YESHIVAT HAR ETZION

ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**Commentaries on the Mishna**

**By Rav Yosef Marcus**

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

In memory of Steven Esses (Shlomo David ben Moshe) z"l

May the family know no more sorrow.

\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*\*

**Shiur#10: The Drafts of the Rambam’s Commentary on the Mishna and their Significance**

1. **Introduction**

In the previous *shiur,* we discussed the phenomenon of retractions and modifications in the Commentary of the Rambam on the Mishna, and saw that the Rambam’s own autograph manuscript is an important source for understanding the process of how he wrote his Commentary.

Beginning in the 1940s, scholars began to discover individual sections of the Commentary on the Mishna in the Cairo Geniza in the Rambam’s own handwriting. These passages were distinctly different from the version in the autograph manuscript (the version they were familiar with). This led them to conclude that these passages were taken from a draft written by the Rambam before he had compiled the final version which is more familiar.[[1]](#footnote-1) The drafts that have been discovered thus far contain fragments from the following tractates: *Shabbat, Pesachim, Bava Batra, Sanhedrin,* and the introductions to *Kelim* and *Seder Taharot.[[2]](#footnote-2)*

Scholars disagreed about the relationship between these drafts and the final version of the Commentary with which we are familiar. Simon Hopkins[[3]](#footnote-3) initially believed that this was essentially a “first edition”, though he later wrote that “while the overall [initial] approach presented there is still reasonable, the claim that these *Geniza* fragments can be viewed as an official edition seems to me today to be somewhat exaggerated. This is because individual manuscripts do not necessarily indicate the existence of an entire edition.”[[4]](#footnote-4)

Either way, Hopkins claims that these drafts were not simply the Rambam’s personal notes, and that the Rambam did in fact publicize them to the general population. He consequently believes that it is entirely possible that the Hebrew translations of the Commentary on the Mishna (which was printed in Arabic, as mentioned in previous *shiurim*), which occasionally feature different versions of the text than the standard printed edition, occasionally reflect the text of the draft before the Rambam’s final round of editing.[[5]](#footnote-5) Hopkins finds support for his position in the words of Rav Kapach,[[6]](#footnote-6) who suggests that there are some passages that were found in reliable manuscripts, but are absent from the handwritten autograph copy. He explains that not all of the Rambam’s modifications were added to the final official version of the commentary. Rather, some of them were recorded in other ways, such as the Rambam telling them to his students while studying, and the like.

Rav Shilat[[7]](#footnote-7) strongly disagrees with this approach. He argues that the Rambam never allowed the drafts to be transcribed; therefore, it is impossible that those who translated the Rambam’s Commentary into Hebrew ever saw or translated these passages. In his opinion, these drafts were personal and were only used by the Rambam, and following his final edits, he stored them so that they would never be used. In response to Hopkins’ proofs, he argues that the difference between the older editions found in the translation and the text of the drafts is quite significant. Therefore, he claims, it is not reasonable that the Rambam would have allowed for the distribution of passages from a version of the commentary that he had never completed.

1. **The Renewal of *Semikha* (ordination)**
2. **The Need for *Semikha***

The relationship between the drafts and the Rambam’s personal manuscripts can be further analyzed by examining a specific innovation offered by the Rambam with regard to the issue of reinstituting the concept of *semikha* (ordination).[[8]](#footnote-8)

There is a widespread halakhic assumption that in order for a rabbinical judge to be a full-fledged member of the *Sanhedrin,* including permission to judge cases involving monetary fines, he must be ordained by a rabbi who was ordained himself, with the chain of ordination stretching back continuously to the time of Moshe.[[9]](#footnote-9) This is how the Rambam summarizes the issue in the *Mishneh Torah*:

Regarding the Great Sanhedrin, the lesser Sanhedrin or a *beit din* (rabbinical court) of three, one of the judges must be ordained from another who was ordained. And Moshe our teacher ordained Yehoshua with [his own] hands, as it is stated, “And he placed [*vayismokh*] his hands on him and commanded him” (*Bamidbar* 27:23). Likewise, Moshe our teacher ordained the seventy elders, and the Divine presence was upon them, and those elders ordained others, and [those] others [ordained] others, and it was found that the ordained [were ordained] by one person from another, back to the *beit din* of Yehoshua and back to the *beit din* of Moshe our teacher. [[10]](#footnote-10) (Rambam, *Hilkhot Sanhedrin* 4:1)

1. **The Comments of the Rambam in the Commentary on the Mishna in Tractate *Sanhedrin***

Unfortunately, the chain of *semikha* was abolished over the course of the generations, and there are no longer any ordained rabbinical judges.[[11]](#footnote-11) Consequently, it is difficult to understand how the chain will be able to return in messianic times. It appears that the Rambam was the first one to address this question, which he discusses explicitly and at length. In a long passage in his Commentary on the Mishna to tractate *Sanhedrin,* the Rambam expands on the various halakhic details of *semikha,* and then addresses the issue of how to reinstitute it:

And we do not require ordination by [placing of] hands; rather the appointing *beit din* tells the person who is worthy of being appointed: “You, Rabbi so and so, you are ordained, and you are permitted to judge cases of monetary fines.” And that person is thereby ordained, and is called “*Elohim*,” and may judge all cases… and I believe that if there would be agreement among all of the students and the Sages to appoint one person in the Yeshiva[[12]](#footnote-12) to make him the head, as long as this is in the land of Israel, as we have stated previously, the Yeshiva will be established for that man, and he will be [considered] ordained, and he may ordain anyone he chooses afterward. Because if you do not say this, the reality of the Great *Beit Din* [i.e., the Great Sanhedrin of 71] will never be possible, as each of them must be ordained without doubt, and God has already promised their return, when it says, “And I shall return your judges as in former [times]” (*Yeshayahu* 1:26).

And perhaps you will say that the Messiah will appoint them even though they are not ordained, [but this is impossible, as] this is contradicted, as we have already explained in the introduction to this work that the Messiah will not add anything to the Written or Oral Torah and will not detract from it at all. And I believe that the Sanhedrin will return prior to the revelation of the Messiah, and one of the signs of the Messiah will be the Sanhedrin, as it says: “And I shall return your judges as at first, and your advisors as at the beginning, and afterward you will be called the city of justice.” And this will be, without a doubt, when God prepares the hearts of people, and they increase their positive actions, and their desire for God and His Torah increases, and their uprightness shall increase before the coming of the Messiah, as was explained in the verses in the Torah.[[13]](#footnote-13) (Rambam, Commentary on the Mishna, *Sanhedrin* 1:3)

The Rambam claims[[14]](#footnote-14) that a general agreement of the students and Sages of the land of Israel to appoint a specific person to lead them renders that person ordained, and he may then ordain others. Aside from the actual halakhic argument supporting this opinion, the Rambam also explains why this is the only possible practical possibility: The Sanhedrin will certainly return in messianic times, but the ordination of judges is not based on the authority of the Messiah, as the Sanhedrin will return before the coming of the Messiah.

The passage of the draft from tractate *Sanhedrin* that Hopkins published[[15]](#footnote-15) contains the majority of the Commentary of the Rambam on chapters 1 and 2. A careful comparison between the text of the draft and that of the standard version of the Commentary on the Mishna indicates that the formulation and the content of both are quite similar overall, besides for a number of differences, some of which are in fact significant,. One gets the impression that whether the Rambam published the draft version or not, it reflects a version of the text that is almost identical to the one which the Rambam did publish, and they do not appear to just be a rough draft of notes and random comments.

