

A PRAGMATIC STUDY OF *KOL NIDRE*: LAW AND COMPASSION

TZVEE ZAHAVY
TEANECK, NEW JERSEY, USA
ZAHAVY@GMAIL.COM

ABSTRACT

This paper is a study of the Kol Nidre service using the methods of pragmatics. We show how that service uses legal texts to create liturgy that is designed to be an effective and powerful technology of the sacred for the creation and delivery of compassion. We use pragmatics to examine the context of the liturgy and determine its meaning. We explain the status of the involved worshippers and overcome the ambiguity of the meaning of the prayer by paying special attention to the manner, time and place of its recitation. The ambiguity in the case of the Kol Nidre is whether it is a legal utterance, a magical utterance or a pure liturgical utterance of compassion. We review several previous explanations of the prayer and conclude that with a pragmatic contextual elucidation of the Kol Nidre.

Kol Nidre, recited in the evening at the outset of the solemn fast of Yom Kippur, is one of the best known and most effective liturgies of the synagogue. It is the inaugural recitation of the Yom Kippur service. As such, it stands at the head of the most solemn day of the year, the Day of Atonement. It is sung at a moment when there is maximum attendance and attention in the house of worship. Jews know that Yom Kippur caps off the Ten Days of Repentance. It is the final day to seek that atonement for one's sins.

1. CONTEXT

The context of the prayer, the identity of the speakers and their intentions are clear. The Kol Nidre plays a critical role within the Yom Kippur liturgical system in particular, and in the Days of Awe parent system in general.

This first liturgical paragraph recited on Yom Kippur eve activates the system for the day. It has the critical attention of all system users. They are present at their pews in the synagogue and their emotions are primed because of the solemnity of the occasion.

The best known theological narrative of the day as a whole, articulated in the *Unetaneh Tokef* prayer, tells us that this is the day that God finalizes the verdict, the judgment for every Jew for the coming year. “On Rosh Hashanah it is written. On the day of fasting of Kippur it is sealed.”

The classic simple plaintiff meditative musical melody of the Kol Nidre service contributes to bolster its effectiveness as a solemn Yom Kippur prayer.

The exterior trappings of the prayer in the synagogue context add to its solemnity. In some of our Orthodox Ashkenazi congregations, we enter for an evening prayer and witness a surreal, nearly mystical setting. All the male worshippers are wearing white robes. It appears for a moment confusing, as if everyone in the pews acts as the hazzan of the congregation. Though it is nightfall, the men, in an Orthodox service, and both men and women, in more liberal congregations, wear their prayer shawls as if it were a morning service. To add to the seriousness of the circumstance, the ark is opened and Torahs are brought to the bimah. With heightened focus, the liturgical users await the start of the dramatic action. Their stomachs are full from the pre-fast meal. They start the mental countdown and imagine the hunger that will follow the next day and the breakfast in twenty five hours at the end of the holiday.

Access to the Kol Nidre liturgy requires a special contextual script, used only for the one purpose of providing entry to this service. There are several stages of preliminaries that set the context before entry into the liturgy.

Stage 1: “In the assembly up on high and in the assembly down below...” Even though the participant does not need to be told to pay attention, the introductory phrases first mystically invoke the heavens and then focus us on our actual surroundings.

Stage 2: “By the authority of Omnipresent and by the authority of the congregation, we allow ourselves to pray together with the transgressors.” This phrase affords the devotee authorization to engage in something surely purposeful and potentially transformative.

Synagogue participants do not begin any service in the Jewish year with these scripts. These are specific to the Kol Nidre. There are several unknowns and ambiguities embedded in the scripts. Who are these transgressors? Are these the people sitting beside the users? Or perhaps are they self-referential—the users permit themselves to recognize their own transgressions. The scripts are intoned and entered so quickly, that the user may not have the time to be entirely self-aware of the value of this permission. Whatever the case, that preface to prayer is both a prologue and a blunt statement. This context-setting action is altogether an odd recitation, a singular liturgy, a one-off with no analogue elsewhere in the synagogue service.

