrupt.’”

God provides further justification for why the Israelites now default to becoming Moses’ people. By attempting to group the God of Israel alongside the molten calf of Egypt, the people have been disqualified from God’s sovereignty over them. In a less argumentative tone than the previous exchanges with Moses that exposed Israel as trespassing against the first commandment, God summons Moses “for the purpose of reconciliation” (לפיסו). His intent is to explain the issue of foreknowledge regarding Israel’s eventual sin: אמרתי לך עד שאתה בסנה מה: “Did I not tell you when you were at the burning bush what [Israel] would do in the future?” God claims that Moses views Israel from a limited perspective, with an eye only to their acceptance of the Torah rather than to her eventual backsliding. Moses, therefore, was

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<sup>522</sup> Here the interpretation begins with the words of Rabbi Ḥaggai, who quotes the people, but then the discourse shifts without warning to God’s speech.

willing to accept the “mixed multitude” (ערב רב) among the congregation during their wilderness sojourn. Although doing so with good intentions, Moses did not anticipate what God knew would unfold due to the inclusion of those not originally belonging to Israel. God claims he had even issued Moses advanced warning concerning these infiltrators. While God allowed Moses to commit this error of inclusion, the consequence of such error was to reduce the people to Moses’ charge and responsibility. Although God’s argument appears to overcome that of Moses, he does ultimately concede in accepting the people back. In this instance, Moses does not acquit Israel through superior argument but rather through the struggle itself to defend the people.

Similar to the exchange in Genesis Rabbah 49 involving Abraham’s pleading for Sodom, the Exodus midrash shows keen interest in the divine command to descend: וַיִּדְבֹר ה' אֶל מֹשֶׁה לֵּךְ רֵד / “The Lord said to Moses, ‘Go, descend [for your people whom you brought out of Egypt have corrupted themselves]’” (Ex. 32:7). The rabbis interpret Moses’ descent from the mountain as more than then a simple departure from one location so as to safeguard another. Rather than suggesting mere damage control, descent more specifically addresses Moses’ responsibility for and inseparability from the Israelite community. Whenever the Israelites transgress, Moses’ status appreciably declines, no longer residing on the elevated mountain of God but instead within the trenches of the rebellious Israelites. As goes the community, God reminds Moses, so too goes the fate of their lawgiver and prophet.

כשיהיו בניך צדיקים הם מתרוממים בעולם ועולים, וכן שלוחיהם מתעלים עמהם, וכשהם יורדים הם ושלוחיהם בירידה. לך רד, למה, (שמות ל, ז): כי שחת עמך, אמר לו הואיל וחסאו אתה והם בירידה

“When your children become righteous, they shall be exalted in the world and ascend, and thus their messengers shall be exalted with them. And when they descend, both they and their messengers shall descend together. [Therefore], ‘Go, descend.’ Why? Because ‘Your people have corrupted themselves.’” (Ex. 32:7). He said to him, “Since they have sinned, you and they shall descend [together].”<sup>523</sup>

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<sup>523</sup> *Exod. Rabb.*, 42.7.

Moreover, with this responsibility comes the issue of inseparability from the people. God not only has lowered Moses' rank but has also renounced his claim to Israel. The people now belong exclusively to Moses since they have trespassed against God.

Moses eventually contests this divine response, but his immediate concern centers on God's uncontrollable anger. A citation of Proverbs 25:15 represents Moses' opening strategy for mitigating God's rage: *בְּאַרְרָה אָפִים יִפְתָּה קָצֵין*/"By forbearance is a ruler persuaded." Moses repeatedly seeks forbearance through words of persuasion. God counters these attempts by insisting on Moses' descent, citing the people's abrogating of an earlier oath that they would observe all the commandments (Ex 24:1). The most egregious violation, from God's perspective, is that of violating the first and second commandments, thus uprooting the foundation of the pact between God and Israel. The rabbis have compounded such idolatry by attributing to the idolators of the golden calf the practices of both blood-spilling and sexual perversion. God consistently cites the violation of the core commandments following an oath of obedience, while Moses crafts arguments based on previous oaths sworn by God toward Israel. Moses also appeals to earlier instances of Israel exhibiting merit, as well as to the previous merit of Israel's ancestors.

While Moses cannot hope to win every argument with God, he still hopes to diminish the "rage" (*בְּזַעַף*) of God and ward off the imminent threat of annihilation. Not only God's fury signals the prospect of doom, but also the presence of the "ministering angels" (*למלאכי השרת*), who assume the role of both accusers and punishers: *וְשֵׁם עֹמְדִים וּמְבַקְשִׁים לְצַאת וּלְהַבֵּל כָּל יִשְׂרָאֵל*/"Who were standing up and requesting to go out and bring all of Israel to ruin." The angels' act of standing and petitioning to destroy Israel demonstrates a legal setting of rising before the divine judge and presenting one's case as accuser. This is further supported by Moses'

immediate response: מיד התחיל מלמד עליהם סניגוריא “I shall not move away from here until I have pleaded for mercy on their behalf.’ Immediately he began to plead in their defense.”<sup>524</sup> The text’s use of סְנִיגוּרְיָא (advocacy/spoken defense) confirms the courtroom defense scenario associated with the incident.

Each of Moses’ arguments appeal to Scripture as the basis of his defense, while at the same time supporting Israel’s continued claim to God’s favor despite her earlier violation of the first two commandments. Moses’ line of argument proceeds as follows: (1) Israel at least accepted the Torah, when nations like Edom refused it; (2) the Israelites enslaved in Egypt instantly believed in their God upon hearing Moses’ report from the mountain; (3) the young men laid sacrifices before God at the close of the revelation of all the laws and statutes; and (4) the Israelites acknowledged God as their sovereign. For each of these arguments, God counters that Israel’s willingness to receive the Torah was nullified when they violated their oath to perform every commandment enjoined on them. Although the Israelites initially believed upon hearing the divine name, they later disbelieved by building and worshiping a false image. While making sacrifices and acknowledging God as their master, the Israelites later laid down an idolatrous sacrifice and mistook deliverance from Egypt as the work of the calf—although God still received partial credit. Despite God’s persistent refusal to accept Moses’ appeals, the midrash states that the defense was still capable of suspending any conviction or punishment ( בטל משה ) (מיד את הפרענות). The exchange also makes clear that the discourse is one part legal appeal and one part petitionary, each aspect belonging to the lawcourt pattern of prayer, more specifically in terms of the complaint (“I have merit to speak”) and the subsequent petition.<sup>525</sup>

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<sup>524</sup> Ibid., 43.1.

<sup>525</sup> Jerrow, “Arguing with God,” 113: . . . “most rabbinic expansions of the golden calf argument between Moses and God are petitionary in nature as opposed to being expressions of confession or thanksgiving/acknowledgment.

While acknowledging Moses' ability to assuage God's anger and suspend full condemnation, the rabbis remain focused on prophetic descent, claiming that Israel's sin compromises Moses' status as both prophet and spokesperson for Israel. Moses thus experienced "excommunication" (גדוי) as a result of the golden calf incident. Scriptural support for banishment derives from Genesis 38:1a: וַיֵּהִי בַּעֲת הַהוּא בִּיְרֵד יְהוּדָה מֵאֶת אָחָיו / "At that time, Judah departed from his brothers." The midrash adopts a hyper-literal translation of the preterite form of ירד—"Judah descended from his brothers"—suggesting that due to his inability to oppose and dissuade his brothers from selling Joseph into slavery, Judah experienced excommunication from his family and thus settled among the Adulamites in Genesis 38. This descent in the form of banishment is described as a "falling away from his brothers" (ירידה מצד אחיו, 42.3).

Moses suffers the same type of descent owing to his inability to secure the faithfulness of the Israelites. He is further compared, by way of a brief parable, to an "ambassador" (פְּרָזְבוּטִים) who is charged with crowning his king, but while on route to the throne is unaware that the people have rioted and begun desecrating the statues and images representing their ruler. Upon arriving at the king's residence, the ambassador is commanded to descend. The king has advanced notice of the people's rebellion prior to the ambassador's arrival, again suggesting that God had already anticipated Israel's transgression prior to Moses' ascent to the mountain top. While acknowledging that the exchange of arguments secures Moses with a stalemate, the rabbis also view the degraded status of Moses as evidence of Israel's lack of exoneration in the golden calf incident. Even Israel's greatest prophet is lowered in God's eyes; but the acts of advocacy and

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This excerpt, as well as those passages that follow, is no exception, for although Moses may implicitly or explicitly allow that Israel has sinned in its veneration of the golden calf, his ultimate aim is to persuade God not to consume the nation."

propitiation still secure undeserved divine acquittal, at no time attributed to any inherent righteousness on the part of Israel.

It should be acknowledged that, while Moses suffers a certain degree of demotion in this incident, the rabbis still regard him as achieving what no other mortal can, which is acquittal for actions so egregious that they in principle cannot merit clemency. Moses ranks with Daniel as one of two advocates “who set themselves in opposition to the standard of [strict] justice in order to plead for mercy on behalf of Israel”/שנתנו פניהם לנגד מדת הדין לבקש רחמים על ישראל<sup>526</sup> By “justice,” the rabbis are most likely referring to the same unwavering standard of strict legal judgments that characterize the rabbinic conception of the heavenly court, where humans are potentially liable to the same expectations as the heavenly beings.<sup>527</sup> The advocate’s obligation consists of scaling down such standards due to God’s creation of people as flawed images of God’s perfection, saddled as they are with the inclinations toward both good and evil. Once these principles of the advocate’s commission are established, those being his standing in the breach between God and humanity, scaling down strict justice, and presenting his legal game-face, the rabbis turn to the rarely attested biblical expression, מִשֶׁה נִיחַל מִשָּׁה / “Then Moses pleaded” (Ex 32:11).

Exodus Rabbah 43.1 applies the biblical expressions, “plead” and “stand within the breach,” (Ex. 32:11; Ps. 106:23), to Moses’ continued defense of Israel. Such actions are supplemented by the notion of Moses presenting his best litigation image (מסביר פנים) before both God and the accuser. By virtue of standing within the breach, the advocate intervenes in the most direct way possible before the divine judgment seat, occupying a portion of the divine courtroom,

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<sup>526</sup> *Exod. Rabb.*, 43.1.