One of the important and striking differences between the text of the draft and that of the Commentary on the Mishna is the novelty with regard to this issue of reinstituting *semikha*. In the lengthy paragraph cited above in the Commentary on the Mishna, the Rambam comments on the ruling of the Mishna that “the ordination of Sages and the [ceremony of] the heifer whose neck is broken [must be performed] with three [judges].” After the Rambam explains that the expression “ordination of elders” refers to the appointment of rabbinical judges, he elaborates on the laws of *semikha* and mentions his opinion regarding its reinstitution. He then explains the source for the requirement to have three judges present for the execution of the ceremony for the heifer whose neck is broken. However, the draft version does not appear to contain the entire paragraph about the method of *semikha* and the issue of its renewal.

We should note that in the photo edition of the draft published by Hopkins, the manuscript appears torn at the beginning of the lines and at the end, cutting off the Rambam’s words. However, keeping in mind the context and the size of the words in the draft manuscript, as well as a comparison with the standard text of the Commentary on the Mishna, Hopkins suggests that the missing words do not include any mention of the novelty with regard to *semikha*.

If we compare the draft version with the interpolations suggested by to the Rambam’s autograph manuscript of the Commentary on the Mishna, it appears that the two versions indeed overlap significantly. This is also the impression one gets when comparing the draft version of tractate *Sanhedrin* chapters 1-2 with the final version of the Rambam’s Commentary on the Mishna. They appear to have a similar formulation in the original Arabic, which has been translated by Rav Kapach into Hebrew as follows (translated here into English):

The ordination of elders is the appointment of rabbinical judges… and it says with regard to the breaking of the heifer, “And the elders of the congregation shall place,” (*Vayikra* 4:15).[[16]](#footnote-16) Rabbi Yehuda says, “And they shall place,” [indicates] no less than two, “elders,” no less than two others. There is no balanced *beit din,* i.e., the number of judges must be odd [; [requiring that] we add one, and the halakha is in accordance with Rabbi Yehuda. (Rambam, Commentary on the Mishna, *Sanhedrin* 1:3, Rav Kapach edition)

It seems that when the Rambam wrote his draft on tractate *Sanhedrin,* the vast majority of the first two chapters was already in its final form which would ultimately become the final edition. However, when the Rambam completed his final edit, he inserted his novelty about *semikha* into the already existing text in between the words “rabbinical judges” and “and it says,” where there is an ellipsis in the above English translation. After that, he continues with the same formulation as is written in the draft version.

1. **The Comments of the Rambam in the Commentary on the Mishna of Tractate *Bekhorot***

Until this point, we have discussed the comments of the Rambam about the renewal of *semikha* as they appear in his Commentary on the Mishna to tractate *Sanhedrin.* The Rambam also briefly refers to this notion in his commentary on tractate *Bekhorot*:

We have already explained in the beginning of *Sanhedrin* that a ordinary *beit din* cannot be called [a *beit* din] unless it was ordained in the land of Israel, whether it was one ordained by an ordained [individual], or with the consent of all of the residents of the land of Israel to appoint a specific man as the head of the Yeshiva, as the people of the land of Israel are called “the community [*kahal*],” and God calls them the entire community, even if there were [only] ten lone [individuals], and we do not consider those aside from them [who live] in the Diaspora, as we have explained in [tractate] *Horayot.*  (Rambam, Commentary on the Mishna, *Bekhorot* 4:3)

The Rambam begins with a reference to what he wrote “in the beginning of *Sanhedrin*” and briefly summarizes his novel idea. However, the formulation of his novelty here is somewhat different from the way it is presented in *Sanhedrin.* First, whereas in *Sanhedrin* he requires the consent to be that of “all the students and Sages… and on condition that this in the land of Israel,” here the Rambam refers to the “the consent of all of the residents of the land of Israel,” without reference to the Sages specifically.