To further set the context, the hazzan intones, “Kol Nidre....” using a simple tune, with familiar chords, that sounds a bit like a finger exercise, an orchestral in a tune-up, with short bursts of music before the overture before the performance. It draws the user-attendees to attention. It announces that something significant is about to begin.

The legal script that follows is simple, direct and clear:

All vows that I have vowed... from this Yom Kippur until the next, I retract them. Let all of them be permitted... non-existent. Let my vows not be valid vows.

Scholars previously assumed that this prayer was a speech act in either a legal mode or a magical mode of expression and that discussion of those modes alone was enough to provide for the interpretation of the service. We insist based on pragmatic study that this is not the case. Jewish liturgy is not a speech act of law nor is it one of magic.

No doubt that on the surface, outside of its elaborate context, Kol Nidre is a legal declaration. Stuart Weinberg Gerson in his study *Kol Nidrei: Its Origin, Development and Significance* (New York, 1977), reviewed the prevailing scholarship and theory on the prayer. Our contention is that he examined the prayer solely as a

legal text outside its context, as many have done over the centuries, and like previous scholars, he missed the essential pragmatic meaning of the liturgy.

Gerson took a straight up approach to the text starting with his premise that Jewish tradition is “grounded in the seriousness of the power of the spoken word and may be understood only within that framework.” Gerson focused sharply on “words” to make a point about the release of spoken vows with spoken formulas of the remedial text. Words of power can repair the damages or problems caused by other words of power.

This is a good start at resolving how a law formula can be a liturgy. But this characterization does not allow for the different kinds of spoken words, delivered in many forms and idioms within the composite that makes up the liturgical subset of the “Jewish tradition” namely the evening service on the Day of Atonement that forms the actual context of the Kol Nidre.

The proper framework for understanding the Kol Nidre is the *Yom Kippur Machzor*, the service for the Day of Atonement in the synagogue, not the laws courts where vows are made and nullified, not the legal heritage of the Israelite and Jewish predecessors and surely not the entirety of the “Jewish tradition.” There are specific intentions, emotions and dramas built into, and read out of, those few spoken words within any liturgy that need to be factored into the equation. If they are not, there is no accurate computation of the liturgical intent and power of the prayer possible here.

As part of the Evening Service on Yom Kippur, Kol Nidre is not an actual act of vow nullification. Gerson’s analysis treats the Kol Nidre prayer as if it is such and it functions as a “powerful ritual.” He sees it as a “vehicle through which absolution is automatically granted for unfulfilled vows.” But, there is another ritual of vow nullification that we have in the Siddur and that Jews perform on Yom Kippur eve, before the festival. It is called the *Hatarat Nedarim*. It is recited prior to the beginning of the holiday, outside of the framework of the service, before the prayers begin. It is a pure formulaic that achieves a true vow nullification. Hence, the formal legal procedure of *Hatarat Nedarim*, already performed before the holiday, is not what is going on in the synagogue in the Kol Nidre. If it were, that would be redundant.

Thus Kol Nidre is cannot be a sterile verbal legal remedy for vows, nor can it be a repetition of such a remedy—a variation of

what went on elsewhere and earlier. If actual vow nullification were the intended action of this Kol Nidre prayer, that would detach it from its liturgical context and treat it as a separate and distinct legal act, unconnected at all to what follows in sacred liturgies of the Yom Kippur eve and day.

Nevertheless, Gerson insists that he sees a problem of “unfulfilled vows” for which there is a remedy of a “powerful ritual.” The scenario he paints is that there is a problem extrinsic to the end user’s being, there is a bug in the system, and the supplicant can remedy this by manipulating words, he can fix the spiritual bug with a code change right at the outset of the Yom Kippur liturgy.

This does not compute. It does not appeal to us as pertinent to the context, as a healthy moral, religious or ethical dramatic state of affairs for the most solemn day of the year. And this begs for us the most obvious question. Many worshippers will attest that Kol Nidre is the most moving and emotional prayer of the synagogue year. As described just now, this is a violation of pragmatic analysis. Can a bug-fix with new programming code be the state-of—the-drama that they find so moving? Can the recitation of a dry legal formulary be the inspiration to kick off the climax of the ten days of atonement?