<sup>527</sup> Richard Hidary, *Rabbis and Classical Rhetoric: Sophistic Education and Oratory in the Talmud and Midrash* (Cambridge: Cambridge University Press, 2017), 251: “I propose that the rabbis envisioned the heavenly court in terms of Roman courts, not in spite of 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.”



inaccessible to other mortals, and he insists at all costs that God relent from his condemnatory verdict. This portrait of Moses occurs in a shared tradition from *Midrash Tehillim* 106, where the interpretation of Psalm 106:23 is applied directly to Moses' appeals before Yahweh. The Psalmist writes as follows:

וַיֹּאמֶר לְהַשְׁמִידֵם לִילֵי מֹשֶׁה בְּחִירוֹ עֹמֵד בְּפֶרֶץ לְפָנָיו לְהַשִּׁיב חַמְתּוֹ מִהַשְׁחִית

He said he would have destroyed them had not Moses, his elect, stood in the breach before him, preventing his wrath from destroying [them].

Rabbi Berehiah and Rabbi Shmuel both understand this verse in relation to a courtroom setting, where the advocate must either remove the accuser himself or else thwart the legal method of pronouncing the defendant guilty.

ויאמר להשמידם. רבי ברכיה בשם רבי יהודה ברבי סימון משל לקטיגור שהיה מקטרג לבן של מלך. מה עשה הסניגור דחה אותו ועמד במקומו והקטיגור ראה אותו והלך לו כך לולי משה בחירו

‘He said that He would have destroyed them.’ Rabbi Berehiah, in the name of Rabbi Yehuda, in the name of Rabbi Simon: “It may be compared to an accuser that was prosecuting the son of the king. What did the advocate do? He removed him and stood in his place. And when the accuser saw him, he went about his business. Thus the Scripture: ‘Had not Moses his elect . . . .’”

The midrash provides further evidence that Moses' advocacy for Israel in large part resembles the theological principle of justification, minus of course the act of martyrdom itself. Israel stands trial as the prosecuted son, whose only recourse for acquittal is the intervention of the preeminent prophet, whose presence immediately nullifies the accusation. In the *Exodus Rabbah* midrash, the accuser will be identified as the Satan.

רבי שמואל בר נחמן אמר משל למלך שכעס על בנו. בא לחתום בקולמוס ליתן לו אפופסין בא הסניגור והטף הקולמוס מידו. כך להשיב חמתו מהשחית

Rabbi Shmuel bar Nahman said, “This may be compared to a king who was angry with his son. He came to sign with a pen so as to render him his verdict. The advocate entered and snatched the pen from [the king's] hand. Thus relented his anger from harming him.

The second interpretation from the midrash finds the king himself ready to seal the guilty verdict pronounced against his son. There is no questioning of the verdict; instead the advocate's only recourse is to prevent the sealing of the verdict by imposing his will on the courtroom. The advocate not only possesses the power to banish the accuser but also to reverse a divine judgment. Moses here ascends to a high level of salvific power, in as much as he can unilaterally plead for the condemned and achieve an instant acquittal.

The confrontation between advocate and prosecutor in Exodus Rabbah engages with and expands the above tradition from the Psalms midrash, whereby the accuser must be banished so that fair justice can be argued for the defendant.

רבי ברכיה אמר שתיים, אחת בשם רבנו ואחת בשם רבי שמואל בר נחמן, רבנו אמר למה הדבר דומה למלך שהיה דן את בנו והיה הקטיגור עומד ומקטרג, מה עשה הפדגוג של בן, כיון שראה אותו מתחייב דחף את הקטיגור והוציאו לחוץ ועמד לו במקומו מלמד על הבן סניגוריא. כך בשעה שעשו ישראל את העגל היה השטן עומד ומקטרג בפנים ומשה עומד מבחוץ, מה עשה משה עמד ודחף את השטן והוציאו לחוץ ועמד במקומו, שנאמר עמד בפרץ לפניו, עמד לו במקומו של פורץ

Rabbi Bereh̄ia spoke two [teachings], one in the name of our Teacher, and the other in the name of Rabbi Shmuel bar Naḥman. Our teacher said, “To what can this matter be compared? To a king that was issuing judgment on his son, and there was a prosecutor standing and bringing charges [against the son]. What did the son’s teacher do? As soon as he saw him on the verge of being convicted, he pushed away the accuser and brought him outside [the courtroom] and stood in his place, pleading as a courtroom advocate on behalf of the son. Similarly, when Israel had made the Calf, the Satan was standing among them and making accusations [against Israel], while Moses was standing away from them. What did Moses do? He rose up and pushed the Satan out of the way and brought him outside [the Israelite camp], and he stood in his place. As the Scripture states, ‘He stood in the breach before them,’ [meaning] he stood in the place of the one who created the breach [between God and Israel, that being the Satan].”<sup>528</sup>

The tradition understands Israel as the divine ruler’s son, and God Himself is the party issuing a conviction against his son, with the prosecutor presenting the specific charges. The conviction is imminent, and it is the son’s instructor (הַפְּדָגוּג) who assumes the office of advocate in order to redeem the guilty party. Not only does he banish the Satan but takes his place within the divine

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<sup>528</sup> *Exod. Rabb.*, 43.1.

courtroom and begins pleading the defense. Standing in the breach involves acting as a replacement for the Satan, who is originally responsible for creating the breach. Note that Satan no longer assumes the role of a mere accuser of mortals in the divine court, one testing the metal and obedience of God's people, but he is now credited with establishing the distance between God and humanity that is responsible for transgression in the first place. The rabbinic interpretation of Moses' defense transcends a desperate appeal on behalf of the guilty. It now rewrites the Israel's archetypal sin in terms of Satan's meddling with God's elect, creating a barrier between them and their God, and the requirement that a divinely empowered prophetic advocate remove the barrier, lest God's people are permanently vanquished.

Rabbi Shmuel bar Nahman further states that “stood in the breach” constitutes “a difficult Scripture” (דבר קשה, 43.2), yet his interpretation follows a similar line of reasoning as the anonymous “Our Teacher” parable. God again assumes the role of judge, and he is on the verge of signing a “verdict of condemnation” (גזר דינו) against his son. The scripture which captures God's anger and intent, as well as that of the judge in the parable, is that stating, ‘Leave me alone, that my fury may burn against them and devour them’ (הַנִּיחָה לִּי וַיִּחַר־ אַפִּי בָהֶם וְאָכְלָם), Ex. 32:10). God's legal grounds for carrying out the conviction derive from the Covenant Code's prohibition on sacrificing to any deity other than Yahweh (Ex. 22:20), which constitutes a capital offense. In this case, the “associate regent” (סוֹנֵקֶדְרוֹ)<sup>529</sup> of the king snatches the pen out of the judge's hand as a means of deescalating his fury. This action involves less argumentation than it does a legal stratagem in the face of an outraged ruler. Averting the signed verdict of

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<sup>529</sup> Greek, συγκαθέδρος, “assessor.”

condemnation, in this case, leaves uncertainty with the prosecutorial process by rendering the decision unofficial and thus open to an appeal.<sup>530</sup>

כך בשעה שעשו ישראל אותו מעשה ישב הקדוש ברוך הוא עליהם בדין לחיבם, שנאמר (דברים ט, יד): הרף ממני ואשמידם, ולא עשה אלא בא לחתם גזר דינן, שנאמר (שמות כב, יט): זבח לאלהים יחרם

In the same way, when Israel performed that act [of idolatry], the Holy One, blessed be He, [presided] over them in the courtroom in order to convict them. As the Scripture states, “Leave me alone, that I may destroy them” (Deut. 9:14). But he did not exact [annihilation upon them]. Rather, he approached to sign the decree of condemnation, as the Scripture states, “Whoever sacrifices to gods [other than the Lord Himself<sup>531</sup>], shall be set aside for divine annihilation” (Ex. 22:19).<sup>532</sup>

God, as the meticulous, law-observant judge, does not destroy Israel prior to establishing legal precedent; therefore, a judge’s seal must attach itself to the guilty verdict. Moses understands that he cannot overturn the legal precedent of Exodus 22:19, and once the written document of conviction has been signed it will be barred from reversal. Moses may, however, intervene by preventing the signature altogether in order to buy time for the defendant. The delay affords an opportunity for a counterargument based on Israel’s alleged lack of criminal intent.

מה עשה משה נטל את הלוחות מתוך ידו של הקדוש ברוך הוא כדי להשיב חמתו, למה הדבר דומה לשר ששלה לקדש אשה עם הסרסור, הלך וקלקלה עם אחר, הסרסור שהיה נקי מה עשה נטל את כתבתה מה שנתן לו השר לקדשה וקרעה, אמר מוטב שתדון כפנויה ולא כאשת איש. כך עשה משה כיון שעשו ישראל אותו מעשה נטל את הלוחות ושברן, כלומר שאלו היו רואין ענשן לא חטאו

What did Moses do? He took the tablets from the hand of the Holy One, blessed be He, in order to remove his rage. To what may this be compared? To a ruler who sent his agent to betroth a woman. He set out, but [the woman] had corrupted herself with another man. As for the agent, who himself was innocent, what did he do? He took the marriage contract which the king had given him to betroth her and tore it up. He said, “It is better that she be tried as a single woman and not as a married one.” Moses acted in the same way when Israel performed that deed. He took the tablets and smashed them, as if to say that, if

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<sup>530</sup> Peter G. Stein, “Roman Law, Common Law, and Civil Law Symposium: Relationships Among Roman Law, Common Law, and Civil Law,” *Tulane Law Review* 66, no. 6 (1991-1992): 1601-1602.

<sup>531</sup> בלתי ליהנה לבדו, Deut. 32:9

<sup>532</sup> *Exod. Rabb.*, 43.1.

Israel had seen their punishment [which they were subject to in the tablets], they would not have sinned.<sup>533</sup>

The parable illustrates the pact between God and Israel in terms of marriage obligations, whereby the offending wife, cast as the inferior party, can plead innocent if the marriage contract has not yet been finalized. Moses' act of smashing the tablets of the Decalogue enables him to plead for the offending party's lack of intent, which in this case would ward off a death sentence. Of particular interest is the rabbinic conception of the Covenant Code somehow being manifest within the tablets of the Decalogue. Israel would have seen, according to this conception, the punishment for transgressing the first commandment within the tablets, and had that been the case, would have lacked any legal recourse for reversing the death penalty. Smashing the tablets, therefore, enables Moses to plead for a stay of execution and thus the preservation of Israel as a collective. The action also, as the midrash points out, places Israel within the category of inadvertent (שוֹגְגִין) as opposed to premeditated (מְזִידִין) transgressors.

