

MEIRA Z. KENSKY

Trying Man, Trying God

*Wissenschaftliche Untersuchungen
zum Neuen Testament 2. Reihe
289*

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Trying Man, Trying God

The Divine Courtroom in Early Jewish
and Christian Literature

Mohr Siebeck

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“A court of law has a curious attraction, hasn’t it?”
Franz Kafka, *The Trial*

*In memory of my mother, Tikva Frymer-Kensky
In honor of my father, Rabbi Allan Kensky
And even my brother, Eitan Lev Kensky*

Preface

This monograph is a revised version of my 2009 dissertation at the University of Chicago, over which I spilt much blood, sweat, and tears. At the first I would like to express my gratitude to Hans-Josef Klauck, whose expertise, advice, generosity of spirit, and commitment to excellence has made me the scholar I am today, and whom I am proud to call my Doktorvater. Next to Michael Fishbane, whose innovation and insight is legend, and without whom I would be a paltry reader of texts. I would like to thank also Gregory Sterling, who has provided me not only with precise critique and review, but with an excess of kindness and support.

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Iowa, June 2010

Meira Z. Kensky

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Chapter 1

Introduction

In the Albert Brooks comedy *Defending Your Life*, Daniel Miller wakes up dead in an afterlife which bears a striking resemblance to 1991 Los Angeles. He discovers that he is in Judgment City, a way-station where he will go through a forensic process to determine whether he shall proceed to the next stage of existence or return to earth to go through human life again. In this process, he is represented by Bob Diamond (Rip Torn), an advocate charged with the responsibility of persuading the panel of judges that Daniel should be allowed to go forward. Unfortunately for Daniel, he is being prosecuted by a dragon-lady attorney against whom his advocate has a poor record, and his judges seem predisposed not to like him. This is a result, he learns, of the fact that he has been through this process before, many many times. Daniel seems doomed to a harsh verdict. This impression is reinforced when, on a day when his advocate is unavailable, his substitute defense counsel seems totally unconcerned and indifferent to providing good advocacy, cowering to the prosecution on every given point.

While in Judgment City, Daniel meets and falls in love with Julia (Meryl Streep), a woman whose trial is proceeding in absolute divergence from Daniel's. Julia is enjoying her trial, calling her advocate by his first name and taking advantage of all the amenities Judgment City has to offer. Though Julia does not divulge too many details about her earthly life, Daniel realizes that her trial is totally different than his own. When he peeks in to her trial, he sees why: on the giant screen where scenes from the defendant's life are played for evidence, he sees Julia rescuing children from a blazing house fire, and if that wasn't enough, after ensuring her children's safety, going back for the dog. When the scene stops playing and the lights go up, everyone in the room is in tears, and one of the judges apologizes: she knows that the day is running late, but she just needed to see that scene again.

Over the course of the movie, Daniel and the viewer realizes that the criteria by which he is being judged is not whether he lived a morally upright life, but whether or not he lived a life free from fear. Julia is brave and courageous; Daniel, on the other hand, is shown to have lived his life too scared to make decisions that would have benefited him both financial-

ly and emotionally. The culmination of the prosecution's case against him is when she shows a scene not from his life but from his time in Judgment City, in which Daniel admits to Julia that he is terrified of what lies ahead. Though Diamond objects vigorously to the acceptability of the evidence, it is admitted into the trial, and seals Daniel's fate. Daniel gets the word – he is going back to earth. Julia, on the other hand, is headed towards “points beyond,” and the love that has developed between them seems to be over.

Throughout all of this, the audience has been watching from Daniel's perspective, learning things when he learns them, viewing his trial as he views it, and thinking about the process with his character. Daniel is not shy about expressing his opinions, especially when he thinks elements of his trial are unfair and that he is getting a raw deal in Judgment City. When Diamond is absent from his trial, and his substitute attorney does not provide vigorous advocacy, Daniel expresses frustration and anger, a position which the viewer may well be expected to share. When Daniel objects to the fact that the prosecutor and his advocate seem to have some sort of relationship separate from the trial, and the judges dismiss his objections, the viewer is expected to think about the equity of the situation and whether the judges are judging his trial fairly. Most importantly, when Daniel learns that he is being judged on the criteria of fear, the viewer is asked, along with Daniel, to think about whether this is a fair and proper criteria for adjudication. Daniel expresses shock at this discovery, asserting that humans are taught to admit to their fears and to be honest about them. The viewer is expected to take a position on this issue, as it is this that ultimately seals the verdict against Daniel.