And so, to try to fix this, to create and justify that there is a drama, Gerson formulates, in his study, that there must be more going on in Kol Nidre saying, “The spoken word takes on a reality independent of human control, and no vow already in force can be revoked.” But we cannot accept Gerson’s straw man that the “word” has its own ontological reality, which in his theory cannot be reverted. Spoken code can be re-spoken, re-said and thus reverted. Prescribed legal formulas can nullify contracts.

Gerson creates that artificial context and drama to explain the potency of the prayer. By means of this Kol Nidre legal artifice, the intimidating vow words that can never be “revoked” are instead retroactively annulled. The vower then can treat them as if they had never “taken shape,” and the vower is thereby spared the “grave consequences of an unfulfilled vow.” The clever prayer thus deftly outsmarts the power of the intractable vow.

Gerson probes and summarizes opinions about the origins and Halakhic basis of Kol Nidre as an annulment of vows. In the process he does show that many others over the centuries have

accepted the liturgy partly or wholly on its face value, as a clever script whose performative purpose is to undo vows.

And yet, Gerson is not satisfied with this analysis. And neither are we. It is too objective and extrinsic to what is transpiring in the interior life of the Jew in the context. It has nothing to do with prayer service of Yom Kippur eve as a spiritual experience.

A second approach of scholarship looking to define the Kol Nidre out of its pragmatic context identifies other forces and purposes at work in the recitation. Some scholars proposed that the legal script formula of Kol Nidre is patterned on a magical incantation. This assertion is based on similar phrases and annulments that appear far outside the context of the liturgy, on the earthenware magic bowls found at Nippur and elsewhere in the Middle East dating from the fourth to seventh centuries. This wholly separate and tangential evidence dates from a period prior to the known entry of the Kol Nidre into the Yom Kippur liturgy (*Gerson 1977*), p. 123.

Gerson points out that, at the minimum, the incantation bowls show that the legal terminology of Kol Nidre was also applied at times in a magical context. The maximalist interpretation of the magical nature of these texts casts them as original incantations, “against demons by annulling the entire range of curses people bring upon themselves and others.”

In tracing the development of the prayer, Gerson reports that,

the Geonim uniformly declined to refer to Kol Nidre as a magical incantation. They described it as a nullification of human vows and expressed their approval or disapproval of it on legal grounds.

Gerson further reports that another scholar struggled with the use of this legal text as liturgy,

Keival contends that the Geonim were prepared to accept Kol Nidre as a prayer for divine absolution, but not as a nullification of vows... All these opinions take the Geonic opposition to Kol Nidre on legal grounds at face value. They do not really provide a ‘deeper’ understanding at all (p. 125).

Hence Gerson intuitively stated a viewpoint in that conclusion of his historical survey that we do endorse, i.e., there is deep liturgical meaning embedded in this prayer that needs to be understood in pragmatic contextual terms. In his survey, Gerson remarked that a host of great rabbis finally and firmly denied that Kol Nidre, “has any power to annul vows beyond those made with God or imposed upon oneself.” This points us back to our understanding of the formula as a liturgy.

Paradoxically Gerson concludes that, “Kol Nidre is not a prayer” (p. 134). “It does not ask God for forgiveness or absolution.” But he says,

Kol Nidre was an extremely popular ritual with the Jewish populace of ninth-century Babylonia and Palestine... the laity refused to let it go (pp. 134–5).

Gerson says it is not a “prayer” because he has a better way to compartmentalize the text. “Kol Nidre refers to the nullification of curses and spells,” Gerson says. “To use a musical analogy, Kol Nidre is a sonata and we’ve been playing it all along in the wrong key” (p. 136). It fits best in the “magic” category he says.

We do agree in part with Gerson, that is about his claim of the use of the wrong key. But we think he too does not get it right by invoking “magic” as the answer. We see the Kol Nidre neither as a corrective legal instrument nor as a palliative magical spell. Kol Nidre is not new code or script to fix a bug in our programming, legal or magical.

These modes of analysis just described are not pragmatic. They intentionally neglect the all of the context and cues of the recitation. Those indicate that Kol Nidre is legal formula transformed into true liturgy. It is situated as the inaugural liturgical recitation for the solemn day that follows. It thus makes pragmatic sense that Kol Nidre articulates a main theme of the liturgy, a central idea for the prayers that continues into the coming evening and through the next day.