ועוד אמר משה מוטב נדונין כשוֹגְגִין ואל יהו מְזִידִין, למה, שהיה כתוב בלוחות (שמות כ, ב): אנכי ה' אלהיך, וענשו אצלו, זבח לאלהים יחרם, לפיכך שבר את הלוחות. ויאמר להשמידם, מיד התחיל חוגר בתפלה, הוי: ויחל משה את פני ה' אלהיו, שעמד בקלות ראש לפני הקדוש ברוך הוא לבקש צרכן של ישראל, הוי: ויחל משה

Moses further stated, "It is better they be sentenced as inadvertent transgressors and not as if they acted with premeditation." Why? Because it is written in the Tablets, "I am the Lord your God" (20:2-5). And the punishment [for violating this prohibition appears] next to [the first commandment]: "Whoever sacrifices to gods [other than the Lord Himself], shall be reserved for divine annihilation" (Ex. 22:19). On this account did he smash the tablets. [God] said, ["Leave me alone] that I may destroy them." Immediately Moses girded himself in prayer. This [explains the scripture], "Moses pleaded before the Lord his God": he stood disrespectfully before the Holy One, blessed be He, in order to plead for the [urgent] need of Israel. This [explains the Scripture], "Moses pleaded."<sup>534</sup>

The rabbinic construction of Moses as advocate in the aftermath of the golden calf apostasy, therefore, contributes several new orientations towards the sin and its resolution. First, Moses

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<sup>533</sup> Ibid.

<sup>534</sup> Ibid., 43.2.

abandons any effort to begin his appeals by statements of praise for the divine judge. The nature of the crisis affords him no time. Moses also resorts to unilateral acts of intervention that are neither encouraged nor condoned by Jewish law. He assumes the authority to nullify both the divine seal of judgment and the terms and conditions of the original covenant set in stone tablets. Moses feels justified in these actions due to his argument that the Israelites had not been granted the time to read over the entirety of the document, which would have informed them as to the consequences of a transgression so severe. Their ignorance of the entirety of the document renders Israel an unintentional sinner and therefore cleared of capital punishment.<sup>535</sup>

It should also be noted that the rabbis, acting almost as impartial observers of the discourse between God and Moses, appear to have no inherent problem with the level of wrath exhibited by God, the stronger party. Jerrow's analysis, however, does not afford due weight to the theological setting of legal defense and makes the perhaps questionable move of highlighting the rabbis' discomfort with God's wrath in the aftermath of the golden calf incident. This interpretation relies on the idea that God's initiating of Moses' intercession,<sup>536</sup> as presented by the rabbis, reflects their discomfort with divine wrath and their imputing to God his true motives, which are to promote Moses' successful series of appeals on Israel's behalf. Yet the rabbis in these passages do not explicitly demonstrate an unease with God's response as much as they evoke the necessity of the prophet's advocating on Israel's behalf. Indeed, many of Moses' arguments cannot measure up to the strict standards of divine justice, but it is the intention and discourses themselves which initiate redemption. More accurately, it would seem that the rabbis

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<sup>535</sup> For the development of the categories of intentionality and premeditation in rabbinic law, as well as the relevant scholarship, see Aurelian Botica, *The Concept of Intention in the Old Testament, Philo of Alexandria and the Early Rabbinic Literature: A Study in Human Intentionality in the Area of Criminal, Cultic and Religious and Ethical Law* (Piscataway, NJ: Gorgias Press, 2011), 319-442.

<sup>536</sup> *Ex. Rabb.* 42.9.

express little discomfort with God's justified wrath, in large part so as to be even further consoled by their view of God's greater degree of mercy. On one further note, when Moses offers non-sophisticated arguments for Israel and bordering on sophistry in his reasoning,<sup>537</sup> Jerrow argues that the rabbis consistently view God as offering Moses these opportunities as a means of covering for what appears to be brazen, disrespectful behavior on the prophet's part. Yet the rabbis again never indicate explicitly that they are uncomfortable with Moses' assertive pleading. They rather view it, as I would argue, as a matter of necessity.

Moses can also argue on the simple basis of grammar and syntax, putting God in a position to revise the wording of commandments and how they are addressed to the people. Just as God may appeal to the strict letter of the law, Moses will counter by appealing to the precise wording of the Hebrew language through which the law is conveyed.

בשעה שעשו ישראל העגל היה משה מפיס את האלהים ולא היה שומע לו, אמר לו אפשר שלא נעשה בהם מדת הדין על שבטלו את הדבור, 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

When Israel made the Calf, Moses was attempting to conciliate God, but He would not listen to him. God said to Moses, 'Is it possible that we not exact on them the strict letter of the law on account of their violating the [first] commandment?' Moses said, 'Lord of the universe, you spoke as follows at Sinai: "I am the Lord your God [addressing an individual]." "Your God" [addressing the collective] was not said. Were you not speaking to me [perhaps]? Were you speaking to them, perhaps? Did I myself violate the commandment, strange as it seems to me?'<sup>538</sup>

If God can administer the strict letter of justice for every infraction, it is Moses' job to discover inconsistencies in the strict wording of the laws, whereby he can argue to exonerate Israel for their transgression. But beyond this parsing of words, Moses is again alluding to the boundaries between the individual Israelite and the larger collective, as well as to whom the Israelites really

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<sup>537</sup> *Ex. Rabb.* 43.5

<sup>538</sup> *Ibid.* 43.7.

belong. If God believes the Israelites were Moses' people and not his own, then he must have been addressing Moses in the singular form. If, however, God was addressing the entire people, then these are still his people, and God still bears responsibility for them.

Moses employs yet another argument involving the near impossible situation God placed the Israelites in by settling them in Egypt among the so-called idolaters. The result of such an extended stay in Egypt was Israel's defectiveness, comparable to such things as a substandard slave or a poorly cultivated vineyard. Moses argues that the Israelites, owing to God's keeping them in Egypt so long, are immature and require more time to produce the righteousness which God expects.

דבר אחר, אשר הוצאת מארץ מצרים, מה ראה להזכיר כאן יציאת מצרים, אמר רבי אבין בשם רבי שמעון בן יהוצדק משל למה הדבר דומה למלך שהיה לו שדה בור, אמר לאריס לך פרנסה ועשה אותה כרם, הלך האריס ופרנס אותה שדה ונטעה כרם, הגדיל הכרם ועשה יין והחמיץ, כיון שראה המלך שהחמיץ היין, אמר לאריס לך וקץ אותה, מה אני מבקש מן הכרם עושה חמץ, אמר האריס אדוני המלך כמה יציאות הוצאת על הכרם עד שלא עמד, ועכשו אתה מבקש לקצו

Another interpretation: "Whom you brought out from the Land of Egypt." What did [Moses] observe here by mentioning the exodus from Egypt? Rabbi Abin said in the name of Rabbi Shimon ben Yehozaddok, "To what may this be compared? To a king that had an uncultivated field. He said to [his] tenant, 'Go, cultivate [the field] and turn it into a vineyard.' The tenant went and cultivated that field and planted a vineyard, he grew the vineyard and produced wine, but it [ended up] turning sour. When the king saw that the wine had turned sour, he said to the tenant, 'Go and cut it down. What would I want from this vineyard that produces sour [wine]?' The tenant responded, 'My Lord the King, how much expense did you shell out for the vineyard until it would not stand? And now you want me to destroy it?'"<sup>539</sup>

Here Moses places the responsibility on God for the defective state of his people. There is no disputing either the sin or the lack of piety among the congregation that has perpetrated it. The waywardness of the people, however, is attributed to God's placing them in a hostile

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<sup>539</sup> *Exod. Rabb.* 43.9.



environment, and now that the people have been ransomed, God needs to exercise patience and restraint.

Moses' line of reasoning, interestingly enough, clashes with earlier rabbinic statements, such as that of Resh Lakish concerning Noah, who was praised by some rabbis for his ability to live righteously in spite of being surrounded by the ungodly: וריש לקיש אמר בדורותיו כ"ש בדורות "And Resh Lakish said, [Noah was righteous] in his generation, all the more so [would he be righteous] in other generations [less wicked]."<sup>540</sup> Moses' argument, to the contrary, is that Israel remains young and inexperienced, having recently been ransomed from Egypt, and they have known nothing other than idolatry during their bondage.

אמר משה רבון העולם לא ממצרים הוצאתם, ממקום עובדי עבודת כוכבים, ועכשו נערים הם, שנאמר (הושע יא, א): כי נער ישראל ואהבהו, המתן מעט להם ולך עמהם ועושין לפניך מעשים טובים, הוי: אשר הוצאת ממצרים

Moses said, "Lord of the Universe, did you not take them out of Egypt, from a place of idolaters? And now they are mere youths, as the Scripture states, 'When Israel was [merely] a child, I loved him, [and out of Egypt I called my son]' (Hos. 11:1). Endure a little while on their behalf, and walk alongside of them, and they shall perform good deeds in your presence. Therefore [the Scripture], 'whom you have brought forth from Egypt.'"<sup>541</sup>

Contrary to God's apparent rush to judgment and destruction, Moses argues that the wilderness was actually the setting for the replanting in the desert (עקרון ממצרים והביאן למדבר) of the Israelites, so that they could exist on healthier soil and bear better fruit. Moses poses the analogy of a vineyard which acquires sustenance through dead trees, comparable to Israel's survival on the basis of the righteousness of the patriarchs.

הוי כשם שהגפן הזאת חיה ונשענת על עצים מתים, כך ישראל חיים ונשענים על האבות כשהם מתים, הוי: זכר לאברהם ליצחק ולישראל

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<sup>540</sup> *b. Sanhedrin*, 108a.

<sup>541</sup> *Exod. Rabb.*, 43.7

Therefore, just as this vineyard lives but is supported by dead trees, so also does Israel live by being supported by the patriarchs who have passed away. Therefore [the Scripture], “Remember Abraham, Isaac, and Jacob [your servants].”<sup>542</sup>

The “merit of the deceased” in fact expedites God’s mercy more powerfully than any other argument.