Throughout the course of this movie, the viewer is expected not to sit as mere passive spectator on the trial, but to act as the real judge, evaluating and adjudicating the system in which the two protagonists find themselves, especially since so many decisions that drastically affected their trials were decided before they even entered the room. Julia's actions in life, before she even stepped foot in the courtroom, guaranteed her a sympathetic and friendly panel of judges, prosecutor, and advocate. Daniel's actions, however, led to a hostile and adversarial courtroom situation. How impartial can the verdict be if the deck was already stacked against the defendant? And is it fair to use the very criteria at issue in the courtroom to set up the courtroom itself? What about the evidence presented, especially the scene from Judgment City? This was highly unusual and seemingly inappropriate evidence. Were the judges right to allow it? Did the panel issue a just verdict?

Luckily for Daniel, this is a comedy, and so at the very end of the movie he is united with Julia and the system is ultimately exonerated. When Daniel commits a truly brave and heroic act at the end of the film, the camera

pans back to reveal that the scene is playing out on the evidence screen before Daniel's panel, prosecutor, and advocate. The judges give the word and Daniel's verdict is overturned. He is reunited with Julia. The viewer is allowed to leave the theatre feeling like ultimately, the bureaucracy of Judgment City was able to secure a positive verdict, and though at times its methods seemed partial and inequitable, in the end the system functioned successfully. Though it was Daniel who was ostensibly the defendant, ultimately it was the system itself which was on trial, and the viewers were truly the judges of Judgment City.

Defending Your Life participates in a long trajectory of texts that depict the adjudication of one's post-mortem destiny using courtroom and trial imagery. From the literature of ancient Egypt, which could imagine death itself as a vindictory lawsuit between Osiris and Seth,¹ to the recent film *Wristcutters*, based on the short story by the Israeli author Edgar Keret, scenes of post-mortem courtroom procedures pepper Western literature, drama, art, and film.² In addition to these depictions of the courtroom in the afterlife, which usually involve either God or heavenly functionaries, we also find depictions of divine decision-making imagined as the result of courtroom proceedings, whether that courtroom is located in the past, in a simultaneous present, or in the future, as at the end of days. Something about the trial and the courtroom has held our attention for thousands of years as a consistent way of imagining the way God or gods make decisions of the utmost importance. The courtrooms, of course, have changed, and this is reflected in the literature. In the Hebrew Bible trials are conducted in throneroom settings, reflecting the earthly associations of trials with kings and royal adjudication, while under Roman imperial rule trials were elaborate and bureaucratic, and this imagery was transferred to the divine courtroom by authors such as Seneca, Lucian of Samosata, and Tertullian. But there remains this consistent creative move to use this situation familiar from our earthly landscape to imagine how decisions are made beyond earth.

In many ways, this is not surprising, due to the dual nature of the courtroom. On the one hand, the courtroom is a familiar and recognizable aspect of the daily life of Western culture. It is a place where arguments are presented, evidence is weighed, and decisions are handed down everyday.

¹ See the discussion in Jan Assman, *Death and Salvation in Ancient Egypt* (Ithaca: Cornell University Press, 2001), 70ff.

² For an overview of some of the more prominent scenes in religious literature, see S. G. F. Brandon, *The Judgment of the Dead: The Idea of Life After Death in the Major Religions* (New York: Charles Scribner's Sons, 1967); More recently Alan Segel, *Life after Death: A History of the Afterlife in the Religions of the West* (New York: Doubleday, 2004). I am told that these scenes occur also in Eastern literature and art, though this is beyond the scope of this study.

