

**Burchard's *Decretum* and Eleazar of Worms' *Sefer ha-Rokeah*:
A Comparative Study of the Role of Penance in the Religious
Lives of Christians and Jews in the Rhineland in the Middle
Ages**

The regnant perception of Ashkenazic Jewry in the High Middle Ages is of a community isolated, intellectually and socially, from the surrounding Christian culture. This view has been challenged by the work of recent scholars who not only have found commonalities in the Jewish and Christian use of dialectic in glosses to their respective religious and legal texts, but in folk religious practices as well. A striking parallel is the centrality of penance in the religious lives of both Christians and the *Hasidei Ashkenaz*, or German Pietists, a semi-separatist Jewish pietistic group in the 12th and 13th centuries. For both groups, penance was not only a means to deter sin; one can argue that its primary purpose was to cleanse and heal the penitent from the spiritual pollution of sin.

Specifically, there are several significant parallels between the *Decretum* of Burchard, Bishop of Worms, (c. 950-1025) and the *Sefer ha-Roqeah* (Book of the Perfumer) of R. Eleazar of Worms, (c. 1176-1238) despite the nearly two centuries between them. Both works are compilations of religious law which have introductions that stress piety and penance, both have a separate penitential section, and both conceived their works of religious law in light of the great importance they placed on piety and penance. In this paper I will examine these similarities by comparing the types of penance prescribed for sexual activity with a menstruating woman and parturient in Burchard's *Corrector*, the penitential section of the *Decretum*, to those found in *Hilkhoh Teshuvah*, or Laws of Atonement, in R. Eleazar's *Sefer ha Rokeah*. Though my focus is on the similarities between Burchard and Eleazar of Worms, there are of course many differences; Only by

understanding the differences can the similarities be fully appreciated.

Penance #53 for sexual relations during a woman's menses and immediately post-partum in Burchard's *Corrector* is as follows:

Did you unite with your wife during the time of her menses? If yes, you will do penance ten days on bread and water. If your wife has entered a church before having been purified from the blood following childbirth, she will do penance for as many days as she should have removed herself from the church. However, if you slept with her during these days you shall do penance twenty days on bread and water.

When Burchard mentions "purified from the blood following childbirth," he is referring to the practice of "churching," which was very common throughout the Middle

Ages. Following childbirth, a woman would customarily wait for forty days before entering a church, emulating Mary who, as stated in the Gospel of Luke, Ch. 2 verse 22, waited forty days before going to the Temple in Jerusalem to be purified after Jesus' birth, in accordance with Leviticus Ch. 12 verses 2-8. In Paragraph 53 of the *Corrector*, a woman who went to church before the end of the forty day period had to do penance for as many days as she entered the church too early; e.g., if she only waited thirty days, she must do penance for ten days. If her husband had relations with her during "those days," he had to fast for twenty days on bread and water; though the wording is ambiguous, it seems more plausible that "those days" refers to the days the woman "owed" the church, since he is sleeping with her during her time of impurity. All of these offenses have to do with improper relations within the marital relationship, and hence are not

damaging to society as a whole, but only to the spiritual “health” of the individuals involved:

Relations

- 1) During Lent
- 2) With a woman who is still not purified from childbirth
- 3) During pregnancy, (the latter two which have no chance of resulting in offspring), are all considered spiritual offenses.

Menses is dealt with more leniently in the *Corrector*. A man who sleeps with his wife during her menses is prescribed 10 days fasting of bread and water. Sexual relations during menses precludes procreation, but sexual positions other than the missionary position are also prohibited and have the same penance. According to James Brundage, penitentials in general forbade sexual positions other than the missionary position not only to promote procreation, but to limit experimentation that could intensify sexual pleasure for its own sake, which indicates

that sex in general, even within the context of marriage, is considered spiritually polluting.

I will now turn to the penances of the German Pietists:

The significant role penance played in the religious lives of Christians began to have a parallel in the religious life of medieval Jews. Though the timeline is very different, just as Christian private penance began with Irish and English monastic communities in the 6th century and then spread to the general population as a sacrament, so too were “Jewish penances” initially for a Pietist audience, and eventually applied to the general Rhenish-Jewish community by the late Middle Ages.

Ivan Marcus describes the German Pietists as “a group of ascetic religious extremists.” The three major figures in this group were Shmuel, son of Qalonimos the Elder of Speyer (c. mid-twelfth century); his younger son, R. Yehuda, known as

he-hasid, or "the pietist" (d. 1217), and author of *Sefer Hasidim*, or "Book of the Pious"; and R. Yehuda's cousin and student, Eleazar, son of R. Yehuda of Worms (d. 1230).