וכן משה בשעה שעשו ישראל אותו מעשה עמד ולמד עליהם זכות ארבעים יום וארבעים לילה, ולא נענה, אלא כיון שהזכיר את המתים מיד נענה, שנאמר: זכר לאברהם ליצחק ולישראל, מה כתיב (שמות לב, יד): וינחם ה' על הרעה

And in the same way Moses, when Israel performed that act [of building and worshipping the Golden Calf], stood and pleaded on their behalf regarding their innocence for forty days and forty nights; but he was not answered. But as soon as he mentioned [the merit of] the deceased, immediately he was answered, as the Scripture states, “Remember Abraham, Isaac, and Jacob [your servants].” And what is written [in the following verse]? “The Lord changed his mind concerning the evil [he had stated he would do to his people]” (Ex. 32:14).<sup>543</sup>

As recalled from the *Pesiqta de Rab Kahana*, the merit of the patriarchs, among its several functions, can act as advocate in God’s courtroom when all else fails. Moses cannot persuade the God of Israel for the entire forty days and nights of his communion on Mount Sinai; yet the mere mention of the patriarchs elicits immediate reversal of the condemnatory verdict. In this literary context, Kensky understands the merit of the patriarchs as follows:

They are described here as being analogous to an advocate in the human courtroom. This imagines the courtroom function of זכות אבות almost as if the patriarchs were there physically defending the accused. They are here likened to the way an advocate operates inside a royal courtroom. But not just any advocate—a surefire winner, as citing the merits of the patriarchs guarantees a positive verdict.<sup>544</sup>

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<sup>542</sup> Ibid., 44.1

<sup>543</sup> Ibid.

<sup>544</sup> Kensky, *Trying Man, Trying God*, 302.

The rabbinic interpreters, however, are not content to merely acknowledge such merit without expanding the theological boundaries of what constitutes patriarchal merit and demonstrates its legitimacy.

The rabbis specify different modes of execution that have been nullified by the patriarchs. They argue that death by burning was covered by Abraham when he entered the furnace and confronted Nimrod. Isaac atoned for death by the sword when offering himself up at his own sacrifice. Death by exile has been accomplished by Jacob during his flight to and prolonged sojourn in Haran. And should God not deliver Israel on the patriarchs' behalf, when they rise from the dead during God's judgment, how will he explain to them that their descendants have been eradicated? This represents the endgame of Moses' pleas, again an appeal to the world to come, and the guarantee that the patriarchs' descendants inherit it, as the justification for securing Israel's place.

מה יש לך לומר לאבות לעתיד לבוא כשיעמדו אבותיהם ויבקשו ממך הבטחה שהבטחתם, מה יש לך להשיבם, לא כך הבטחתם שאתה מרבה בניהם ככוכבי השמים, ועכשו תבקש לכלותן, הוי: זכר לאברהם

‘How will you respond to the patriarchs in the world to come, when the people’s ancestors shall stand and request from you the assurance which you promised. How will you answer them? Did you not promise them that you would increase their descendants as the stars of the sky? And now you seek to destroy them? Therefore [the scripture], “Remember Abraham.”<sup>545</sup>

The merit of the patriarchs, therefore, not only acts as an immediate recourse of defense when God's mind cannot be swayed otherwise, but it also remains a theological marker for the world to come, in as much that the promises to the patriarchs have eschatological significance for the rabbis. The promised descendants continue to be Israel, and any abrogation of the covenant with Israel will constitute a breach of the earlier covenants when the patriarchs are resurrected from the dead and find their promised descendants are missing.

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<sup>545</sup> *Exod. Rabb.* 44.1.

## 8.6 Returning to Israel: Moses' Hope for Acquittal in Deuteronomy Rabbah

In the early medieval aggadic midrash, Deuteronomy Rabbah, the text devotes considerable attention to Moses' hope for acquittal prior to the Israelites crossing of the Jordan into the land of Israel.<sup>546</sup> The rabbinic exegetes understand Moses as deeply regretful for having squandered his opportunity to see Israel before his death; thus the midrash expands Moses' sermon on Mount Horeb, largely by drawing associations between Moses' advocacy for the apostate Israelites who worshipped the golden calf, on the one hand, and the proposed advocacy that Moses would require of his people in order to obtain permission to enter Israel. Moses claims his merit as an advocate as justification for the seeking of his own advocate capable of reversing the death sentence against him, which must take place prior to Israelite entry into the land. The prophet initially assumes the proposed advocate to be the people of Israel, but when this does not materialize, Moses is left to plead in his own defense, an endeavor nearly attaining success until the irreversible and absolute judgment of God intervenes.

In the current discussion, the question is raised as to why the rabbis devoted undue attention to Moses' wish for forgiveness, and why they conceived of God as being so unwilling, despite so many other acts of clemency, to pardon Moses in the particular instance of allowing him entry into the Jewish holy land. A further inquiry examines whether the rabbis themselves are questioning the integrity of God's judgment, or at least leaving God's just judgment of Moses as an open question. Alternatively, do the rabbis concede that Moses, despite all benign intentions, was justifiably banned from the land of Israel. The passages used for responding to these

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<sup>546</sup> On text-historical issues concerning Midrash Rabbah Deuteronomy, see Marc Bergman, *The Tanhuma-Yelammedenu Literature: Studies in the Evolution of the Versions* (Piscataway, NJ: Gorgias Press, 2003); Dov Weiss, "Divine Concessions in the 'Tanhuma' Midrashim." *HTR* 108, no. 1 (2015): 70–97; Shalem Yahalom, "Tanhuma in Masquerade: Discovering the Tanhuma in the Latter Midrash Rabbah Texts," in *Studies in the Tanhuma-Yelammedenu Literature*, ed. Ronit Nikolsky and Arnon Atzmon (Leiden: Brill, 2022), 222–247.

questions are those focused on the act of advocating for either Israel or Moses and how the two phenomena relate to one another.

These sections of Deuteronomy Rabbah express the relationship between Moses and Israel in terms of the questionable divine justice of forgiving the less righteous party as opposed to withholding clemency for the preeminent prophet. It will be argued that the rabbis ultimately defend God's verdicts by prioritizing advocacy on behalf of the community of Israel rather than for the sake of the individual, no matter how righteous the latter might appear. The individual's salvation in fact derives from the well-being and security of the collective. Therefore, individual sins committed by Moses are much harder to forgive than collective transgressions perpetrated by the entirety of Israel, due to the reality that the condemnation of an entire community would entail universal disaster. In spite of this rabbinic prioritizing of corporate Israel over Moses, there are hints that dissatisfaction lingers over Moses' outcome, and that the justice of banishing him from Israel was not categorically accepted.

This section of the midrash first addresses advocacy in its consideration of Deuteronomy 9:1, where Moses, from the perspective of the rabbis, has already issued admonitions concerning the earlier infraction of worshipping the golden calf. The verse alerts the Israelites to brace themselves for the crossing of the Jordan River, whereupon they will come to drive out nations more powerful than Israel.

שִׁמְעוּ יִשְׂרָאֵל אֲתָהּ עֹבֵר הַיּוֹם אֶת־הַיַּרְדֵּן לְבָא לְרִשְׁתָּ גּוֹיִם גְּדֹלִים וְעֲצָמִים מִמֶּנּוּ עָרִים גְּדֹלֹת וּבְצֻרֹת בַּשָּׁמַיִם

Hear, O' Israel. On this day you are about to cross the Jordan, to come and dispossess nations greater and more powerful than you; large cities fortified to the heavens.<sup>547</sup>

In Deuteronomy Rabbah 3.10, the rabbis of old (רבנין) are reported to have viewed the command to hear as one signaling the one faculty Israel retained after the golden calf incident, since the

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<sup>547</sup> Deut. 9:1.

“We will do and we will listen”<sup>548</sup> assurance given to God in Exodus 24 could not salvage the guarantee of acting in accordance with God’s law. The Israelites could, however, preserve their pledge to listen by now by heeding the prophetic warning prior to crossing the Jordan and conquering the land of Canaan.

In Deuteronomy Rabbah 3.11, the warning to Israel becomes more specific, as Moses explains that the habitual pattern of sinning and being forgiven through Moses’ advocacy, which took place in the wilderness, can no longer endure:

לא תהיו סבורין כשם שהייתם במדבר והייתם חוטאים והייתי מבקש עליכם רחמים

Do not imagine [that matters will remain] just as [they were] when you were in the desert and you would sin, and I would always plead for mercy on your behalf.

Moses, in a manner closely resembling the occasional bitterness he demonstrates against his people in scripture, begins lording his advocacy over the people, reminding them of his project of bailing them out when they faced imminent destruction as their divine punishment.

אמר להן כשעשיתם אותו המעשה ובקש הקדוש ברוך הוא לכלות אתכם לא נתפללתי עליכם סגוריא מנין שנאמר (דברים ט, כו) ואתפלל את ה' ואמר ה' אלהים אל תשחת עמך וגו'

[Moses] said to them, “When you committed that very deed, and the Holy One, blessed be He, sought to destroy you, did I not intercede as an advocate on your behalf?” From where [in the Scripture do we know this]? It is written, “I interceded with the Lord, and I said, ‘Lord, do not destroy your people, etc.’”<sup>549</sup>

The midrash then recounts two of Moses’ defense strategies for exonerating the Israelites, both of which are attested in Exodus Rabbah and have already been considered above. These include the struggle against the five angels of destruction” (חמשה מלאכי חבלה) and parsing the pronouns contained in the first two commandments, making the claim that they are directed at a singular

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<sup>548</sup> Ex. 24:7

<sup>549</sup> Deut. Rabb., 3.11.

“you,” thus pardoning the Israelite congregation as a whole. Then another claim, this one much more direct, emerges:

דבר אחר, ה' אלהים אל תשחת עמך ונחלתך, אמר רבי חיא בר אבא משפסק סניגור היה רוח הקדש  
מלמד זכות עליהן

Another interpretation [of] “Lord God, do not destroy your people and inheritance”:  
Rabbi Hiya bar Abba said, “From the time that the Advocate stopped [defending Israel],  
the Holy Spirit began pleading for acquittal on their behalf.”<sup>550</sup>

The implication of this interpretation appears to be that the Holy Spirit, and not Moses, has requested from God that he not destroy the people of Israel. Put another way, Moses’ advocacy is viewed in this midrash as a temporary project, after which the Holy Spirit assumes responsibility for defending Israel in spite of her ongoing waywardness.