It is, in other words, ordinary, and to a certain degree omnipresent. Most people in the modern world have had some experience with courtrooms and are familiar with their set up, rules, and cast of characters. Courtroom scenes appear throughout the classics of Western literature and film, from the trial of Socrates to *To Kill a Mockingbird* to *Legally Blonde*. Just like in the ancient world, forensic rhetoric has entered the educational system, as Mock Trial teams have become part of American high school extracurriculars. Lawyer jokes have been around since at least the time of Shakespeare. Nothing could be more familiar, so much a part of the everyday experience of society, than the courtroom.

On the other hand, courtrooms are also deeply unfamiliar and scary places, places of increased formality and solemnity. Courtrooms are places in which no less than life and death decisions are handed down, places infused with the enormous power of the state, places in which people's lives can literally hang in the balance. Courtrooms are also passionate locations, places of great emotions like fear, anger, grief, and relief. Nothing could be more extraordinary than the courtroom. Courtrooms are places that lift people out of the ordinary and put them into the extraordinary. They are infused with the ideals of justice and equity, dispassion, and reason, and yet they are also places which can provoke suspicion, anxiety, and great fear.

This dual nature of the courtroom is one of the reasons why courtrooms have become such a standard part of our conception of the afterlife. Courtrooms manage to simultaneously capture both human ideals and human realities. Part of the argument of this study is that the courtroom functions powerfully as a symbol or microcosm of anxiety over the afterlife, as it perfectly captures both the ideal and the reality: the ideal, that one's life will be fairly and impartially judged, and the reality: that in truth, we just do not know how impartial that assessment is going to be. Since the earliest depictions of the divine courtroom in the Hebrew Bible and the literature of Ancient Egypt and Greece, these scenes have been infused with the very real fears and worries of their creators and their audiences. This is reflected also in the literature of nascent Judaism and Christianity, the primary focus of this study.

But as in *Defending Your Life*, the audiences and readers are not passive spectators in the divine courtroom. Instead, the trial scenarios ask the readers to take on a different rôle, that of judges. The audiences of these scenes are asked to be critics in the truest sense of the word – judges of what is put before them, including the system itself and the verdict handed down. This is crucial for understanding what is truly taking place in these scenes of the divine courtroom, even in those that date from the ancient world.

This manuscript is a full-length study of the divine courtroom in the formative literature of early Judaism and early Christianity. The central argument of this study is that these courtroom scenes, though fanciful in nature and often remarkably entertaining, are part of a serious inquiry taking place throughout the Mediterranean as to the nature of divine justice. These scenes can contain explicit criticism about the adequacy and equity of God's justice, or can attempt to vindicate God from charges of injustice and inequity. What is important is that this amounts to a rotation of the courtroom scene: the courtroom, rather than simply functioning on the narrative level with the reader as an additional spectator, is rotated so that the reader is in the judicial position, and it is the judge and the process itself which are being adjudicated. When man is tried, it is truly God who is on trial.

A secondary but related argument of this study is that courtroom imagery is not benign. Throughout every culture and time period surveyed in this manuscript, people express wariness and anxiety regarding courtrooms and the judicial process. Courtrooms in the ancient Mediterranean, Antique, and Late Antique worlds were not necessarily places associated with justice. People were wary of going to court and regarded courtrooms with fear and suspicion. Courtrooms were places which were associated with the failure of justice as often if not more often than the opposite. The use of courtroom scenes to depict the operation of divine justice is not necessarily an endeavor meant to be consoling or optimistic. Often authors deliberately play on their audiences' anxieties and fears about courtrooms in general, regarding the divine courtroom as a place to be feared even if one believes they are innocent and should be acquitted or vindicated therein.

Scenes of the divine courtroom vary from text to text, but several points remain consistent. God is pictured as the ultimate judge, holding court (often in a throneroom) on matters ranging from the lives of individuals on earth to the destination of souls after death. He is often flanked by ministering angels, who perform the roles of prosecutor and defender for the matter at hand. Judgments are recorded for posterity, either on scrolls or tablets, and the case is closed. The most prominent example of this scene in biblical literature occurs as the framing narrative to the poetry of Job, in which God, holding court, brags about his servant Job to the Accuser (*ha-satan*), whose role it is apparently to roam around the earth and find examples of human impropriety. However, the Accuser's role in Job is actually more subversive – these examples of human impropriety are used to impeach God, and while the matter at hand is ostensibly the piety of Job, the true challenge presented is whether or not God's conception of justice holds up to intense scrutiny and trial. The actions of man thus have direct implications for the question of God's ultimate justice and propriety. The

trial setting and the legal questions and scenarios it invokes is a key motif in the theology of the wisdom literature, and is the center of an ongoing and eternal question: is God's justice actually just?