Using this mode of study we conclude that this “dry” legal text is actually a vivid emotional liturgical declaration of the end user’s meditative intent. The worshipper announces the central theme of Yom Kippur at the outset of a set of long and complex performances that will follow over the next day.

Is this a “prayer?” Most certainly and pragmatically, yes. It is the inaugural declaration of the centerpiece of the entire Yom Kippur liturgy. It accomplishes this.

Kol Nidre is the declaration of a compassion that the liturgical users will now seek for themselves. This continues in the selibot, which continue as further repetitive declarations of compassion throughout the solemn services.

It is not an easy task for worshippers to find this emotional outlet for themselves, along with their entire community, together on the same day at the same time in the same place. As the worshippers go along in their extended meditation of compassion, they ask God to help them attain this empathy and forgiveness. Their process extends into the *viduy*, the confessions of sin in which they list their shortcomings, forgive themselves and ask for forgiveness from their God.

2. THE LITURGICAL FORCES IN PLAY

How does a stoical legal declaration function as a primary part of a warm liturgy? Why do the worshippers say, we release ourselves of our vows? Why do the parishioners start with that form of proclamation? The liturgical performers do so because that is in a scribal idiom a way for saying that they have compassion on themselves, they forgive themselves. Here in this collective house of gathering, they speak about themselves. They emotionally—not legally—annul their own wrong declarations, intentions and acts of the past and of the future.

These words in nonfigurative legal idiom are then pragmatically used as a personal meditation of compassion—as clear as any such act in any other religious context. This is a Jewish meditation. There is no clearly known abstraction to which the liturgical users appeal to formulate a “definition” of Jewish compassion. They inductively learn what it is from the modes in which they practice it. All the congregation needs to do to begin this meditative analysis and perception is to trigger the first realization that their liturgy in this instance on Yom Kippur Eve is a long diverse set of meditative practices seeking for themselves and their fellow Jews “*rahamim*” “*selibab*” “*mehilab*.” The worshippers are preparing to have remorse, regret and true pain because they are trapped by their shortcomings, their bad deeds, their inability to find peace. They have been disappointed, traumatized and confused by what they see around them.

They seek after compassion, which is dictionary-defined as, “sympathetic pity and concern for the sufferings or misfortunes of others.” In a process that they will call “atonement” they turn this compassion inward to address their own case, to have mercy on their own souls. They perform this liturgy enmeshed in their cultural trappings, simple and ornate. The pragmatic metaphor of choice to start the engine of compassion is the conceptual legal process for the release of vows. The idiom of these most sacred prayers begins with that. “Kol Nidre” serves on a basic subconscious emotional level as the ordinal articulation of the Jewish meditation of compassion.

This begins the epic Jewish holiday of compassion. The worshippers employ a legal sounding idiom saying that they are releasing vows. They are in fact starting a twenty-five hour marathon of meditative compassion and forgiveness. The Kol Nidre is the anthem that kicks off the liturgical Olympiad.

The *selibot* continue this process in another closely related musical, archetypal key. The *Avodah* and martyrology, later in the *Musaf*, change the channels to other exemplary and metaphoric styles. If mode x to achieve compassion does not work for you, then here is mode y or mode z . God will help you achieve compassion, or the priest in the *Avodah* will assist you to find compassion through the Temple rituals, or the martyrs in the martyrology will show you through their sacrifices, how to find the light of compassion at the end of the tunnel of sorrow. Perhaps these images and liturgies will open your heart and guide you to find compassion, to forgive yourself and your neighbors.

This sustained meditation on the emotions of compassion ultimately helps to remove the worshipper’s feelings of sin, guilt and suffering.

This meditation comes from the hearts and souls of the congregants fully clothed in the cultural garb of their community. It is expressed pragmatically in the way that the meditative masters of that faith think and the way they talk. As we have asserted, the deep emotional utterance of Kol Nidre comes forth in a legal idiom because that is how the rabbinic masters chose to express their meditation, acting in an archetypal scribal mode that is so familiar to them.