According to this passage, what forms the basis for Moses’ reiteration of his defense of Israel during his sermon in the wilderness, given his activity was not intended to continue throughout the course of his prophetic career? Deuteronomy Rabbah understands Moses as readdressing his actions in anticipation that the Israelites would in due course reciprocate by advocating on his behalf.

לפיכך כשבאו לעבר את הירדן הזכיר להן כל מה שבקש עליהן סנגוריא שהיה סבור שהם מבקשים  
עליו רחמים שיכנס עמהם

Therefore, when they were about to cross the Jordan, Moses reminded them of all that he had pleaded on their behalf as an advocate, as he was expecting that they would plead for mercy on his own behalf, in order that he might enter [the Land of Israel] with them.<sup>551</sup>

The rabbis further support this claim by noting that the use of אָתָּה in “you are about to cross the Jordan” is emphatic and thus poses a clear distinction between those permitted to enter the land and the one who is forbidden, that being Moses. This would presumably represent the obvious

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<sup>550</sup> Ibid.

<sup>551</sup> Ibid.

insinuation that the people should begin advocating for him. A parable employed to illustrate this predicament deals with a matron whom a dissatisfied king has decided to replace. The first wife, in a desperate effort to maintain her standing, hints to her sons that they should appeal for her. When they do not understand her subtle request, she restates her intention as one of cautioning her sons how to conduct themselves before their father. According to the explanation of the parable, Joshua represents the matron, and when the Israelites do not comprehend Moses' request for advocacy, he simply cautions them about how to act before God moving forward, basically conceding their lack of intuitiveness.

Later in Deuteronomy Rabbah 3, Moses begins employing alternative arguments through which to appease the God of Israel, at times working from the same playbook found in Exodus Rabbah, and other times presenting new lines of entreaty. The scripture under scrutiny is Exodus 32:11-12.

11 יתל מלשה את־פני יהנה אלהיו ויאמר למה יהנה יחרה אפך בעמך אשר הוצאת מארץ מצרים בכם גדול  
 ובגד חזקה:  
 12 למה יאמרו מצרים לאמר ברעה הוציאם להרג אתם בקהרים ולכלתם מעל פני האדמה שוב מחיון אפך  
 והנתם על־הרעה לעמך

So Moses pleaded before the presence of the Lord his God. He said, “Why should your anger rage, O’ Lord, against your people, whom you have brought out from the Land of Egypt with great power and a powerful hand? Why should Egypt say, ‘With evil design he brought them out, in order to kill them in the hill country, and to vanquish them from the face of the earth.’ Relent from your anger and repent concerning the evil in store for your people.”

Among the interpretations of these verses depicting Moses as biblical advocate, there is one where Moses explains to God that the divine love for Israel desires one capable of pleading on her behalf.

דבר אחר, אמר לפניו רבונו של עולם יודע אני שאתה אוהב את בניך ואין אתה מבקש אלא מי שילמד עליהן  
 סנגוריא



Another interpretation. [Moses] said before Him, “Lord of the Universe, I know that you love your children and seek nothing other than someone who would plead in their defense.”<sup>552</sup>

Some of the additional arguments, beyond what Exodus Rabbah presents, are Moses claiming that heaven and earth should be uprooted before any lasting harm should come to Israel.

אמר משה רבון העולמים ולכלותם אתה מבקש, עקר העליונים והתחתונים ואחר כך עקר אותם

Moses said, “Master of the Worlds, do you really seek to annihilate them? Uproot then the upper and lower spheres, and afterwards, then uproot [Israel].”

The text also includes an eschatological element indicating the ultimate result of Moses’ many performances of advocacy on the part of wayward Israel.

אמר לו הקדוש ברוך הוא משה חייד כשם שנתת את נפשך עליהן בעולם הזה כך לעתיד לבוא כשאביא להם את אליהו הנביא שניכם באין כאחת

The Holy One, blessed be He, said to him, “Moses, by your life, in the same manner that you gave your life on their behalf in This World, so in the future [World to Come], when I bring back to them Elijah the Prophet, the two of you shall arrive at the same time.”

Moses’ reward, therefore, for acting as Israel’s advocate is direct participation in the eschatological restoration of his people.

The next recitation of Moses’ argument to abrogate the prohibition against his entering the Land of Israel occurs in 7.10, where the rabbis consider Deuteronomy 29:3.

לֹא־נָתַן יְהוָה לְכֶם לֵב לְדַעַת וְעֵינַיִם לְרֹאֹת וְאָזְנַיִם לִשְׁמָע עַד הַיּוֹם הַזֶּה

But the Lord had not given you a mind to know, nor eyes to see, nor ears to hear until this very day.<sup>553</sup>

According to one interpretation, these words of Moses referred to two separate decrees against which Moses had advocated for annulment.

אמר רבי שמואל בר נחמני בשביל עצמו אמר להם משה את הדבר הזה, כיצד, שני דברים גזר הקדוש ברוך הוא, אחד על ישראל, ואחד על משה

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<sup>552</sup> Ibid., 3:15.

<sup>553</sup> Ibid., 7.10

Rabbi Samuel bar Nachmani said, “Moses made this statement [to Israel] in relation to himself. How [do we know]? The Holy One, blessed be He, issued two decrees, one against Israel, and the other against Moses.”<sup>554</sup>

Rabbi Samuel then explains how the first decree pertained to punishment for the golden calf episode, a ruling which Moses was able to successfully appeal on account of his unwavering advocacy for Israel. The other decree, issued against Moses, declared that he should die before setting foot in the holy land. Moses had pleaded against both; however, when the time arrived to contest his banishment from Israel, he encountered an insurmountable obstacle.

כיון שבא לכנס לארץ ישראל, התחיל אומר (דברים ג, כה): אעברה נא ואראה את הארץ הטובה. אמר לו הקדוש ברוך הוא, משה, כבר בטלת את שלי וקימתי את שלך, אני אמרתי ואשמידם, ואת אמרת סלח נא, ונתקים שלך, ואף עכשו מבקש אני לקים את שלי ולבטל את שלך, אמר לו הקדוש ברוך הוא, משה, אין אתה יודע מה לעשות, אתה רוצה לאחוז את החבל בשני ראשין. אמר לו, אם אעברה נא אתה מבקש לקים, בטל סלח נא, ואם סלח נא אתה מבקש לקים, בטל אעברה נא. אמר רבי יהושע בן לוי כיון ששמע משה רבינו כך, אמר לפניו רבונו של עולם ימות משה ומאה כיוצא בו ולא תנוק צפרנו של אחד מהם

When he came to enter the Land of Israel, [Moses] began saying, “Allow me please to cross and see the good land.” The Holy One, blessed be He, said to him, “Moses, you have already abolished my [decree], and I have fulfilled your [requests]. I said, ‘Let me destroy them,’ and you said, ‘Please forgive [them],’ and your [request] has been granted. Likewise, I now seek to fulfill my [ruling] and nullify your [request].” The Holy One, blessed be He, [further] said to him, “Moses, you have no idea what to [is the right thing] to do. You want to clutch on to the rope from both ends.” [The Holy One] said to him, “If you request that [your petition], ‘Allow me to cross,’ be fulfilled, [your petition], ‘please forgive [them],’ is nullified. And if you request that [your petition], ‘Please forgive,’ be fulfilled, [your petition], ‘Allow me to cross,’ is nullified. Rabbi Joshua ben Levi said, “When Moses our teacher heard this, he said before him, ‘Master of the Universe, Moses and one hundred like him ought to die rather than the fingernail of one of [the Israelites] be harmed.”<sup>555</sup>

The immediate question is why, in the view of the rabbinic interpreters, the God of Israel cannot abrogate two divine decrees. It would appear that a limit has been placed on the extent of God’s mercy, and in the case of Moses and the Israelites, one or the other must pay the penalty. Moses, therefore, concedes to God’s response, but the rabbis are not finished explaining the

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<sup>554</sup> Ibid.

<sup>555</sup> Ibid.

extent of his dissatisfaction, which he redirects against the Israelites upon realizing that they, through either lack of awareness or resolve, have no intention of advocating for his cause.

אמר רבי שמואל בר יצחק, כיון שנטה משה למות ולא בקשו עליו רחמים שיכנס לארץ, כנס אותן והתחיל מוכיחן, אמר להם אחד פדה ששים רבוא בעגל, וששים רבוא לא היו יכולין לפדות אדם אחד, הרי ולא נתן ה' לכם לב לדעת, אמר להם אי אתם זכורים כל מה שהנהגתי אתכם במדבר, שנאמר (דברים כט, ד): ואולך אתכם ארבעים שנה במדבר וגו'

Rabbi Samuel bar Isaac said, “When Moses was about to die, but [the Israelites] had not petitioned for mercy on his behalf that he might enter the Land [of Israel], he gathered them together and began to rebuke them. He said to them, ‘One person redeemed sixty myriads with respect to the calf, but sixty myriads were unable to redeem one man.’ This [is the meaning of the Scripture], ‘The Lord has not given you a heart to know.’ [Moses] then said to them, “If [only] you were to remember all [the ways] I led you in the desert.’ As the Scripture states, ‘I led you for forty years in the desert, etc.’” (Deut. 29:4).<sup>556</sup>

Moses is greatly agitated, therefore, by the lack of supporting speech he believes is due him from the Israelites. As represented by the rabbis, the rabbinic Moses intuitively feels that the power of six-hundred thousand advocates might succeed in reversing his sentence. Further evidence of the discrepancy between Moses’ advocacy for the multitudes and their lack of reciprocation comes in 11:10. Moses recounts, upon the divine court’s decree that he is barred from entering Israel,<sup>557</sup> the following:

ישראל חטאו חטאות גדולות כמה פעמים, וכיון שבקשתי עליהם רחמים מיד קבל ממני

“Israel committed severe transgressions numerous times, yet when I petitioned for mercy on their behalf, you immediately accepted my appeal.”<sup>558</sup>

The rabbinic exegetes confirm Moses’ claim, referencing both Exodus 32:14 and Numbers 14:20 as evidence that, were it not for Moses, the Israelites would have been annihilated for their trespasses in the desert.

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<sup>556</sup> DR 7.10. I’m interpreting זכורים אי אתם זכורים in this passage as an optative of unattainable wish.

<sup>557</sup> “But the hard decree was yet to be sealed until the Divine Court was revealed to [Moses]. [God] said to him, “It is a decree from me that you shall not cross [the Jordan].”