Each chapter in this manuscript examines the way this imagery of the divine courtroom appears in a corpus of literature. Chapter two examines the way the divine courtroom appears in the Hebrew Bible, particularly in the way biblical texts imagine God's judicial process. The legal relationship between God and Israel is invoked time and again throughout the Bible by the prophets and psalmists, in various ways for various purposes. This includes use of a genre of literature referred to as the *riv*-pattern, or 'covenantal lawsuit.' Normally this genre is understood as God indicting Israel for breach of contract, with God acting as both judge and prosecutor. However, I will argue that the prophetic use of this genre actually begs the question of God's justice, inviting the reader to sit in judgment on God's actions. Because of the centrality of the legal relationship between God and Israel, pictures of the heavenly courtroom and God's judgment therein are especially potent mediums for expression of anguish, consolation, and philosophical investigation.

Chapter three examines scenes of the divine courtroom in Greek and Roman literature from Homer to Seneca and Lucian, texts that are very much part of the cultural backdrop of the early Jewish and Christian texts which are the focus of this study. Not only do we have comparable scenes of the god(s) administering justice from Homer to Lucian, but in addition we have an equally important literary tradition that posed the philosophical questions of justice, civic obligation, morality, violence, religion, ethics, etc. to an audience of judges – Greek tragedy. Greek drama put these questions, including questions of the justice of divine activity, on stage to be judged – literally – before a large audience, the same audience who regularly attended trials and lawsuits, the audience of the city. In this chapter I demonstrate that over time, the portrayal of the divine courtroom by Greek and Roman authors became more and more critical. While the earliest texts only allude to questions of the justice of Zeus and his ability faithfully and justly to administrate the cosmos, the later texts put this question front and center, using scenes of the divine courtroom not to present a post-mortem world that functions orderly and judiciously, but instead a post-mortem world that is incapable of ensuring justice and incompetent in judicial matters. In this way the Greek and Roman literature, though having different characters and settings than those of the Hebrew Bible, finds itself running a slightly parallel course in terms of the way this literary motif is employed in both cultures.

Chapters four through six represent the heart of the study, as I turn my attention to the way the divine courtroom appears in Second Temple Jew-

ish literature, the letters of Paul, and New Testament narrative. The influence of Greco-Roman culture becomes immediately apparent as the location of the divine courtroom moves from an atemporal, eternal address to a more permanent residence either at the end of days, as God acts as ultimate judge of Israel and the nations, or to the immediate afterlife, as God sits in judgment on the fate of individual souls. Scenes of the divine courtroom are often found in apocalyptic literature such as 1 Enoch and 4 Ezra, and in otherworldly journeys undertaken by biblical patriarchs, most prominent of these being the possibly parodic and definitely entertaining *Testament of Abraham*. Often these scenes are used to provoke a number of attitudes on the part of the reader, such as humor, consolation, fear, or a reaffirmation of personal piety and commitment to God. However, these scenes are also part of an ongoing conversation that began in the Hebrew Bible: the question of God's ultimate justice in the universe and the issue of theodicy. These scenes become opportunities for authors to work out their visions of ultimate justice, often attempting to vindicate God of charges of injustice, impropriety, or abandonment. In particular, Second Temple literature deals with the complicated relationship between justice and mercy. I will demonstrate in this chapter that throughout the Second Temple period there is a consistent concern by authors to prove to their readers that God is justified in his actions. Forensic scenarios become the carriers of these conversations. The courtroom scenes serve as vehicles in these authors's attempts literally to vindicate God, affording them the opportunity to show God's judicial activity firsthand. What is exceptional is that this does not go unnoticed even by contemporary (or slightly later) authors. I will argue that in the most elaborate of these courtroom scenes, the longer recension of the *Testament of Abraham*, the author actually parodies these very attempts to vindicate God, forcing the reader to take a step back and look at what they are doing in these courtroom scenes.