In the context of the service this is how the Kol Nidre works, expressed in the idiom of the supplicant:

Surely, vows do have potency over us. They do control our actions, they emanate from our psyches deep within. But as scribe-lawyers know, vows can be annulled. So now we want to accomplish that inner emotional task which is the analogue to extrinsic legal vow nullification. To compassionately reverse the wrongs, to take back control, to change course, to forgive ourselves for the evil, the rotten things that we have done, and will do, our mistakes, missteps, misstatements, that we have performed to ourselves, our loved ones, our neighbors and friends. To move on.

To have compassion on oneself is no easy task. So we come together. We come as a collective with each other for the lengthy liturgies of compassion of Yom Kippur.

In a variation from the Ashkenazic performance of Kol Nidre, the Sephardim make the prayer into a declaration and response. The second half is recited by the congregation to answer the declaration of the Hazzan asking to annul his vows, and the congregation responds, "All of them are permitted... nullified."

Within the rich context of Yom Kippur, the liturgy of the entire day will contain meditations by each individual on his or her own behalf. It is meditation that will need to be assisted first by a group, the community of worshippers. It is so difficult to attain the goal of compassion and forgiveness for one's own deeds and thoughts by oneself, or even with a visible and supportive group. The prayers do not start by addressing God. He is not the object of the Kol Nidre meditation. He is not mentioned therein. To help this process, the services then do go on to invoke and seek a higher power. Starting with the *Selibot* prayers, which follow in the *Maariv* service, the liturgy does spend considerable effort and energy through many of the remaining prayers, to implore God to help the worshipper attain compassion through his or her meditations. That is the crux of the emotional content of this liturgy.

It makes some dramatic sense. The many *Selibot* in the Mahzor over the next day's supplications are do not merely incessant repetitions. The selected idiom in *Selibot* is the one of the archetypal meditator. The iterations help the meditator to achieve a true state of meditative compassion for his or her own sins—shortcomings, feelings of anger, hatred, greed, envy. Repetition of formulae is one recognized meditative strategy that the supplicant employs.

And again, all of this takes shape in that pragmatic context, the immediate liturgical and the larger cultural and religious heritage.

3. PRAGMATICS NEGATE PHILOSOPHY

The worshipper seeks emotional release and transformation. There is nothing *magical* about all of this. And it ought not be camouflaged in too much philosophy or theology. Pragmatic insight allows the emotional content to brightly shine through. The theological labels commonly applied to the performances of the day describe that they are meant to achieve repentance for sin or atonement for transgression. A proper pragmatic analysis does not allow us to take the liturgy out of the meditative realm and put it into a flat cognitive mode of special, but emotionally empty, philosophical religious expression.

Philosophical cognition is cold, extrinsic, clean and mental, without the hot, messy, emotional power that one meets in meditation, in one's innermost heart and soul.

That is why, based on our close pragmatic analysis of the liturgy, we want to call Yom Kippur, the Day of Compassion, rather than the Day of Atonement. That is why we want to stop saying that we are repenting of our sins and start avowing that we are having compassion on our own sentient beings. This is compassion in a Jewish key. It is difficult and intricate emotional work.

4. MEDITATIONS OF COMPASSION COMPARED

We described just now what we mean by meditation of compassion in the Jewish scribal and meditative idioms, in its emotional trap-pings and as part of our liturgical drama. That idea, to look for the resonant category of compassion in the drama of Yom Kippur liturgy, jumps out from prominent contents in the prayers. The use of the Hebrew terms of compassion, *rahum* or *rahamim*, sit there on the surface, spoken throughout the Yom Kippur davening, as we have reviewed.

As a student of religions we know the value of engine of compassion as it takes shape in other systems. A prime example is found in the major streams of Buddhism, which develop the compassion idea as a main generative philosophical notion and a goal of meditative practice.

Some time ago, as a meditator, we trained in mindfulness meditation for a period of several years. In that time we practiced as exercises several of the primary meditations of compassion derived from Buddhism. We learned the techniques and the visualizations that contributed to the mastery of these meditations.

