Mekhilta de Rabbi Ishmael, Kasfa (Mishpatim) 20

Rejection of Greco-Roman judicial systems that involve defenders (sun?goros)

Date: 3d CE

Place: Syria Palaestina Language: Hebrew

Category: Jewish

Literary genre: Midrash

Title of work: Mekhilta de Rabbi Ishmael **Reference:** Kasfa (Mishpatim) 20

Commentary: This passage from the third-century midrash, Mekhilta de Rabbi Ishmael, presents several interpretations on the opening words of Exodus 23:7: "Keep far from a false charge (*dvar sheqer*), and do not kill the innocent and those in the right, for I will not acquit the guilty" (NRSV). The third reading – which rejects the appointment of defenders (from the Greek *sun?goros*) – is most pertinent to our project, for it conveys a rejection of a central component of the Roman justice system (for a Greek critique of advocates in court, see Hidary, *Rabbis and Classical Rhetoric*, p. 220).

The first explanation of "Keep far from a false charge" (Exodus 23:7, NRSV) reads it as a prohibition against evil speech, which is defined in rabbinic literature as gossip, false denunciation, and also as divulging intelligence to outsiders, especially foreign governments (for example, Mekhilta de Rabbi Ishmael Pis?a, Bo, parasha 5). Rabbinic texts emphasize the threat of "evil speech" in several sources, such as Tosefta Pe'ah 1:2:

???? ????

"For these things, payment is collected from a person in this world while the principal remains intact (lit. is enduring) for the world to come: idolatry, forbidden sexual acts, and shedding blood, but evil speech (lit. evil tongue) is equal to them all [collectively]" (following MS Vienna; see also <u>Jerusalem Talmud Sotah 9:14, 24c [= Pe'ah 1:1, 15c]</u> for a discussion of this tosefta).

Here evil speech is seen as comparable to an aggregation of the three sins that the rabbis consider most severe. The phrase *dvar sheqer* in Exodus 23:7, which most English versions render as a "false charge," is also translated as "deceitful word" or "deceitful action" (Koehler and Baumgartner, *The Hebrew and Aramaic Lexicon*, vol. 4, p. 1649). Whereas this biblical verse provides instructions for judges, Section A refers to anyone who engages in evil speech; thus, gossip, false denunciation or divulging information to outsiders. However, the next two interpretations address judges.

Section B forbids a judge from appointing an uneducated person (*bur*) to sit with him in the court (when two or more judges are needed; see Mishnah Sanhedrin 1:1-5 for the number of judges required for various categories of legal cases, and Mishnah Sanhedrin 3:1 on judges appointing a fellow to join them to adjudicate a case). In Tosefta Berakhot 1:6, the Hebrew word *bur* refers to someone with little education, who is contrasted with a sage or a student of sages (*talmid ?akham*). If these passages define education as knowledge of the Torah, this midrash implies that this background is necessary to ensure a fair trial.

Section C forbids a judge from admitting professional defenders in court. Professional defenders and accusers had important roles in Roman courts (see Riggsby, *Roman Law*, p. 115; Hidary, *Rabbis and Classical Rhetoric*, p. 222). In contrast, rabbinic literature portrays judges questioning witnesses in Israelite courts, without mention of defenders and prosecutors (for more on "adversarial and inquisitorial courts," see Hidary, *Rabbis and Classical Rhetoric*, p. 217-221, specifically in a rabbinic context, p. 222-238). The Greek terms *sanegor* (from *sun?goros*, meaning a defender) and *qategor* (from *kat?goros*, that denotes an accuser or prosecutor) rarely appear in tannaitic texts. Interestingly, with the exception of our midrash, which bans the presence of defenders, the two other tannaitic passages that include the word *qategor* (Tosefta Sotah 6:5 and Mishnah Avot 4:11) refer to the heavenly court. Additionally, Mishnah Avot 4:11, includes the word *praqlit* (from the Greek ????????//parakl?tos), as an "intercessor" or "advocate"; the few other tannaitic sources that incorporate this word discuss the relationship between Israel and God, but never an earthly Israelite court (see, for example, Tosefta Peah 4:21; Parah 1:1). The tendency to portray the heavenly court similarly to a Roman court became common in amoraic texts (see, for example, Jerusalem TalmudRosh Hashanah1:3, 57a-b). This pattern is noteworthy, given the absence of advocacy or prosecutorial positions in rabbinic descriptions of Jewish courts. As mentioned above, our passage explicitly rejects the use of defenders and links them with dishonesty, for unfair decisions are attributed to

their presence, and as Richard Hidary remarks: "This midrash forbids a judge to appoint defense advocates because doing so would bias his judgment" (*Rabbis and Classical Rhetoric*, p. 223). The midrash then cites Exodus 22:8 to support this the exclusion of defenders: "In any case of disputed ownership involving ox, donkey, sheep, clothing, or any other loss, of which one party says, 'This is mine,' the case of both parties shall come before God" (v. 9 in NRSV). In this verse, and various others, the word God (*Elohim*) is interpreted as a reference to judges. The quotation from Exodus 22:8 is used to demonstrate that the Torah instructs litigants to approach judges directly, without professional accusers or defenders. It is important to consider this teaching in the context of Roman legal norms, for its prohibition of *sun?goros* offers an alternative that dominant system. Furthermore, this source suggests that innocents may be convicted in Roman courts.

Keywords in the original language:

- ???
- ????
- 2222 222
- ?????
- ???

Thematic keywords in English:

- accuser
- advocates
- defender
- evil speech
- heavenly court
- Jewish court
- judge
- Roman court
- Roman justice
- Roman law
- Roman legal system

Bibliographical references: Hidary, Richard, Rabbis and Classical Rhetoric: Sophistic Education and Oratory in the Talmud and Midrash (Cambridge: Cambridge University Press, 2018)

Koehler, Ludwig, Baumgartner, Walter, <u>The Hebrew and Aramaic Lexicon of the Old Testament</u> (Leiden: E.J. Brill, 1994)

Riggsby, Andrew M., Roman Law and the Legal World of the Romans (Cambridge: Cambridge University Press, 2010)

Other sources connected with this document: Text

<u>Jerusalem Talmud Sotah 9:14, 24c (= Pe'ah 1:1, 15c)</u>

The rabbinic ban on teaching Greek to sons

• Read more about Jerusalem Talmud Sotah 9:14, 24c (= Pe'ah 1:1, 15c)

Realized by:

Yael Wilfand



Mekhilta de Rabbi Ishmael, Kasfa (Mishpatim) 20 Published on Judaism and Rome (https://www.judaism-and-rome.org)



Source URL: https://www.judaism-and-rome.org/mekhilta-de-rabbi-ishmael-kasfa-mishpatim-20