There are two primary aspects of German Pietism: One is to seek to fulfill the "Will of the Creator," and the other is to merit, through fasting and intense concentration during prayer, an image of the *Kavod*, or "Glory," of God. The German Pietists believed there was a Divine Will beyond the Written Torah and Oral Torah—the "Will of the Creator" which was not revealed. It was up to the Pietist to seek out this Will by:

- 1) Seeking out and observing stringencies in ritual (such as fasting for two days of Yom Kippur), and
- 2) Having exemplary ethical conduct, such as having a contrite and humble spirit, seeking out peace between a man and his fellow, and in general being scrupulous in observing all the commandments of the Torah, with a very strong emphasis on

avoiding impure sexual thoughts and actions. Marcus believes that German Pietism was a “personal eschatology,” since a Jew could not attain eternal salvation without adhering to the hidden Will of God. Life was considered a difficult trial designed to put the pietist to the test, and the more difficulty he had in fulfilling God’s Will, the greater reward he would have in the afterlife.

Penance plays a significant part in this religious viewpoint. There are several penitential works of the German Pietists, which are as follows:

- 1) The second section of the Book of the Pious, and a responsum on atonement by R. Eleazar’s teacher, R. Yehuda he-Hasid:
- 2) The Laws of Atonement in *Sefer ha-Roqeah* by R. Eleazar,
- 3) A second recension of Laws of Atonement called *Yoreh hatta’im* (*He Will Guide Sinners*), also by R. Eleazar

The following are attributed to or inspired by R. Eleazar:

4) *Moreh hatta'im* (A Guide for

Sinners), at times called *Sefer ha-Kapparot* (The Book of Penances

5) *Darkhei teshuva* (Ways of Penance), and

6) *Seder ha-teshuvah* (A Penitential Manual).

Like their Christian parallels, these “Jewish penitentials” list specific sins along with their prescribed penances and, also like their Christian counterparts, they seek to assist repentant sinners in achieving “complete atonement.”

Like Christian penances, R. Yehuda believed the penances he compiled were meant for any Jew who sinned, whether or not he was a pietist. Also like Burchard’s *Corrector* and other penitentials preceding it, R. Yehuda outlined the procedure for administering penance in much detail, with the sage, like the

priest, playing a central role, and even taking confession from the penitent.

Eleazar of Worms and the *Sefer ha-Roqeah*

Unlike both R. Yehuda he-Hasid and Burchard, R. Eleazar wrote penitentials designed for “the immediate private use of the sinner,” who was too embarrassed to confess his sins to a Sage and receive penances orally. According to Marcus, the omission of confession in R. Eleazar’s private penitentials had an effect on every aspect of the atonement process. Confession of one’s sins to God during the central prayer of the liturgy, recited three times daily, replaced confession to a sage: Instead of demonstrating one’s contrition to a sage who would prescribe abstinence from normally permitted actions, one now had to demonstrate contrition to himself. In place of the shame of confession and the prescription of penances from the confessor, the sinner needed a manual in order to learn which penances to perform and these

penances “had to provide expiation equivalent to the shame no longer experienced.” Penitentials, both Jewish and Christian, focus on those sins which are believed to cause the most spiritual damage; thus readers gain insight into what each society viewed as its ultimate spiritual goal. For Christian society, sexual purity was of paramount importance and was greatly limited even within the marital relationship. For the German Pietists, Marcus writes “the sins R. Eleazar singled out for special emphasis were...the ones corresponding to a list found in the early Jewish mystical text *Hekhalot Rabbati*...which prevent a mystic from being in a state of necessary purity for achieving the mystic vision.” The German Pietists were instrumental in the editing and transmission of these mystical texts, and so it is not surprising that R. Eleazar focusses precisely on those sins that could prevent a Pietist from seeing the Divine Glory.

There is a separate introduction to the “Laws of Atonement” in R. Eleazar’s *Sefer ha-Rokeah*, and it begins with a description of the various Talmudic and Midrashic sources about the origin and purpose of repentance. R. Eleazar delineates four categories of penance:

- 1) teshuvah ha-ba’ah - or “Situational Penance:” Repentance is achieved when one does not sin in the same situation in which he sinned previously;
- 2) teshuvat ha-gader - or “Boundary Penance:” One seeks to prevent sin by not engaging in permitted activities that could lead to sinful ones;
- 3) teshuvat ha-mishqal - or “Balancing Penance:” one undergoes penance that causes suffering equal to the pleasure one experienced by the sin; and finally,

4) teshuvat ha-katuv - or "Biblical Penance:" One undergoes penance equal to the punishment commanded by the Bible for the sin he committed.

These penances, though modeled on a Talmudic statement by R. Eleazar ben Azariah; are not found anywhere in the Talmud. They are instead lifted from the penances listed in R. Yehuda he-Hasid's Book of the Pious, but with significant differences: For example, for the sin of sexual intercourse with a married woman, the "Sage-Penitential" of R. Yehuda he-Hasid requires the sinner to sit in icy water in the Winter, or to sit among insects in the Summer. If he is unable to withstand these penances, he may fast on bread and water, while being flagellated in private, until he can withstand them. In *Sefer ha-Roqeah*, however, R. Eleazar requires fasting in conjunction with the harsher penances, in addition to daily confession during prayer. The harsher penances, and having specific fasts for specific sins, are nowhere in the

Talmud; instead, these bear a striking resemblance to the penances assigned in the Irish Penitentials, mentioned above. Despite prescribing harsher penances, R. Eleazar made the practice of penance more accessible to ordinary Jews by omitting confession to a sage, which was an innovative and controversial practice rejected by most Jews at the time.