Second, here the Rambam adds the reason that this issue is dependent upon the residents of Israel alone, and explains that only they are referred to as a “community.” As Professor David Henschke[[17]](#footnote-17) has shown, the Rambam sees the statement of the Gemara (*Horayot* 3a) that “only the residents of the land of Israel are called a community [*kahal*],” which is stated as part of a discussion about a bull brought for an unwitting communal sin, as a fundamental principle. This principle determines that the national character of the Jewish people is determined solely by the residents of Israel. This principle consequently has a number of important ramifications, one of which is *semikha. Semikha* is an appointment with national significance, and can therefore be executed only in Israel, as only its residents are considered the representatives of the nation.

It appears from here that one who has been ordained receives his authority from the nation, and not from the Torah leadership of the people, as we might have expected. Therefore, when the Rambam rules at the beginning of *Hilkhot Sanhedrin* that the members of the High Court of 71 must be ordained by another ordained individual who is part of the link in a chain of ordained individuals dating back to Moshe our teacher, he means the following: Moshe did not rely on his authority for ordination as stemming from the fact that he was the divine representative, but rather because that he was the representative of the nation.[[18]](#footnote-18) When the Rambam rules that one individual who is ordained may ordain others, he is doing so as a representative of the nation.

In light of this, the novelty of the Rambam about renewing the institution of *semikha* appears to be clear-cut: If the chain of *semikha* is broken, and there are no more individual representatives of the entire nation, then the nation, i.e., the Jewish population in the land of Israel, can once again ordain sages.[[19]](#footnote-19)

1. **The Rambam’s Position in the *Mishneh Torah***

Although we have primarily been discussing the Rambam’s Commentary on the Mishna, we will briefly discuss the way the Rambam cites this novelty about *semikha* in the *Mishneh Torah.* In chapter 4 of *Hilkhot Sanhedrin,* the Rambam discusses various *halakhot* relevant to *semikha,* such as the necessity for ordained rabbinical judges, how *semikha* is performed, and more. The Rambam then writes the following:

If there was only one ordained [individual] in the land of Israel, he places two next to him, and [they] ordain seventy as one, one after the other, and then he and the seventy form a high court, and they may ordain other courts.

It seems to me that if all of the Sages in the land of Israel agree to appoint rabbinical judges and ordain them, they are [considered] ordained, and they may judge cases of monetary fines, and they may ordain others. If so, why were the Sages distressed about [the lack of] *semikha* because they feared that the laws of fines would be lost in Israel? [It is] because Israel is scattered, and it is impossible that all would agree. But if there was one ordained from another who was ordained, the unanimous agreement is unnecessary. Rather, he may judge the laws of monetary fines for all, as he has been ordained by a *beit din.* But the matter requires a decisive ruling. (Rambam, *Hilkhot Sanhedrin* 4:11)

Although only the second ruling[[20]](#footnote-20) here directly addresses the renewal of *semikha,* it seems that there is a clear relationship between the two rulings. Both discuss a reality without a Sanhedrin. In the first ruling, the case is where only one ordained individual remains, and the Rambam writes that this situation may be rectified, as one ordained individual is sufficient to ordain others and to renew the Sanhedrin. In the second ruling, the Rambam suggests a way to ordain sages in a more difficult case where there are no ordained individuals at all. Here, he brings his innovative opinion that the consent of all of the Sages in the land of Israel to appoint and ordain rabbinical judges renders them ordained.

A comparison between the words of the Rambam here and in the Commentary of the Mishna yields some significant differences:

1. In the Commentary on the Mishna to Sanhedrin, the Rambam writes “if there was agreement among all the students and Sages.” In tractate *Bekhorot,* it refers to “the residents of the land of Israel,” while the *Mishneh Torah* states “the Sages in the land of Israel” more specifically.
2. In *Sanhedrin,* the Rambam describes a three-part process: A) The students and Sages agree to appoint one person as the head. B) The person who is appointed establishes the Yeshiva and becomes ordained. C) That person ordains others. This description appears in *Bekhorot* as well*.* However, in the *Mishneh Torah* the Rambam describes the process differently: If all of the Sages consent to appoint and ordain rabbinical judges, then they all become ordained. According to this, the *semikha* is accomplished directly by all of the Sages, and not only via the sage who was appointed to be the head.[[21]](#footnote-21)
3. In *Sanhedrin,* the Rambam cites two explanations for why the renewal of *semikha* is necessary. In contrast, in the *Mishneh Torah* he does not prove the necessity of the renewal of *semikha* at all, and instead he addresses a potential question against his opinion: If his novelty is correct, then why were the Sages distressed over the abolishment of *semikha*? To this, he answers that it is difficult to gather all of the Sages together in one place and reinstitute *semikha* again in this manner.
4. The most striking distinction between them is the concluding statement of the Rambam in the *Mishneh Torah*: “But the matter requires a decisive ruling.” These words seem to indicate that the Rambam was still somewhat unsure of whether this novelty could actually be followed in practice.[[22]](#footnote-22)

It is evident that although the Rambam does quote his novelty in the *Mishneh Torah,* he alters the formulation somewhat: He omits the reasons for why he arrived at this conclusion, he slightly changes the halakhic details that allow for the renewal of *semikha,* and most importantly, he seems uncertain about whether the novelty is true at all. In other words, whereas when he originally wrote the draft version of the Commentary on the Mishna, he had not even thought of this idea yet, or alternatively was not yet interested or ready to put it in writing, when he wrote the final copy of the Commentary on the Mishna, he presents the idea as being absolutely true. In the third stage, he again expresses doubt about it, though the fact that he mentions it at all as a real possibility indicates that he certainly still took it quite seriously.

[Translated by Rav Eli Ozarowski]