One encyclopedia entry on “compassion” sums up the philosophical side of the Buddhist notions of compassion with a reference to a few short representative Buddhist traditions on the subject, as follows:

Compassion or *karuna* is at the transcendental and experiential heart of the Buddha's teachings. He was reputedly asked by his personal attendant, Ananda, “Would it be true to say that the cultivation of loving kindness and compassion is a part of our practice?” To which the Buddha replied, “No. It would not be true to say that the cultivation of loving kindness and compassion is part of our practice. It would be true to say that the cultivation of loving kindness and compassion is all of our practice.”

At the same time, it is emphasized that in order to manifest effective compassion for others it is first of all necessary to be able to experience and fully appreciate one's own suffering and to have, as a consequence, compassion for oneself. The Buddha is reported to have said, “It is possible to travel the whole world in search of one who is more worthy of compassion than oneself. No such person can be found” (Wikipedia, *Compassion*).

It is refreshing to see such a clearly stated definition of the centrality of this emotionally resonant category that we have been calling “compassion.” In our Judaic instance of the liturgy of Yom Kippur it is fair to say that the way the concept works its way through prayers is not quite as clear and clean.

It is more complicated—embedded in a rich set of our religious and cultural matters. Dani Shapiro writes about this characteristic of Judaic belief and practices in her memoir, *Devotion*. She recalls about a well-known Jewish-Buddhist teacher and writer, “...someone asks Sylvia Boorstein why she complicates her Buddhism with her Judaism. *Buddhism is so pure and simple—why complicate it?* And Sylvia answers by saying, *Because I am complicated with my Judaism. It's where I come from.*”

Many gradations of the powerful emotional operative category “compassion” are there in our practice but are concealed by countless cultural wrappers, by layers of expression. We use several distinctive idioms and archetypes and multiple modes of expressing the facets and characteristics of compassion and loving kindness. And so it has taken us significant energy to identify and track the essential emotional content and goals in this service called Kol Nidre and in the prayer services that follow throughout the day.

But the payoff is there. Through all of the intricacies of the *mabzor*, we do expect that the ordinary worshipper, the Davener, is culturally conditioned and accustomed enough to know that the personal goal of Yom Kippur is to receive and to give *rachamim* and *selibah* and the array of accompanying emotionally resonant reliefs. And we expect that through the multifaceted variations and repetitions of the liturgy, the typical Jew will derive all the benefits that accrue therewith, compassion and forgiveness for oneself and one’s community. That is the transformation process that we call repentance or Teshuvah. And that leads to the result that we may call atonement or Kippurim.

5. A CASE STUDY TO VALIDATE OUR PRAGMATIC ANALYSIS

We offer an example as a validation of our pragmatic interpretation. In the final series of the *Selibot*, we utter the catalogue of God’s thirteen mainly emotional attributes over and over again on Yom Kippur in Neilah, the familiar:

Lord, Lord, God, Compassionate, with loving kindness, patient, with kindness and truth; keeper of mercy for thousands, forgiver of iniquity, transgression and sin; clearing us. Forgive our iniquity and sin and accept us (cf. *Exodus* 34:6–7).

יְיָ אֱלֹהֵינוּ רַחוּם וְחַנוּן / אֲרַךְ אַפַּיִם וְרַב חַסֵּד וְאֱמֶת
 נֹצֵר חַסֵּד לְאֵלֵינוּ / נֹשֵׂא עוֹן וְפֹשֵׁעַ וְחַטָּאָה וְנִקְיָה:
 וְסִלַּחַת לְעוֹנֵינוּ וְלַחַטָּאתֵנוּ וְנִחַלְתָּנוּ:

Within this sequence of repeated meditations, the tenth century Italian payetan Rabbi Amitai ben Shepatiah presented in his prayer a direct appeal to the divine attribute of compassion to intercede for us (in the second stanza of the poem, shown in the Hebrew below):

Attribute of compassion, pour upon us
In the presence of your creator, cast our supplications
For the sake of your people, request compassion
For every heart has pain and every mind is ill.