Before examining the penances for sexual relations with a *niddah*, or menstruating woman, I feel it necessary to clearly define her halakhic status. A woman is considered a *niddah* not only during her actual menstrual flow, but for seven days after it ceases, until she immerses in a mikvah, or ritual bath. Leviticus 18:19, and Leviticus 20:18, expressly forbid sexual relations between a husband and wife when she is a *niddah*, and rabbinic texts take this further and forbid all physical contact as well.

Sexual relations with a *niddah* was considered nearly as heinous as adultery – marital relations with a *niddah* is mentioned

four times in R. Eleazar's Laws of Atonement, and has severe penances prescribed. This is in pointed contrast to Burchard's *Decretum*, where adultery was dealt with far more severely than with marital relations with a menstruating wife. According to R. Eleazar, if a man has relations with his wife when she is a *niddah*, he must confess daily while praying, fast for forty consecutive days, be flagellated each day he fasts, abstain from meat, wine, and warm food, and refrain from bathing on the days he fasts. By contrast, the prohibition of marital relations with a menstruating woman in Burchard's *Corrector* is presumably while the woman actually experiences her flow, and it does not warrant a severe penance. For the German Pietists, not only is sex with a *niddah* violating a commandment of the Torah; in *Hekhalot* literature, menstrual impurity is a potent barrier to experiencing a mystical vision of God's Glory.

Adultery is the most heinous sin; R. Eleazar writes that the adulterer must “bear great suffering like death.” Very harsh penances are prescribed, such as sitting in ice or snow for an hour once or twice a day every day, as well as contrite confession in conjunction with unspecified suffering, since the adulterer’s lover is now forbidden to her husband. Unlike Burchard’s *Corrector* and other Christian penitentials that commonly prescribed abstinence from marital sex during the time one was fulfilling his penance, adultery is the only case in R. Eleazar’s “Laws of Atonement” where abstinence from marital relations is prescribed.

Despite the paramount importance of sexual purity for the German Pietists, R. Eleazar is adamant that after a man’s wife is purified from her *niddah* status, her husband should:

Rejoice with her, and embrace her and kiss her and sanctify himself via marital relations...[he should take] delight in intercourse and all types of embrace in order to fulfill his desire and [his wife’s] desire so that he will not lust after another when he is with [his wife], for she is the wife of his bosom and he should show her great affection and love.

Unlike Christian penitentials, which frowned upon sexual pleasure even within the marital relationship, R. Eleazar stresses how important it is for a married couple to have joyous, loving, and pleasurable sexual relations within the proper perimeters, expressly to avoid sin. It is noteworthy that there are no proscriptions of various sexual positions. R. Eleazar could have included a discussion of marital relations anywhere in the *Sefer ha-Roqeah*; the fact that he chose to place it in the penitential section of his work speaks volumes as to how important he thought marital relations were to the spiritual well-being of the couple.

Concluding Remarks

Penance, particularly for sexual sins, is featured in ten out of the twenty books of Burchard's *Decretum*, not only in the penitential *The Corrector*.

Conversely, penance is in only one section of *Sefer ha-Roqeah*; the fact that both R. Eleazar and Burchard include penance in their respective religious legal works signifies the centrality of penance to their concept of a comprehensive collection of religious law. For Burchard, penance was a means to correct and heal the soul infected by sin; in a similar vein, for R. Eleazar (and his predecessors, R. Yehuah he-hasid and R. Shmuel), the practice of penance was sought to restore the spiritual imbalance sin caused. Marcus' description of the Pietist penitential process can easily be applied to that of Burchard and the practice of Christian penance in general: "The process consists of an integrated set of demands for psychological change, coupled with ritual drama designed, in part, to demonstrate the achievement of inner change, in part, to make possible its achievement". For both Christians and Jews, penance is a ritual of contrite actions meant to correct the excesses of illicit human desire; for R. Eleazar,

however, desire in the proper context is not only permissible but encouraged.

There has been much debate whether the penitentials of the German Pietists are a direct result of the Christian environment around them (which scholars such as Yitzhak Baer and Gershom Scholem contended,) or if they stem from Jewish tradition (which others, such as Peter Schafer, argue). I don't believe it is an either/or situation. Rather, building on Ivan Marcus' concept of "inner acculturation" I propose the concept of "cultural epigenetics". The field of epigenetics posits that certain genes in a genome can be "turned on" or "turned off" due to environmental factors; perhaps what is at work in thirteenth century Ashkenaz is an environment that is "turning on" the penitential "gene" that has its roots in Second Temple Jewish mysticism. This could lead German Pietists to combine disparate sources for penance in unique ways; however, I think it is likely an organic process,

much like the childhood initiation rite described by Marcus in his *Rituals of Childhood*.

Penitentials are another piece of the great puzzle of how medieval Jews and Christians in the Rhineland and N. France interacted. The parallels between Christian and Jewish penitentials give a glimpse of the parallels in the religious sensibilities of both communities; instead of the classic image of two communities only sharing hostilities, a richer and more variegated picture emerges.