<sup>558</sup> Ibid. 11.10

Moses then assumes the role of self-advocate, arguing that if he was able to instantly reverse divine condemnation against Israel, were he to advocate for himself, someone who has not continuously committed grievous sins, his appeals should be even more readily accepted. His attitude, as portrayed by the midrash, approaches that fine line between bold prayer and hubris, as evidenced by the prophet's claim that he was without sin in comparison with the Israelites.

אני שלא חטאתי מנעורי לא כל שכן כשאתפלל על עצמי שיקבל ממני, וכיון שראה הקדוש ברוך הוא שקל הדבר בעיניו של משה ואינו עומד בתפלה, מיד קפץ עליו ונשבע בשמו הגדול שלא יכנס לארץ ישראל

“As for myself, who has not committed sin from the time of my youth, how much more so that, when I pray on my own behalf, He should receive [my petition] favorably.” But when the Holy One, blessed be He, saw that the matter had become trivialized in Moses' view, and that he was not standing in prayer, immediately He sprang upon him and swore by his great name that he would not enter the Land of Israel.<sup>559</sup>

The text suggests that Moses has gone one step too far in advocating for his own cause, that limits exist to boldly confronting God's judgments, and that piety and prayerful attitude must remain in the foreground of any individual petition to the deity.

Then the prophet, in a fashion similar to that of Honi the Rainmaker, begins fasting and draws a circle around himself, refusing to budge until God's decree has been rescinded. His prayers and supplications in fact make the heavens and the earth tremble. God, steadfast in his resolve to preserve the decree, engages with the heavens and the earth, which suggest that perhaps the time has arrived for their complete renewal.

וכיון שראה משה שנחתם עליו גזר דין, גזר עליו תענית ועג עוגה קטנה ועמד בתוכה, ואמר, איני זו מכאן עד שתבטל אותה גזרה. באותה שעה מה עשה משה, לבש שק ונתעטף שק ונתפלש באפר ועמד בתפלה ובתחנונים לפני הקדוש ברוך הוא, עד שנזדעזעו שמים וארץ וסדרי בראשית, ואמרו שמא הגיע צביונו של הקדוש ברוך הוא לחדש את עולמו, יצתה בת קול ואמרה, עדין לא הגיע צביונו של הקדוש ברוך הוא לחדש את עולמו, אלא (איוב יב, י): אשר בידו נפש כל חי ורוח כל בשר איש, ואין איש אלא משה, שנאמר (במדבר יב, ג): והאיש משה ענו מאד מכל האדם אשר על פני האדמה

And when Moses saw that the decree of judgment on him had been sealed, he decreed a fast for himself, drew a small circle [on the ground] stood in its midst, and said, “I shall not budge from here until you abolish that decree.” At that moment, what did Moses do?

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<sup>559</sup> Ibid.

He wore sackcloth and wrapped himself in sackcloth, he languished in the dust and stood in prayer and supplications for grace before the Holy One, blessed be He, until heaven and earth and the orders of creation trembled and said, “Perhaps [the time] has arrived for the will of Holy One, blessed be He, to renew his universe.” The Divine Voice proceeded forth and declared, “[The time] has not yet arrived for the will of the Holy One, blessed be He, to renew his universe. Rather, under his authority is the life of every living thing and the spirit of every mortal. And [the word], ‘אִשׁ’ [refers to] no one other than Moses, as the Scripture states, ‘As for the man Moses, he was exceedingly humble, more than all other people upon the face of this earth.’”<sup>560</sup>

Moses’ self-defense operates on two fronts. First, he has encircled himself with a legal performative, which like the case of Honi the circle-drawer, represents a legally defined space through which an appeal can be made directly to God concerning a legal reversal. The setting, additionally, is eschatological, as the renewing of heaven and earth referred to after the prophet’s supplications falls in line with Isaiah’s prophecies anticipating the ultimate redemption of Israel.<sup>561</sup> Moses’ petitions are so strong that even the animated heaven and earth themselves propose that perhaps that the creation be renewed and consequently Israel be restored. God, however, addresses each divine court and admonishes them to be unmoved by Moses’ pleas, since the decree against Moses has already been sealed.

God is determined to not concede Moses’ request, proclaiming a new admonition that Moses not be exonerated, and all the heavenly courts are cautioned to follow this advice.

מה עשה הקדוש ברוך הוא באותה שעה, הכריז בכל שער ושער של רקיע ורקיע בכל בית דין ובין דין שלא יקבלו תפלתו של משה ולא יעלו אותה לפניו, מפני שנחתם עליו גזר דין, אותו מלאך שממנה על הכרזה אכזריאל שמו

What did the Holy One, blessed be He, do at that time? He declared at every single fate of every [sphere] of heaven at every single court that they were not to accept the prayer-petition of Moses and not raise [the issue] before Him, since the judicial decree against

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<sup>560</sup> Ibid.

<sup>561</sup> Is. 51:6a: / שִׂאוּ לְשָׁמַיִם עֵינֵיכֶם וְהִבִּיטוּ אֶל־הָאָרֶץ מִמַּחַת כִּי־שָׁמַיִם כְּעָשָׁן נִמְלָחוּ וְהָאָרֶץ כַּכֶּגֶד תִּבְלֶה וְיִשְׁבְּתִיהָ כַּמָּוֶתוֹן / “Raise your eyes toward the heavens, and observe the earth below, for the heavens shall vanish like smoke, and the earth like a garment shall grow old, and its inhabitants, in like fashion, shall die.” See further, 65:17, 66:22.

[Moses] had [already] been sealed, the name of that Angel appointed over [this legal] proclamation is *Achreziel*.<sup>562</sup>

The notion that several divine courts would require a reminder from God that a prophetic petition must not be heeded, along with a justification of the request, begs the question whether the rabbinic interpreters are merely entertaining their audience for narrative purposes here, or else they indeed believe that the supernal regions contain several courts of law that are amenable to prophetic petitions.

But the predicament is hardly resolved, as God must continue performing damage control through an address toward the ministering angels, for the potency of Moses' prayers prove overwhelming.

באותה שעה קרא הקדוש ברוך הוא בבהלה ואמר להם למלאכי השרת רדו בבהלה ונעלו כל שערי רקיע ורקיע, שגבר קול התפלה כלפי מעלה ובקשו לעלות הרקיע מפני קול תפלתו של משה, שהיתה תפלתו דומה לחרב שהוא קורע וחותך ואינו מעכב, שהיתה תפלתו מעין שם המפרש שלמד מן זגזגאל רב סופר של בני מרום

At that moment, the Holy One, blessed be He, called out in dismay and said to the Ministering Angels, "Descend immediately and remove the entrances to every heavenly place, for the sound of the prayer [of Moses] has grown strong toward the upper regions. So the angels sought to ascend the heavens, away from the sound of the prayer of Moses, for his prayer was like a sword that tears and cuts and does not cease. His prayer was sourced from the divine name, which he learned from Zagzagel his teacher, the scribe of the living things on high."<sup>563</sup>

Yet despite the power of the prayer, the divine beings in the celestial realms are impressed by God's unwillingness to accept the supplications, a confirmation that God shows no partiality toward even the greatest of all prophets. Moses, however, refuses to abandon his self-defense, appealing to the fact that he labored incessantly toward the end that Israel would develop a secure, faithful relationship with her God. Moses believes, furthermore, that just as he was forced to endure the troubling times of Israel when they lapsed into non-belief, he should be entitled to

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<sup>562</sup> *Deut. Rabb.*, 11.10.

<sup>563</sup> *Ibid.*

share in their favorable moments, the most favorable to date being the long-awaited crossing into the land of Canaan. Moses, in the manner of a courtroom defendant, challenges the divine judge by arguing that, should the prophet be refused entry into Israel, the Torah has been rendered illegitimate:

ומנין שהתפלל משה באותו הפרק חמש מאות וחמשה עשר פעמים שנאמר (דברים ג, כג) ואתחנן אל ה' בעת ואתחנן בגימטריא הכי הוי. באותה שעה אמר משה לפני הקדוש ברוך הוא רבונו של עולם גלוי ההוא לאמר וידוע לפניך יגיעי וצערי שנצטערתני על ישראל עד שיהיו מאמינים לשמך, כמה צער נצטערתני עליהם במצות עד שקבעתי להן תורה ומצות, אמרתי כשראייתי בצרתן כך אראה בטובתן, ועכשו שהגיע טובתן של ישראל אתה אומר לי לא תעבר את הירדן הזה הרי אתה עושה תורתך פלסתר

And from where [do we learn] that Moses prayed at that very stage five-hundred and fifteen times? As the Scripture states, “I pleaded to God for favor at that time, [saying] . . .” (Deut. 3:23). ואתחנן, according to its Gematria value, thus [amounts to 515]. At that moment, Moses stated before the Holy One, blessed be He, “Lord of the Universe, it is revealed and known in your presence [the degree of] my labor and grief which I suffered on behalf of Israel until they would believe in your name. How much grief I suffered on their behalf with respect to the commandments, until I established for them the Torah and commandments. I said that, just as I had observed their troubles, so I would see their success. And now that the good outcome of Israel has arrived, you say to me, ‘You shall not cross over this Jordan.’ Behold, you are about to render your Torah into a fraud.”<sup>564</sup>

At stake is the very credibility of the written Torah, which Moses will now cite as evidence by claiming that God is violating his own warning that the Israelites are forbidden by law from exploiting the indigent laborer, who merits the wages of his work and must be paid prior to the sunset. Moses will compare his forty years of toil to that very laborer, and that his wage should have been entry into the land of Israel.

דכתיב (דברים כד, טו) ביומו תתן שכרו ולא תבוא עליו השמש כי עני הוא ואליו הוא נושא את נפשו ולא יקרא עליך אל ה' והיה בך חטא זו היא שלום עבודה של ארבעים שנה שעמלתי עד שיהיו עם קדוש ונאמן שנאמר (הושע יב, א) ויהודה עד רד עם אל ועם קדושים נאמן

“As it is written, ‘On his due day you shall pay him his wages. The sun shall not set upon him, for he is poor and his life depends upon it. Let him not cry out against you to the Lord, so that it becomes a sin for you.’ So this is the payment for forty years of work,

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<sup>564</sup> Ibid.

where I labored until they might become a holy and faithful people? As the scripture states, ‘And Judah still walks with God, even with the Holy Ones.’<sup>565</sup>

Moses is thus persistent regarding his unfair treatment at the hands of God, virtually abandoning reverent prayer and elevating himself above the Israelites, claiming that he is both without sin and is due his just wage after forty years of toil for Israel’s benefit.