אֲזַכֶּרֶה אֱלֹהִים וְאֶהְמֶיָהּ / בְּרֵאוֹתַי כָּל-עֵיר עַל-תְּלָהּ בְּנוּיָהּ
וְעֵיר-הָאֱלֹהִים מְשַׁפֵּלֶת עַד שְׂאוֹל תַּחֲתֶיהָ / וּבְכָל-זֹאת אָנוּ לָיָהּ וְעַיִנֵינוּ לָיָהּ: יי

מִדַּת הַרְחָמִים עָלֵינוּ הַתְּנַלְגָּלִי / וְלִפְנֵי קוֹנֵךְ תַּחֲנֻנֶךָ הַפִּילִי
וּבְעַד עַמֶּךָ רַחֲמִים שְׂאַלִי / כִּי כָל-לֵבב דָּוִי וְכָל-רֹאשׁ לְחֵלִי: יי

תִּמְכָּתִי יִתְדוֹתַי בְּשִׁלְש־עֶשְׂרֵה תְּבוּת / וּבְשִׁעְרֵי דְמַעוֹת כִּי לֹא נִשְׁלָבוֹת
לְכֹן שְׁפָכְתִּי שִׁיחַ פָּנָי בּוֹחֵן לְבוֹת / בְּטוֹחַ אָנִי בְּאֵלֶיהָ וּבְנִכּוֹת שְׁלֹשֶׁת אָבוֹת: יי

יְהִי רְצוֹן מִלְּפָנֶיךָ שׁוֹמֵעַ קוֹל בְּכִיּוֹת / שֶׁתְּשִׂים דְּמַעוֹתֵינוּ בְּנֹאדֶךָ לְהֵיוֹת
וּתְצַלֵּנוּ מִכָּל גְּזֵרוֹת אַכְזָרִיוֹת / כִּי לָךְ לְבַד עַיִנֵינוּ תְּלוּיוֹת: יי

(From Goldschmidt's *Yom Kippur Machzor*, p. 778 (*Machzor Layamin Hanora'im*, 2 vols., Jerusalem, 1970); also said in the Yom Kippur evening prayer and on the 5th day of repentance)

Rav Joseph Soloveitchik, our teacher and a noted Orthodox theologian, went out of his way in his monograph, *Halakhic Man* (Phila., 1984), to comment negatively on this line:

The Halakhah views this prayer and other similar prayers as a deviation from legitimate Halakhic prayer, which is fundamentally exoteric in nature (p. 44).

The legal point of view does not know about an ontologically independent entity called compassion.

The Rav says further,

Man needs no outside help or special agents to approach God... A person needs no advocates when he knocks at the gates of heaven (J.B. Soloveitchik, *Yom Kippur Machzor*, New York, 2006, p. 818).

We respectfully emend the words of the Rav and would formulate matters differently. Ordinarily, it is true that we do not find an instance in the authorized rabbinic prayers in which we direct prayer to a divine attribute as if it were an exoteric intercessor.

There is this one exception to this pattern in the present piyyut, *Ezkerah Elohim*, which we recite at the very end of the Neilah, at the conclusion of Yom Kippur. By this time we have spent much effort to find God's compassion, our compassion, and to embrace it within us.

Rabbi Amitai knows that nowhere else do we deem it prudent to turn to the attribute of compassion and to project it as if it were an intercessor before God. But here at the close of Yom Kippur, we do, and we should, the piyyut tells us. We have earned the right and the duty to address the very compassion that we have brought into being through our strenuous efforts of the past twenty five hours.

And we may turn that compassion into our intercessor to God—just this one time. Theological principles must step aside, for in our actual synagogue, that is how the liturgical prayer operates. Accordingly, we deem it preferable to ask those who are concerned here that you slightly modify your legal and Halakhic perspective on principles if you must, defer your philosophical and theological notions, but always to respect the integrity and insight of your liturgy.

Liturgy and theology, and the law and the Halakhah, are distinct and highly complementary domains of Judaic expression. In the rare instance when they do conflict, we find instances to opt in favor the great expression of Judaic emotion and drama, the liturgy.

We recommend that liturgy be treated in its proper pragmatic performative context. In doing so we will best appreciate the emotionally resonant categories of our liturgy and be able to tap into the enormous power that they offer us: to bring forth compassion into our lives, to help us mend ourselves, our communities and our worlds.