Chapters five and six examine the literature of the New Testament first with an analysis of the way the divine courtroom is found and functions in the letters of Paul (chapter five), and then in New Testament narrative (chapter six), particularly the Gospels of Matthew and John, and the book of Revelation. I argue in chapter five that there is significant tension in the way Paul utilizes the imagery of the divine courtroom. Ultimately, I demonstrate that Paul finds himself within the long-standing tradition of using the language of the divine courtroom as an opportunity to acquit God of perceived injustices. However, this stands in some tension with another aspect of Paul's thought, his *rejection* of the legal metaphor as an appropriate way to imagine the relationship between God and the new Israel, the *ekklesia*. If the period of the law is over, as Paul argues in Galatians 3-4, then so to are the protections that the law offers for humanity. People no

longer have recourse to the law as a means for argumentation and complaint against God, nor can they use the contractual arrangements of the covenant as arguments in their own defense. Paul's understanding of the anthropological nature of man *vis-à-vis* that of God strongly hampers the ability of mankind successfully to stand trial before God. It would seem that the divine courtroom no longer would carry the same currency for Paul as a medium for picturing man's destiny, and yet Paul continues to use the forensic metaphor to picture what will come at the end of days (cf. 1 Cor 3), as well as the scene of the courtroom to shame the Corinthians, who think that they – not God – should be Paul's judge and jury (2 Cor 10-12). The forensic metaphor continues to be a part of Pauline discourse, but it now stands in a tension previously not present.

In chapter six, I examine the way the divine courtroom appears in the gospels of Matthew and John, and the book of Revelation. First I discuss the way Matthew uses the divine courtroom, demonstrating that his use of the divine courtroom is designed to provoke fear and repentance. Following that discussion, I examine the unique innovations of the Gospel of John and its "lawsuit motif," engaging especially with the important work of Andrew Lincoln on this matter. Finally, I will turn to the presentation of the divine courtroom at the end of days that appears in Revelation. In all three of these cases, I will demonstrate that far from simple dioramas of the courtroom, the authors paint a picture of the divine courtroom that expects the reader to take an active and judicial role in the proceedings, and use this knowledge as part of their compositional strategies. Though this is most evident in John and Revelation, it is also part of the way Matthew has structured and presented his Gospel.

Chapters seven and eight take as their objects of study the divine courtroom in early Christian literature and rabbinic literature. In chapter seven I examine the extensive courtroom scenes found in the *Apocalypse of Peter* and the *Visio Pauli*, demonstrating that the authors used these courtroom scenes to answer criticisms regarding God's justice, fully intending the reader to play the true judicial rôle in the proceedings. Following this examination, I then demonstrate that at least one very vocal early Christian reader – Marcion of Sinope – did exactly what the courtroom scenario expected him to do, act as judge on the proceedings. Marcion, however, came to the conclusion as some modern readers: that the god of these scenes was entirely unjust and not truly God. God was truly on trial for Marcion, and Marcion pronounced him guilty. In the latter half of the chapter I examine Marcion's critique and the response of Tertullian, who attempts to demonstrate, using the exact forensic criteria that Marcion interrogated, that the judicial attributes are entirely appropriate to God's justice and, indeed, appropriate to God. In chapter eight I provide a broad survey of the way the

divine courtroom appears in the wide corpus of rabbinic literature. I demonstrate that within this corpus we have several examples of this same use of the divine courtroom as a means of calling into question or answering accusations regarding God's justice.

This manuscript demonstrates that throughout the formative literature of Judaism and Christianity, the use of the courtroom imagery for figuring God and the process of divine decision making carried with it a challenge to the reader to think critically and judicially about God. These ancient authors took seriously the distinct judicial rôle for the reader in the imagined and narrated courtroom. Ancient authors used the imagery of the divine courtroom with the full knowledge and expectation that their readers would take a significant role in the proceedings. Though most modern scholars have neglected this aspect of the literature, ancient writers knew all too well that all audiences sat in judgment on what was presented before them.³ Aristotle, in his handbook on rhetoric, writes that "the object of rhetoric is judgment – for they judge the deliberations and the verdict is a judgment" (*Ars. Rhet.* 2.1.2). According to Aristotle, it was necessary not only to consider how to make the speech convincing, but that the speaker also needs to know how to prepare the judge and how to put the judge into a particular frame of mind.

