



Maimonides and the *Semikha* Controversy
By David Silverberg

Parashat Pinchas tells of the formal designation of Yehoshua, Moshe's disciple, as his successor. As instructed by the Almighty, Moshe assembles the nation for a formal ceremony conferring his status of authority upon Yehoshua, a ceremony that included *semikha* – the placing of his hands upon Yehoshua's head (27:23). As Maimonides discusses in *Mishneh Torah* (Hilkhot Sanhedrin 4:1-2), this episode began the process of formal *semikha* – ordination, or conferral of authority – that continued uninterrupted until the year 4298 (538 C.E.). Though today "*semikha*" refers to a sort of rabbinical "degree," the certification of a rabbinical student by his institution or mentor as a competent halakhic decisor, the term initially had a much more specific denotation, referring to a particular halakhic status of rabbinic authority. *Semikha* grants rabbinical judges certain authoritative power, which is required for, among other things, corporal punishment. A rabbinical court may administer corporal punishment and monetary penalties (*kenasot*) only if they are invested with the power conveyed through formal *semikha*. Similarly, the ancient system of *kiddush ha-chodesh*, whereby new months are declared by the *Sanhedrin* (supreme halakhic body) based on the sighting of the new moon, requires *semikha*.

Maimonides, based on the Talmud, describes that only a rabbi who is himself invested with this status may confer it upon another. The reason, presumably, is that halakhic authority originates from Moshe, who brought us the Torah, and a scholar must therefore draw his authority from the unbroken chain which began when the lawgiver designated his disciple, Yehoshua, as his successor. Maimonides also notes that although we refer to this status with the term "*semikha*," which denotes the placing of hands upon one's head, no such ceremonial act is required for the conferral of *semikha*. The procedure entails simply a formal declaration by a rabbinical court of three judges, one of whom must have received *semikha* himself (ibid., 4:3; later we will elaborate further on this point). The Talmud explicitly establishes that *semikha* can be conferred only in the Land of Israel, and Maimonides rules accordingly (ibid., 4:4).

As mentioned, the *semikha* chain continued from Moshe's time until the period of persecution following the failed revolt of Bar-Kokhba, during the century following the Second Temple's destruction, when the unrelenting pressure of the hostile Roman Empire resulted in the discontinuation of *semikha*. Without the possibility of formal *semikha*, rabbinic authority is considerably curtailed; all responsibilities requiring the *Sanhedrin* cannot be fulfilled, and, needless to say, rabbinical courts do not have the coercive power invested in courts of *semukhin* (those who had received *semikha*).

In this same chapter in *Mishneh Torah* (4:11), Maimonides introduces a novel theory allowing the reinstating of the *semikha* chain, a ruling which marks among the most fascinating – and perhaps controversial – halakhic positions that appear in *Mishneh Torah*:

The following appears to me: If all the scholars in the Land of Israel agree to appoint judges and grant them *semikha*, they are *semukhin* [formally ordained] and are licensed to adjudicate matters involving monetary penalties, and they can then ordain others. If so, why were the Sages concerned about [the loss of] *semikha*? So that the laws of monetary penalties will not be suspended from Israel, because Israel is scattered, and it is impossible that they will all agree. And if there is a *samukh* who received [*semikhka*] from a *samukh*, he does not require everyone's consent; he may rather adjudicate matters of monetary penalties for all, since he was ordained by a rabbinical court. But the matter requires a final decision.

Acknowledging that he has no source for his position ("The following appears to me"), Maimonides boldly allows for the restoration of *semikha* with the consent of "all the scholars in the

Land of Israel." Contrary to the impression given by the relevant Talmudic sources, which hinge *semikha* on the unbroken link to Moshe and Yehoshua, Maimonides recognizes an alternate method of conferring this status – through the unanimous consent of the sages living in *Eretz Yisrael*. He anticipated a challenge to his theory from the Talmudic account (Sanhedrin 14a) of Rabbi Yehuda Ben Bava's martyrdom in perpetuating the *semikha* tradition. If Rabbi Yehuda Ben Bava gave his life to ensure the continuity of the chain, seemingly he understood that without his efforts *semikha* would be permanently lost. Maimonides therefore clarifies that the sages' concern was not the permanent loss of *semikha*, but rather the important function this status serves in terms of rabbinic authority, and the difficulty entailed in securing the unanimous consent required for its restoration.