1. Concerning the identification of the passages from the Geniza as the draft of the Rambam, see: Simon Hopkins, “*Mesoret Ha-text shel Perush Ha-Mishna La-Rambam*,” *Sefonot* 20 (5751), pp. 109-114; Hopkins, *Perush Ha-Rambam La-Masekhet Shabbat—Tiyotat Ha-perush Lefi Keta’im Otographim Mi-genizat Kahir*, Jerusalem 5761, p. 21. [↑](#footnote-ref-1)
2. Hopkins, *Perush Ha-Rambam* *La-Masekhet Shabbat—Tiyotat Ha-perush Lefi Keta’im Otographim Mi-genizat Kahir*, p. 20. [↑](#footnote-ref-2)
3. Ibid, p. 114. [↑](#footnote-ref-3)
4. Ibid, p. 23, note 50. [↑](#footnote-ref-4)
5. Ibid, pp. 22-23. [↑](#footnote-ref-5)
6. Rambam’s Commentary on the Mishna, Rav Kapach edition, vol.1, p. 18. [↑](#footnote-ref-6)
7. Rav Yitzchak Shilat, *Tikkun Mishna Perush Ha-Rambam La-Avoda Zara Ve-Horayot*, Jerusalem 5762, p. 18, note 44; p. 21 note 49, ibid. *Mesekhet Shabbat im Perush Ha-Rambam La-Mishna*, Jerusalem 5765, p. 8. [↑](#footnote-ref-7)
8. The Rambam’s position on this matter stood at the center of a very bitter dispute between the Mahari Beirav and the Maharalbach in the 16th century. See *Shut Maharalbach, Kuntres Ha-semikha, Keren Re’em* edition, 5768. A lengthy discussion of this topic is beyond the purview of this *shiur.*  [↑](#footnote-ref-8)
9. This is the conclusion of a number of Talmudic passages, such as *Sanhedrin* 2a-3a, 5a, 13b-14a, and *Gittin* 88b. [↑](#footnote-ref-9)
10. See also the language of the Ramban in his Commentary on the Torah, *Shemot* 21:1: “And they also interpreted: “Before them” (*Shemot* 21:1), and not before common people (*Gittin* 88b)… as they [i.e., “them”] are the expert rabbinical judges that were ordained [person to person] back to Moshe our teacher.” [↑](#footnote-ref-10)
11. Regarding the question of the precise time when the institution of *semikha* was abolished, see Rav Menachem Kasher, *Torah Sheleima*, Vol.13, Jerusalem 5752, pp. 97-100. [↑](#footnote-ref-11)
12. The intention of the word “Yeshiva” here is somewhat ambiguous. It is possible that it refers specifically to the Great Sanhedrin of 71, which is referred to in the *Mishneh Torah* by the Rambam as a Yeshiva as well (*Hilkhot Sanhedrin* 1:3). See *Shut Maharalbach* (*Kuntres Ha-semikha,* p. 6, s.v. “*u-beikar ha-din*”) and the *Ha-maor* edition of the Rambam’s Commentary on the Mishna (Jerusalem 5769) here, note 38. [↑](#footnote-ref-12)
13. This version of the text is based upon the Hebrew translation of Rav Kapach. [↑](#footnote-ref-13)
14. From the language of the Rambam, it appears that this is his personal novelty, and it is not based upon a Talmudic or other source. The words of the Rambam himself in his letter to Rabbi Pinchas Ha-dayyan should also be noted (p. 443 in the edition of Rav Shilat): “And an idea that is from my own analysis [not based on a source] will say explicitly, “it seems to me that the matter is such-and-such.” Indeed, when the Rambam cites this novelty in the *Mishneh Torah* (quoted below)*,* he writes: “It seems to me.” [↑](#footnote-ref-14)
15. See Simon Hopkins, *“*Two New Maimonidean Autographs in the John Rylands University Library*,”* *Bulletin of the John Rylands Library*, 1985; 67(2), pp. 710-735. [↑](#footnote-ref-15)
16. As is already noted by the *Tosefot Yom Tov* (*Sanhedrin* ibid.), the verses cited by the Rambam regarding the heifer whose neck is broken are actually referring to the bull offered for an unwitting communal sin (*Vayikra* 4:15). With regard to the heifer whose neck is broken, the Gemara (*Sanhedrin* 14a) actually cites a different verse. Rav Kapach comments on this matter as well in his comments on this Mishna, and notes that the problem is actually evident already from the Gemara itself on 3b, which cites the same verse about a bull offered for an unwitting communal sin as cited by the Rambam. It should also be noted that even in the draft version of the Rambam’s Commentary on the Mishna discussed by Hopkins, the Rambam already had cited the verse referring to the bull offered for an unwitting communal sin. In any event, this issue requires further study. [↑](#footnote-ref-16)
17. David Henschke, “*Yesodo Ha-mishpati shel Ha-musag Umah*: *Bein Ha-Rambam La-Ramban*,” *Ha-Mishpat Ha-ivri* 18-19 (5752-5754), pp. 189-190. [↑](#footnote-ref-17)
18. See a similar approach presented by Rav Mordechai Yehudah Leib Zaks, “*Semikhat Zekeinim,*” *Ha-Torah Ve-hamedina* (3), Tel Aviv 5711, p. 13. [↑](#footnote-ref-18)
19. This is how Rav Shaul Yisraeli explained the Rambam in “*Be-ikvot Ha-diyyunim*,” *Ha-Torah Ve-hamedina* (3), Tel Aviv 5711, p. 34. [↑](#footnote-ref-19)
20. The division above into two sections (which we have presented by presenting the second ruling as a new paragraph) is based upon the clear division between them in the manuscripts. Rav Kapach printed this passage in this same form in his edition as well. [↑](#footnote-ref-20)
21. This distinction is already noted by the Maharalbach (*Shut Maharalbach,* ad loc., p. 494). [↑](#footnote-ref-21)
22. See Eliav Shochetman, “*Ve-hadavar Tzarikh Hekhre’a*,” *Ha-mishpat Ha-ivri* 14-15 (5748-5749); *Yad Peshuta* to *Sanhedrin*; Rav Menachem Kasher, ad loc. (note 12), vol.15, p. 182. [↑](#footnote-ref-22)