Aristotle insists that this is true whether the rhetoric is deliberately, epideictic, or forensic (2.18.1). Ancient orators were fully aware that their audiences were passing judgments on their words, and even on themselves, and they used this knowledge in the preparation of their speeches and other rhetorical compositions. If the reader is to be addressed as a judge even in epideictic rhetoric,⁴ how much the more so is the reader invited to take a judicial position when the rhetoric is specifically forensic?

Not only was judgment a significant aspect of audience response, readers and audiences were more than familiar with courtroom scenes. Courtroom scenes were popular features of ancient literature, tragedy, and comedy. Sandra Schwartz has analyzed the way courtroom scenes function particularly in the Greco-Roman novels and what leads these type of scenes to be so popular. Schwartz argues that "the courtroom scene is a particularly apt formula for the dramatization of ideology. At the center of the drama is a contest, an *agōn*, between two opponents representing opposed moral positions, with the expectation that, at a predetermined end-

³ David Rod has demonstrated that judgment plays a significant role in Aristotle's theory of drama and the audience of drama in the *Poetics*. Cf. David Rod, "Judgment as an Element of Audience Response in Aristotle's *Poetics*," *Theatre Annual* 36 (1981), 1-19.

⁴ For a discussion of the role of judgment in epideictic rhetoric, see Christine Oravec, 'Observation' in Aristotle's Theory of Epideictic," *Philosophy and Rhetoric* 9 (1976), 162-174.

point (the verdict), one contestant will win. The trial scene, therefore, is a formula not only for the exposition of competing ideas but also for the valorization of the moral position implicitly supported by the text's ideology."⁵ In addition, placing the legal system front and center before the reader invites the reader to make judgments on the *process itself*, judging whether or not it is capable of reaching a just verdict. The explicitly evaluative and judicial context draws the reader into the process as a judge more so than other scenarios.

Schwartz recognizes something of import about the courtroom scenes in the ancient novels: "The moral universe of the novels tends to be painted in black and white, and the reader is rarely in doubt as to the guilt or innocence of the parties involved in the trial scenes. Despite this, trials often result in verdicts which are contrary to what the reader knows is right. Indeed, they often confound or subvert justice, and thereby perpetuate the dramatic conflict. The novelists make great use of the dramatic device of irony in order to heighten the pathos of the wrongly accused defendant."⁶ In other words, according to Schwartz the novelists counted on the audience making critical judicial decisions on the scenes before them, and used that knowledge of the inevitable activity of the audience to dramatic effect. Ancient Jewish and Christian authors were no less concerned with this aspect of literary production when they composed and presented their courtroom scenes, both human and divine.

Ancient readers were also accustomed, as I demonstrate throughout the study, to thinking critically and judicially about their gods. Prophets like Isaiah explicitly ask their readers to play this rôle when they invoke the *rîv*-pattern. In Isaiah 5, for example, God, in the "Song of the Vineyard," asks the people of Judah to "judge between me and my vineyard" (Isa 5:3). God in this song willingly takes on the role of defendant in order successfully to demonstrate to the people of Israel that they have no case against him. This type of maneuver is found throughout the prophetic and psalmic traditions, as I demonstrate in chapter two. In chapter three, I discuss a similar dynamic at play in Greek theatre, in which audiences were asked to form judgments on their gods.

Likewise, ancient audiences were sometimes explicitly admonished to take judicial roles both on others and even on their own selves. The Attic orator (and logographer) Isocrates adopted the fiction of a courtroom suit brought against him by a sycophant in order most advantageously to defend his teaching, treating his audience as his judges and asking them to sit in judgment upon him (Isoc. *Ant.* 8). Augustine of Hippo repeatedly en-

⁵ Schwartz, "The Trial Scene in the Greek Novels and in Acts," 110.

⁶ Schwartz, *Courtroom Scenes in the Ancient Greek Novels* (Phd. Diss. Columbia, 1998), 28.

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