Maimonides had introduced this theory in an earlier work, his commentary to the Mishna (Sanhedrin 1:3), where he also provides the logic underlying his position:

I am of the opinion that if there would be consent among all students and scholars to appoint a man in the academy, meaning, to appoint him as the head, on condition that this occurs in the Land of Israel, as noted earlier, then that man... would be a *samukh* and can then ordain whomever he wishes. For if you say otherwise, the existence of the supreme rabbinical court could never again be possible, since each one of them must undoubtedly be a *samukh*, and God has already promised their restoration, when He declared (Yeshayahu 1:26), "I will restore your judges as of old." Perhaps you will argue that the Messiah will appoint them, despite their not being *semukhin*? This is untenable, for we have already explained in the introduction to this work of ours that the Messiah will not add onto the Torah or detract from it, neither the written Torah nor the oral Torah. And I am of the opinion that the *Sanhedrin* will return before the Messiah's revelation.

God's promise to fully restore Israel's system of rabbinic authority necessitates the possibility of conferring *semikha* even after its discontinuation. The Messianic king, Maimonides argues, is as bound to the Torah's laws and procedures as any other member of the nation, and he therefore will not have the power to restore *semikha* if Halakha itself does not allow it. And besides, he adds, the *Sanhedrin* will convene anew even before Messiah's arrival, and there thus must be some halakhic mechanism for the reinstating of *semikha* even after centuries of its suspension. On this basis, Maimonides insists that a consensus of scholars in the Land of Israel grants license to renew the formal status of *semikha*.

Although this ruling does not, as mentioned, appear to have any explicit basis in earlier sources, Rabbi Yosef Dov Soloveitchik (cited by Rabbi Herschel Shachtar, in *Eretz Ha-tzvi*, p. 233) detected a possible indication of this theory in the Torah itself. As Rabbi Soloveitchik noted, Yehoshua's formal ordination, as described in Parashat Pinchas, consisted of two distinct stages. God instructs Moshe: 1) "Take Yehoshua the son of Nun... and rest your hands upon him; 2) Have him stand before Elazar the *kohen* and before the entire congregation, and you shall appoint him in their sight" (27:18-19). These two procedures, Rabbi Soloveitchik suggested, likely correspond to the two methods of conferring *semikha* according to Maimonides. The first stage involved Moshe's personal appointment of Yehoshua, whereas the second involved Yehoshua's formal acceptance by the nation at large. Both procedures were necessary in order to establish the precedent for future conferral of authority. Conceivably, then, Maimonides' theory, allowing for conferring *semikha* either through direct appointment from a *samukh* or via a consensus of leading rabbis, might actually have roots in the Torah itself.

The Controversy of 5298 (1538)

Maimonides' position precipitated one of the most famous halakhic controversies of all time, one which gave rise to volumes of literature on the subject. During the years following the Jews' expulsion from Spain in 1492, many refugees settled in *Eretz Yisrael* and established major centers of Jewish life in Jerusalem and Tzefat (Safed). In the year 5298 (1538), the leading rabbis of Tzefat – without consulting their Jerusalemite colleagues – convened to reinstate *semikha* as sanctioned by Maimonides. Rabbi Yaakov Beirav, known as the Mahari Beirav, was formally ordained by the assembly of twenty-five scholars, and he later conferred *semikha* upon several of his students, most notably, perhaps, Rabbi Yosef Karo, author of the *Shulchan Arukh*. This bold initiative was motivated

– at least in large measure – by the desire on the part of former Marranoes, Jews who had publicly renounced the Jewish faith at the time of the Spanish Inquisition, to earn atonement for their transgressions. Many Marranoes publicly desecrated Shabbat or committed other misdeeds punishable by *karet* (eternal excision from the Jewish people). The Mishna (Masekhet Makot 23a) establishes that flogging at the hands of the rabbinical court absolves violators from *karet*. Hence, many repentant Marranoes who settled in *Eretz Yisrael* sought expiation through court-administered corporal punishment, but, as mentioned earlier, only courts comprised of *semukhin* are authorized to administer punitive measures. Hence, the community of Tzefat decided to reinstate *semikha*, in line with Maimonides' position, so that they could offer former Marranoes the opportunity for atonement.

The Tzefat community's initiative met with vehement opposition on the part of the Jerusalem leadership, particularly its chief rabbi, Rabbi Levi Ben Chaviv (known as the "Maharlbakh"). Rabbi Levi Ben Chaviv composed a lengthy treatise on the subject clarifying the basis for his objection to reinstating *semikha*, which is published at the end of his work of responsa. He was joined by Rabbi David Ben Zimra, known as the "Radbaz," who was among the leading rabbinic figures in Egypt and likewise expressed his opposition to the *semikha* initiative. The Radbaz, too, wrote a letter of objection, and even comments about this episode in his commentary to *Mishneh Torah*. The Mahari Beirav, in turn, wrote a treatise of his own defending his position, and, as mentioned, this issue became the center of considerable controversy and debate.