With the integrity of God’s Torah at stake based on the prophet’s claim that his treatment violates divine law, two angels engage in dialogue for the purpose of resolving the dispute. Samael represents the accusing angel, who is distinguished as the most evil of all angelic accusers, and he zealously awaits Moses’ death in order that he may snatch his soul (אטול נשמתו). The good angel is represented by Michael, who rebukes the accuser by claiming that God’s people will be vindicated by Joshua’s succession of Moses, while the destruction of both temples will be overcome by the dawn of the messianic age.

A final problem arises when Moses resigns to his death sentence prior to entering Israel, for God’s most preeminent angels hesitate to redeem the prophet’s soul. Since Gabriel and Michael cannot take on the task, God relegates the job to the accuser Samael, but Moses twice chases away the angel of death. Finally, God himself calls forth Moses’ soul from his body, after which he assures him a reserved place directly under the divine throne, alongside the cherubim and seraphim. It is perhaps telling, at this final section of the midrash, that God’s last words lament the impossibility of finding an advocate as great as Moses.

והיה הקדוש ברוך הוא בוכה (תהלים צד, טז): מי יקום לי עם מרעים מי יתיצב לי עם פעלי און

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<sup>565</sup> Ibid. The biblical translation of Hosea 12:1 is probably being used by the rabbis in a positive sense to illustrate Judah’s alliance with God, rather than her rebellion. Most modern translations render the verb ריגד, however, as suggesting unruliness, and thus the opposite of what the midrash is likely arguing.



The Holy One, blessed be He, was weeping [and said], “Who shall rise on my behalf alongside evil doers? Who will take their stand for me alongside the workers of iniquity?”<sup>566</sup>

While the verse could be read as asking who will represent God against the wicked, it more likely signifies the impossibility of replacing the one who stands before God and intercedes for those who have committed evil, namely Moses? The last section of the midrash has reminded the reader of Moses’ vital intercessory connection to his people.<sup>567</sup>

## 8.7 Conclusion

The diversity of material drawn from the talmudic literature and Midrash Rabbah supports the argument that Moses’ defense of Israel occurs within advocate-accuser exchanges, more specifically those seeking to demonstrate that Israel must secure her election between the time of the golden calf incident and the arrival of the world to come. Moses achieves these ends through his exemplary status as a rabbinic sage, advancing arguments with sophisticated skill, and normally ethical insights. Moses on one level functions as a propitiatory agent, without whom Israel would experience immediate divine annihilation, owing that the people’s trespasses are too grievous to forgive. On the other hand, Moses’ appeals to God attempt to vindicate Israel in both this world and the world to come. Moses acts as the safeguard of Israelite merit in the long period between his prophetic career and the eschaton, similar to the heavenly Paraclete depicted in the Johannine literature, who preserves the community of the redeemed until their messianic lord and savior returns to pronounce final judgment. Finally, Moses’ arguments vary in their

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<sup>566</sup> Ibid.

<sup>567</sup> As mentioned above, Josephus showed the same concern when discussing the replacement of Moses by Joshua, lamenting that there would be no capable intercessor left for a people who were destined to sin many times over.

persuasiveness and demonstrate that it is the prolonged defense itself, rather than the substance of the arguments, which allows for God's concessions and the ongoing election of Israel. These observations reflect the dual identity of advocates in the rabbinic corpus as both propitiatory agents and skilled rhetoricians; although it is their intercessory office that ranks higher as an agent for securing Israel's deliverance, given that the merits of the argument matter less than the act of interceding itself. When an argument fails, the holy nature of "standing in the breach" becomes the ultimate form of persuasion.

For all of Moses' positive attributes, he still remains a flawed mortal in the midrashic texts. The prioritization of the security of corporate Israel largely determines the divine favor or displeasure toward Moses' intercessory appeals. This is demonstrated in Deuteronomy Rabbah by God's refusal to honor Moses' persistent appeals on his own behalf for entry into Israel. Despite having immediately acquiesced to Moses' earlier pleas for the preservation of Israel in the desert, God cannot condone the same forgiveness of his foremost prophet. Moses exhibits extraordinary powers in these passages, showing the ability to move the heavens and earth, to prevent Michael and Gabriel from escorting his soul away from the living, and to scare off the angel of death when he summons Moses to the other world. God reserves a place for Moses at the divine throne and even assures him that, in the world to come, Moses will return alongside Elijah to ransom the people of Israel. All these powers and rewards, however, function for the preservation of Israel and her ultimate renewal. The power of advocacy, within the rabbinic mindset, most often manifests in those animate and inanimate figures that stand between God's wrath and wayward Israel's vulnerability. It is thought-provoking, in this regard, that many centuries following the biblical witness to Israel's tenuous relationship with their God, the notion endured that Israel's ultimate welfare still depended on not only a long-departed prophet's

actions in the past, but also on his death and post-mortem glorification that would act as a seal for the ultimate restoration of Israel.

## Chapter 9: Conclusion

The present study was initially prompted by an attempt to better understand the legal, rhetorical, and liturgical elements belonging to the phenomenon of advocacy in late ancient Jewish literature. This led to a specific focus on what theological principles might be at work in Jewish advocacy occurrences, specifically in late Second Temple and rabbinic texts, since these are religious texts that each make their own claims regarding the nature of God and humanity's responsibilities toward that God. Underlying the texts examined in the current study is the belief that individuals and communities who adhere to a core body of divinely mandated teachings will secure salvation, both in the present life and ultimately in the eschaton. It makes sense, therefore, that the legal, rhetorical, and liturgical orientations toward ancient Jewish advocacy present in much of the secondary literature could be reassessed in light of a theological perspective largely grounded in soteriology. From the vantagepoint of soteriology, this study argues that late ancient Jewish advocacy narratives manifest the intersection of the legal and theological components of salvation. Accusation, condemnation, supporting speech, and acquittal regularly occur in the imaginary divine court—as well as in texts attempting to remain in worldly reality. The divine court persists in late ancient Judaism as a legal-soteriological means of determining the relative merits of those confronting judgment, where the prospects of attaining salvation generally stand in the foreground.

The apocalyptic literature of the Second Temple period time and again confirms the soteriological orientation intrinsic to many ancient Jewish advocacy occurrences. Quite often a human figure merits access to much greater revelations than the ordinary mortal, and during these heightened experiences of the supernatural he feels compelled on occasion to speak on behalf of the people of Israel, and less frequently on behalf of all humanity itself. In these

instances, a divinely favored individual pleads that Israel be accounted righteous in lieu of the imminent judgment and destruction of humanity at large. The presence of accusers, post-mortem souls awaiting judgment, and angelic record-keepers amplifies the drama surrounding the advocate's appeals, as the window to the world to come is fraught with chaos that no person can overcome absent of divine aid. Herein emerges another common theme in ancient Jewish advocacy literature: that humans by and large are incapable of conquering the supernatural forces marshalled against them, and in many cases, people do not deserve salvation on the basis of their archived record of past deeds. These factors endow the advocate's mission with an even stronger sense of urgency, since he must plead for a party that, according to the letter of the law, merits condemnation.

In contrast to much of the early Jewish apocalyptic literature, one observes in the writings of Philo and the Gospel of John a decidedly deescalated level of urgency with respect to advocacy and eschatology. Philo and John, in their own unique ways, place more emphasis on a daily walk with God and adaptation to circumstances in the current world. In the case of Philo, in fact, the presence of eschatology is rare, such that occurrences of supporting speech and intercessors find their urgency in the immediate relationship between God and humanity. Philo refers to advocates in both worldly and political circumstances, as well as in otherworldly conditions celebrating God's benevolence and flawless model of morality. Although the Jewish philosopher opposes advocates for hire, he understands how they operate in the material world, remaining necessary in political circumstances aimed at preserving the safety of rulers who offend the emperor. Yet Philo also understands a supernatural force at work that endows the human consciousness with a moral compass, higher reasoning, and the ability to articulate words that serve the divine purpose. Philo's Paraclete is more than a simple helper; it embodies God's attributes and directly

divine lines of communication with the human soul. This Paraclete is endowed to people for the purpose of improving life in the here and now. Salvation still remains a priority, but it pertains to the rescue and improvement of one's ethical faculties. While not averse to eschatology, Philo's supernatural advocate presents a means of adapting to the world, and moreover, its appearances belong to a much broader exegetical project of defending Jewish traditions as equal, if not superior, to the longstanding Greek religious and philosophical traditions which an Alexandrian scholar would have to confront.

Although the Gospel of John lacks the sophisticated exegesis found in Philo, it still situates advocacy within the concrete conditions of the here and now. John differs, therefore, from the Synoptic Gospels, which prioritize an imminent end to the world brought on by Jesus' second advent. Indeed, John's Jesus is expected to return to judge the world at some point, but there is no immediate rush in light of the gifting of the divine Paraclete, who will assume most of the responsibilities formerly assigned to Jesus. With access to a full-time supernatural advocate, one whose forensic title incorporates several offices of the divinely incarnated son, the redeemed community of Christ-believers can experience a more inaugurated form of eschatology. This community, at least as reflected in the textual tradition, has been argued to remain within the Jewish world of the late first century, given that the text itself never uses the term, "Christian," and the maps and symbols of its discursive universe remain within the orbit of first-century Judaism and the city of Jerusalem. The Johannine traditions may have emerged alongside the destruction of the Second Temple and the massive displacement of first century Jewish life in Palestine, but its atmosphere of inaugurated eschatology provides an assurance to its followers: salvation is enabled largely through the presence of the Spirit-Paraclete commissioned as the community's advocate.

This essay has also argued that, where advocacy appears in many tannaitic traditions, it should be considered in light of an inaugurated eschatology that was vital to early rabbinic texts such as the Mishnah. Amidst a Jewish life in Palestine largely reduced to ruins, the Mishnah presents an Israel very much at peace, where rabbis can engage undisturbed in advanced discussions of the oral law. It is not surprising, then, where advocacy does appear in the Mishnah and Tosefta, that the writer has time to reflect on the meaning of words and how supporting speech either compromises or contributes to the goal of salvation. Within the judge's seat at the courtroom, one cannot behave as an advocate for hire, but in relation to the process of atonement, the accumulation of divine merit, or the act of praying on behalf of Israel, enlisting the aid of a supernatural advocate is encouraged. And should crisis emerge in the form of drought, a rabbinic holy man such as Honi the Circle Drawer appears as a necessary fix for the leaky patches in Israel's religious order that the halakhah cannot fill. *Mishnah Ta'anit 3* recognizes the necessity of a divinely endowed supporting speaker, should the good life of Torah fall apart; yet the outcome will reflect a return to a peaceful order, where even the advocate himself will conform to the proper understanding of the halakha.