This issue arose once again much more recently, in the earlier part of the 20th century, when the mass emigration of Jews to their ancient homeland aroused calls on the part of some to reestablish the *Sanhedrin*. Among the more comprehensive essays written during this period to address the issue is a responsum by Rabbi Chaim Hirschenson (who lived in Israel and later assumed a rabbinical post in New Jersey). Rabbi Hirschenson published his exposition in the second volume of his work *Malki Ba-kodesh*, which can be accessed online at www.hebrewbooks.org/getsefer.asp?booknumber=352.

We will briefly discuss several of the issues involved in practically applying Maimonides' ruling to the reinstating of the *Sanhedrin* nowadays.

Disputing Maimonides

For one thing, some writers dismissed Maimonides' position altogether. Several writers cited in this context a remark by the Ritva (one of the classic, Medieval commentaries to the Talmud) at the conclusion of his commentary to Masekhet Yevamot: "... until the Messiah comes and we will experience the fulfillment of the verse, 'I will restore your judges as of old'." The Ritva clearly indicates that the restoration of the rabbinic judiciary will occur only after the onset of the Messianic era. In fact, this appears to be the assumption underlying an explicit statement in the Talmud (*Sanhedrin* 98a): "The son of David [the Messiah] will come only when there remain no judges or law-enforcers, as it is written, 'I will turn My hand against you and cleanse all your dross like soap... I will restore your judges as of old'." This passage clearly reads the prophecy of the judges' restoration as referring to the Messianic era, seemingly in direct opposition to Maimonides' position, that the *Sanhedrin* will be reinstated before Messiah's arrival. It should be noted that the Talmud there cites numerous other remarks predicting the circumstances under which the Messiah will arrive, suggesting that many different views existed on the matter. Presumably, Maimonides dismissed the aforementioned passage as reflecting a minority position that has not been accepted. In any event, the Ritva very likely embraced this position, that *semikha* will be restored only during the Messianic era.

Eliyahu the Prophet

The Radbaz (commentary to *Hilkhot Sanhedrin* 4:11) attempts challenging the line of reasoning upon which Maimonides based his view. Recall that in his commentary to the Mishna, Maimonides proved his theory on the basis of the fact that without an alternate mechanism for conferring *semikha*, the *Sanhedrin* could never be reestablished. The Radbaz counters that the prophet Eliyahu, whose return to the world is foretold by the prophet Malakhi (3:23), will arrive before Mashiach. Having himself received *semikha* (as Maimonides indeed indicates, in his introduction to *Mishneh Torah*), he will be in a position to confer the status upon others and thereby reinstate the *Sanhedrin*.

But this argument of the Radbaz can be easily refuted on several counts. Most glaringly, as noted by Rabbi Yosef Kapach in his commentary to *Mishneh Torah*, Maimonides elsewhere (Hilkhot Melakhim 12:2) records a debate among the Sages as to whether Eliyahu's return will occur prior to or after the Messiah's arrival. He explicitly leaves this issue as an open question, which will be resolved only when the events actually unfold. Therefore, given the possibility that Eliyahu will return only after the Messianic era begins, some mechanism must exist for restoring *semikha* before his return. Furthermore, as Rabbi Hirschenson notes, the final Mishna of Masekhet Eduyot discusses the roles Eliyahu will serve upon his arrival, and no mention is made of reinstating *semikha*. Apparently, the restoration of *semikha* can occur even without Eliyahu, thus supporting Maimonides' contention.

What more, the Talmud in Masekhet Eruvin (43a), amidst a complex discussion concerning the laws of *nezirut* (the nazirite oath), envisions the scenario of Eliyahu returning to earth and proceeding immediately to the *Sanhedrin*, before revealing himself to the masses. This sequence of events clearly works off the assumption that the *Sanhedrin*'s reestablishment will precede Eliyahu's arrival. Indeed, the Talmudic commentary *Maharitz Chayot* (in Eruvin) draws proof from this Talmudic passage against the Radbaz's contention, that Eliyahu will renew the *semikha* chain.

"Ve-ha-davar Tzarikh Hekhre'i'a"

A more compelling argument against the *semikha* initiative involves Maimonides' own seeming ambivalence towards the issue. As cited earlier, Maimonides concludes the relevant passage in *Mishneh Torah* with the remark, "*Ve-ha-davar tzarikh hekhrei'a*" – "But the matter requires a final decision." Seemingly, then, as Rabbi Levi Ben Chaviv contended, Maimonides posed this theory not as a definitive ruling, but rather as a speculative, instinctive hypothesis requiring further elucidation. And although in his commentary to the Mishna he expresses no such misgivings, Maimonides' rulings in *Mishneh Torah* are generally seen as the more authoritative expression of his halakhic decisions. Moreover, he authored his commentary to the Mishna at a much younger age (the commentary to the Mishna was his first published work; *Mishneh Torah* was among the last), and it is thus likely that after its publication he reconsidered this ruling.

Furthermore, some writers (including Rabbi Chaim Banbanishti, *Ba'ei Chayei*, C.M., 1:209) note a peculiarity in Maimonides' formulation when introducing this theory. Generally, when he introduces a ruling that he inferred through his own logical deduction, rather than based on an explicit source, Maimonides writes, "*Ve-yir'eh li*" – "It appears to me." In this context, he chose a slightly different formulation: "*Ve-nir'in li ha-devarim*" – "It appears to me as follows." This discrepancy might stem from different levels of conviction: Maimonides employs the more common expression when codifying original rulings which he had deduced with certainty, whereas the deviant syntax refers to a speculative theory which cannot be stated definitively.

The Mahari Beirav responded to the first argument, concerning Maimonides' concluding expression of uncertainty. He countered that Maimonides' indecision refers not to the general issue of reinstating *semikha*, but rather to the particular point articulated just prior to that concluding remark: "And if there is a *samukh* who received [*semikhka*] from a *samukh*, he does not require everyone's consent; he may rather adjudicate matters of monetary penalties for all, since he was ordained by a rabbinical court. But the matter requires a final decision." Quite possibly, Maimonides here questions whether the presence of a single *samukh* on the court conferring *semikha* suffices, or if all three members of the court must have themselves received *semikha* in order to confer the status upon another scholar. In fact, in his commentary to the Mishna, Maimonides explicitly presents both options and expresses his uncertainty on the matter. Accordingly, the Mahari Beirav contended that the clause "*ve-ha-davar tzarikh hekhrei'a*" modifies only the immediately preceding passage, which deals with the required procedures for direct, personal *semikha*, rather than the general context, regarding the possibility of renewing the *semikha* chain.

The Radbaz, however, convincingly dismisses this reading. Earlier in this chapter (4:3), Maimonides very definitively codifies the option of conferring *semikha* through a tribunal consisting of one *samukh* and two non-*semukhin*. Had Maimonides entertained any misgivings in this regard, he should have expressed them in that earlier passage, rather than in an entirely different context, concerning the reinstating of *semikha* through rabbinical consensus. It thus seems far more likely that the phrase "*ve-ha-davar tzarikh hekhrei'a*"

modifies this entire passage, casting doubts on the possibility of renewing *semikha*.

"All the Scholars in the Land of Israel"

Rabbi Levi Ben Chaviv advanced yet another, perhaps more obvious, argument against the initiative of the Tzefat rabbinate, namely, that it did not receive the consent of its counterparts in Jerusalem. Maimonides explicitly requires that "all the scholars in the Land of Israel agree to appoint judges and grant them *semikha*" for the reestablishment to take effect. But the ordination of the Mahari Beirav was conceived and executed without the participation or approval of the rabbinic leadership of Jerusalem, and is thus de facto null and void.

In response, the Mahari Beirav invokes – somewhat questionably – the halakhic notion of *rubo ke-kulo*, whereby the majority of a group is deemed halakhically equivalent to the entire group. The community of Tzefat had, at that time, surpassed Jerusalem in terms of Torah activity, and its rabbinic population clearly comprised the majority of *Eretz Yisrael's* rabbis. Hence, the Mahari Beirav felt, the rabbis in Tzefat were indeed entitled to undertake this initiative without the consent of their colleagues in Jerusalem.

A Limited *Semikha*

Opponents of the *semikha* initiative also argued that the status Maimonides allows reestablishing does not confer full rabbinic authority and power to those receiving *semikha* through this method. After all, he writes, "If all the scholars in the Land of Israel agree to appoint judges and grant them *semikha*, they are *semukhin* [formally ordained] and are licensed to adjudicate matters involving monetary penalties..." Maimonides singles out one ramification of the *semikha* status – the power to impose *kenasot*, monetary fines. This mechanism of conferring *semikha* is perhaps more limited than the conventional method, and invests the *semukh* with the authority to levy fines, but no more. (Rabbi Chayim Soloveitchik of Brisk reportedly accepted this reading of Maimonides' comments; see *Eretz Ha-tzvi*, p. 233.) Accordingly, Rabbi Levi Ben Chaviv and others argued that even should we assume the halakhic validity of the Tzefat community's initiative, it was ineffective with regard to its primary purpose, to allow for the administering of corporal punishment. At best, the *semikha* initiative would empower the Mahari Beirav and his successors to impose monetary penalties, but not court-administered flogging.