Rabbinic attitudes toward advocacy in the amoraic literature comprise a wide range of settings, thus making it difficult to situate these occurrences within any consistent model of interpretation. A few common threads exist, however, that facilitate the offering of broader arguments and conclusions. In most cases in the Talmud, even within the bold literature dealing with the Jewish new year, advocacy occurrences serve the larger needs of either the halakhic principle or exegetical problem up for discussion. This was observed above in halakhic rulings pertaining, for example, to the prohibition on judicial false statements, the unsuitability of a priest performing expiation while dressed in gold, or the means by which a marriage may be

annulled. The exegetical problems posed by aggadic midrash further illustrate this phenomenon, as in the complex interpretive project that Leviticus Rabbah 29 undertakes; first, of connecting the first day of the month of Tishrei to the primordial act of creation, and subsequently, to the eschatological resolution of world history. Furthermore, the intersection of halakha and exegesis governs several of these situations, as in the comparison of worldly advocates to their heavenly counterparts. One heavenly advocate, according to the rabbis, can neutralize the arguments of nine-hundred and ninety-nine accusers. God acting as one's patron, moreover, is immeasurably superior to reliance on a worldly advocate. In the game of survival under imperial sovereigns, the Talmud counsels that God can still represent a person before earthly judges and achieve considerably greater success. In these comparisons, precisely how God will rescue a person does not receive detailed treatment, but the analogies to the experiences of Moses and Daniel suggest that this type of advocacy entails some degree of miracle-working. In the end, God neutralizes the age-old methods of prosecuting the people of Israel, those which currently fall under the authority of the Romans.

Both the midrashic and talmudic literature on the Jewish new year reflect the rabbinic understanding of the relationship between advocacy and the eschaton. Israel, in the main, will receive a far more favorable judgment than the Gentiles, chiefly due to her opportunity for atonement and her access to inanimate and post-mortem forms of advocacy. These intercessors, such as the ram's horn and postmortem patriarchs, act as guarantors of Israel's deliverance, producing salvation both in the current life and in the world to come. Here the boundaries become hazy between the individual and collective, since each person passes individually under God's judgment, but the larger security of the collective remains a consistent priority.



The notion of atonement and patriarchal merit acting as advocates for Israel intersects with other talmudic narratives involving Elijah and the heavenly academy, as the prophet also attests to the post-mortem patriarchs performing regular intercession on behalf of both individuals and Israel. This developing rabbinic narrative of Israel's collective stake in salvation also materializes in midrashim concerning Solomon's prayer of dedication for the Temple. The intersection of daily individual welfare, patterned on the proper method of reciting prayers, with larger community concerns addressed by the king reveals these passages as further evidence of how advocacy emerges out of halakhic discussions, prescribes a pattern of behavior conducive to individual salvation, and then demonstrates how the community of Israel will accrue long term benefits through the king speaking on their behalf. In terms of Elijah, the nature of supporting speech works differently, since his sporadic appearances among rabbis serve the resolution of halakhic disagreements, while at the same time expressing varying degrees of messianic overtones.

Within the aggadic midrashim, the transformation of both Moses and Abraham into learned rabbinic sages marks a new stage in appropriating advocacy for the defense of Israel. Even though Abraham pleads for Sodom in *Genesis Rabbah*, the rabbis apply his arguments consistently in service to the special election status of Israel and her security in the world to come. These texts show less concern for the original basis for Abraham's argument—that even the most sinful of communities must be spared for the sake of a small number of righteous people—than they do for positioning Abraham's methods of argument within the elite branches of rabbinic scholarship. Abraham emerges as the paradigmatic sage and legal scholar, one who had mastered most forms of exegetical and legal interpretation prior to the advent of the rabbinic academies themselves. Moses functions in much the same manner when performing the role of

advocate, both ensuring Israel's salvation and identifying as the consummate rabbinic sage. While his status does not edge near the divine in Exodus Rabbah, Deuteronomy Rabbah endows Moses with powers that arguably rival those belonging to inhabitants of the supernal regions. The prophet's place beside the divine throne, along with his charge to ransom Israel in the company of Elijah during the eschaton, confers upon Moses an identity as close to divine as can be mustered within the rabbinic literature. Moses does not attain the divinity found in the Christian conception of Jesus, but the rabbis elevate him as close as possible without compromising their understanding of Jewish monotheism.

Within many of the text traditions discussed above, an underlying eschatological orientation connects the act of advocacy to the ongoing concern for Israel's salvation. The diverse layers of Jewish theology belonging to early Judaism and rabbinic literature associate salvation in large part with the phenomena of exile and restoration. While covenant breach and renewal provide an important framework for the soteriological understanding of land forfeiture and repatriation, the emergence of a strong and stable eschatology in late ancient Judaism marks an equally important development. Whether that eschatology tends toward immediate expectation, present realization, or some balance between the two, the Jewish anticipation of a lasting divine intervention and the universal restoration of Israel's condition brings with it an approach to salvation where God's people regularly confront prosecution, defense, condemnation, and acquittal. Late ancient Jewish texts traditions concerning advocacy and heavenly courtrooms, according to the argument of the present study, most often manifest within these legal dimensions of salvation presupposing a well-developed eschatology. This orientation toward advocacy is not only soteriological and land-centered, but it also understands advocacy as a means of both confirming Jewish law and operating outside of it when a crisis warrants as much.

This thesis has also attempted to collapse any absolute binary between the ideally constructed rabbinic legal system and the imaginary divine courtroom. Reducing advocacy to lawyers for hire, a professional class which ancient rabbis in principle excluded from their courts, does not do justice to several rabbinic passages demonstrating the theological contexts of supporting speech. Alternatively, reducing rabbinic advocacy episodes to merely representations of God's court, in which supporting speakers are allowed entry so as to protect imperfect humans from God's perfect, inquisitorial justice, also falls short of explaining the instances where the lines between heavenly and earthly judgment converge in rabbinic midrash. In reality, the rabbinic courtroom, while theoretically prohibiting the presence of Roman-style advocates for hire, still functions textually as a lower court operating under the greater authority of the divine court above. If the divine court condones the presence of both accusers and advocates, it is quite possible that the ideal rabbinic courtroom was to some degree aspiring to its ideal archetype, a textual representation of judges presiding at the pleasure of the lone judge above. Whether this ideal was normally satisfied during the periods of the Mishnah, two Talmuds, and early rabbinic midrashic compilations is still open to interpretation. But even allowing that most rabbinic courtrooms would have operated in the absence of paid defenders, the question remains as to why so many references to courtroom advocates entered the rabbinic corpus. Furthermore, several instances of advocacy for Israel occur among rabbis, holy men, preeminent biblical figures, and inanimate sacred media. These manifestations beg the question of what might underly these examples of advocacy. Are the occurrences merely situational, or do they signify an acknowledgment that supporting speech remained part of the rabbinic legal framework, provided it took place among judges, their students, or some form of supernatural media?

The answers to both questions tend toward the affirmative, as advocacy occurs in rabbinic literature in service to much larger literary and theological contexts. Attempting to assign a universal form of causation to each occurrence distorts the nuanced forces at work. To this extent, advocacy within halakhic discussions and exegetical midrash is largely situational. While causality could therefore operate on several fronts, certain generalizations nevertheless work when evaluating a large number of occasions where advocacy and intercession arise. Supporting speech involves certain constants, such as an individual or collective requiring some form of assistance—often on a grand scale in response to looming disaster. In terms of the addressee, advocacy presupposes some form of authority figure who must be persuaded by a third party, since the suppliant in need of the ruler’s assistance or clemency lacks the power, and often the merit, to gain a proper hearing. With these variables in mind, the advocate must employ greater power than those he represents—or, than the power he normally possesses—to persuade the authority figure issuing judgment; and in the rabbinic narratives, this often amounts to someone intervening on behalf of Israel so as to stave off divine destruction. The soteriological component of these episodes is therefore quite common and offers an effective lens through which to interpret advocacy within early Judaism and rabbinic literature.

Given the legal, cultural, and rhetorical diversity of approaches to supporting speech in ancient Judaism, what avenues of further research can be gathered from this survey, which has attempted to be broad in scope and hardly exhaustive. Even if this dissertation has emphasized advocacy’s place in the ancient Jewish legal orientation toward salvation, it has at the same time challenged the law versus grace binary unfairly employed in popular, ecclesiastical, and even some scholarly representations of Jewish and Christian salvation. A departure-point for this study, having established an ancient Jewish theological model through which to interpret

advocacy, would be a mining of early Christian literature in Late Antiquity for advocacy in order to assess various juridical components of salvation present in Judaism's offspring religion. In fact, Christianity's transition, in the third and fourth centuries, toward expansive episcopal offices and an imperial religious identity is arguably a great step toward imposing legal doctrines on religious practice. The codification of what is permissive and prohibited among God's people constitutes the very act of legislating who belongs to the community of the redeemed. Even where the official act of legislation is not involved, the daily experience of the expanding episcopal office indicates an increasingly closer relationship between Christian leadership, legal practice, and the representation of those occupying a lower rung on the social hierarchy. To the degree Christians of Late Antiquity sought supporting speakers in this environment, and that act reinforced core theological principles of early Christian religion, one may again arrive at the legal-theological intersection pertaining to salvation viewed through real-life experience.

Adopting this orientation to late ancient Christianity in the Greco-Roman world, and incorporating more of the classical rhetorical devices present in both rabbinic and early Christian literature, a potentially fruitful basis could be established for comparing the legal-theological components of each religion's ancient salvation doctrines. Since the legal factors informing a given theological perspective can operate in either an official or more popular capacity, it would also be of benefit to examine how supporting speech not only reflects an internal conversation within the text, but also applies to daily life situations experienced by the community. At once the task is both theological and historical. The present study has remained primarily in the former sphere, yet it looks forward to adapting its work to more historically oriented lines of inquiry.

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