Others attempted to refute this qualification based on a passage several chapters later in *Mishneh Torah*, dealing with the guidelines of corporal punishment (Hilkhos Sanhedrin 16:2). Maimonides writes, "Flogging is administered nowadays in all locations, by force of Torah law [as opposed to rabbinic legislation], in the presence of three *semukhin*, but not in the presence of *hedyotot* [those without *semikha*]." Maimonides explicitly allows for the possibility of corporal punishment administered by *semukhin* even "nowadays." Seemingly, then, the *semikha* that can potentially be reinstated grants the rabbinical courts full authorization, and not merely the power to impose fines. Rabbi Chayim Falagi (*Chukot Ha-chayim*, 90) attempts refuting this proof, arguing that the term "*bi-zman ha-zeh*" ("nowadays") often refers to the post-Temple era in general, and not the specific period in which the given work was written. Hence, Maimonides quite possibly means simply that the courts may administer corporal punishment even after the Temple's destruction. This does not, however, indicate that this power is retained even after the discontinuation of the *semikha* chain.

We might, however, dismiss this restriction on the reinstated *semikha* for another reason. As mentioned earlier, Maimonides proved his theory from the prophecy foretelling the full restoration of the Jewish nation's judicial system, which necessitates a halakhically viable means of reinstating the *semikha* process. It seems fairly obvious that the prophet foresees the return of the rabbinical courts' complete authority that applied in ancient times ("I will restore your judges as of old"), and not merely the power to impose monetary penalties. Thus, if Maimonides bases the possibility of reinstating *semikha* on the promise of the return of full judicial authority, then he must allow for the restoration of the authentic *semikha*, which empowers holders of this status with full authority "as of old."

Who Qualifies for *Semikha*?

Finally, we will address a pragmatic issue raised by both the Radbaz and Rabbi Levi Ben Chaviv, namely, the absence of qualified scholars. A scholar ordained with *semikha*, they asserted, must have mastered the entire range of Torah scholarship, such that he can authoritatively decide upon matters across the spectrum of Jewish law. The Radbaz comments, "It seems very unlikely to me that there is in this generation someone worthy of decision-making with regard to the entire Torah." Presumably, the Radbaz made this remark not to belittle the scholarship or caliber of the Mahari Beirav, but rather to emphasize the lofty stature demanded by the *semikha* status. In his view, the Jewish people could not at that time produce a scholar of the requisite caliber, effectively rendering Maimonides' theory practically irrelevant.

It is unclear, however, on what basis the Radbaz and Rabbi Levi Ben Chaviv arrived at this strict standard demanded for *semikha*. As noted by Rabbi Yosef Tzvi Rimon (www.etzion.org.il/dk/1to899/650daf.htm), Maimonides rules explicitly (Hilkhot Sanhedrin 1:6) that a *Sanhedrin* requires a minimum of two members with comprehensive proficiency. The *Kesef Mishneh* commentary notes that the other members are not required to have attained the level of scholarship enabling them to decide on all Torah matters. And since all members of the *Sanhedrin* must have received *semikha*, it clearly emerges that the *semikha* status does not demand comprehensive knowledge. Seemingly, then, towering Torah personalities of the Mahari Beirav's stature (or even lower, perhaps), should qualify for *semikha*.

"Consent Among All Students and Scholars"

Unfortunately, another pragmatic obstacle continues to stand in the way of restoring the system of formal *semikha*: the lamentably fragmented state of the Jewish people and their rabbinic leadership. So many pressing issues currently divide today's rabbis, to the point where rabbinic authority has, in many instances, become confined to a given scholar's immediate following and narrow sphere of influence. In today's world, as we read Maimonides' hypothetical description of "consent among all students and scholars," the prospect of a reinstated *Sanhedrin* appears at best as a distant dream. But his position in this regard should encourage us to reinforce our faith in the words of the prophet, who has promised that God will, indeed, ultimately restore the former glory of our nation's religious leadership, at which point Jerusalem "will be called the 'city of justice,' the 'faithful city'" (Yeshayahu 1:26).