**YESHIVAT HAR ETZION**

**ISRAEL KOSCHITZKY VIRTUAL BEIT MIDRASH (VBM)**

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**Halakha and Jewish History**

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**Shiur #15:**

**Renewal of *Semikha* (1538)**

During the 16th century, one of the most fascinating disputes occurred amongst the rabbis of the Land of Israel.

The story begins with Rav Ya’akov (Mahari) bei Rav, born in Spain in 1474. At a young age he excelled in his Torah studies and became known as a prominent *talmid chakham*. In 1492, together with thousands of Jews, he was expelled and made his way to Morocco. The next few years he moved around several countries including Syria, Algeria and Egypt, where he served as the chief rabbi of these communities.

In 1524, he finally settled in Tzfat where he was accepted as the main rabbinical authority. Tzfat at that time was a center of Torah, and it attracted great rabbinical figures from all over the world.

Mahari bei Rav attempted to renew the ancient *semikha* (ordination) which was annulled in the 4th century C.E., a chain of rabbinic authority directly linking rabbis to Sinai and the authority invested in Yehoshua by Moshe. (Modern *semikha,* on the other hand, is essentially an academic degree bestowed on individuals who have shown proficiency in certain basic areas of Halakha.) By ordaining rabbis who would then possess divine authority, it would be possible to reestablish Judaism’s supreme court, the Sanhedrin, which was the ultimate legislative and judicial authority in ancient and classical Israel.[[1]](#footnote-1)

The attempt was based solely on an original and unique halakhic opinion of the Rambam, mentioned in several of his writings.

The more prominent source appears in *Mishneh Torah*. Notice that the opening words of this law emphasize that this ruling is the Rambam’s innovation (emphasis mine):[[2]](#footnote-2)

**As the matter appears to me,** if all the all the sages in the Land of Israel agree to appoint judges and convey *semikha* upon them, the *semikha* is binding and these judges may adjudicate cases involving fines (*kenasot*) and bestow *semikha* upon others.

The Rambam then poses the obvious question:

If so, why did the Sages suffer anguish over the institution of *semikha*, so that the judgment of cases involving fines would not be nullified among the Jewish people?

His answer is important for it sheds light on the motivation of the Tzfat rabbis:

Because the Jewish people were dispersed, and it is impossible that all could agree.

He then continues explaining the details of this process:

If, by contrast, there is a person who has received *semikha* from a person who has received *semikha*, he does not require the consent of all others. Instead, he may adjudicate cases involving fines for everyone, for he has received *semikha* from a court.

At this point the Rambam makes his crucial remark:

The question requires resolution.

Many have argued whether this phrase is referring to the entire theory or rather to the last detail regarding the individually-ordained rabbi issuing *semikha* to others. This is just one amongst many of the arguments raised during this 16th-century controversy.

In his *Commentary on the Mishna*, the Rambam is more decisive, as one notices from his opening words:

**It appears to me** that…

The Rambam then explains the reason for his theory:

Were this not the case, it would never be possible to reconstitute the Great Court, since each of its members must certainly be ordained, and God has already promised that the Great Court will be restored, as is written: “And I will restore your judges as at first” (*Yeshayahu* 1:26).

The Rambam goes on to refer to the question whether this entire operation should be done before the coming of the *Mashiach* or not:

Now, you might argue that the *Mashiach* will appoint them even if they are not ordained, but that is impossible; for we have already explained that the *Mashiach* will not add anything to the Torah or detract from it, neither the Written nor the Oral Torah.

I am also of the opinion that the Great Court will be reconstituted **before** the appearance of the Mashiach. This in fact will be a sign of his coming, as it is written [ibid.]: “Afterwards you shall be called City of Righteousness, Faithful Town.”

This will doubtless take place when God will perfect the hearts of humankind, who will excel in doing good, and they will greatly desire to appreciate God and His Torah, and they will expand their wisdom **before** the coming of the *Mashiach,* as many verses describe.[[3]](#footnote-3)

The rabbis of Tzfat agreed to follow the leadership of Mahari bei Rav, who adopted the Rambam’s opinion and granted him *semikha*. At this point, Mahari bei Rav sent a letter to the rabbis of Yerushalayim urging them to accept him as a classically-ordained rabbi.

Meanwhile, without receiving an approval from the Yerushalayim rabbis, Mahari bei Rav went ahead and ordained some of his students, amongst them Rav Yosef Karo. Rav Yosef Karo went ahead and gave *semikha* to Rav Moshe Alsheikh, who ordained his student Rav Chayim Vital.

The rabbis of Yerushalayim disagreed with the entire revolutionary idea. Rav Levi ibn Chaviv (c. 1480 – c. 1545), known as the Maharalbach, Chief Rabbi of Yerushalayim, responded with a letter to the rabbis of Tzfat elaborating his opposition.

Letters were sent back and forth between the two Torah centers arguing the matter. The famous Egyptian halakhic authority, the Radbaz, joined the opposition.

As a result of the fierce dispute, the attempt to establish a Sanhedrin failed. Thus, the abovementioned ordained rabbis could no longer give *semikha* to others.

What were the reasons which motivated the Tzfat rabbis to reinstate the Sanhedrin?

It is clear and obvious that the repercussions of the recent tragic Spanish Expulsion were very much the driving force in considering this extraordinary move.[[4]](#footnote-4)

It is in this context that we will attempt to understand the motivation of the rabbis of Tzfat.

Mahari bei Rav mentions in his writings several possible reasons that connect directly to the Spanish Expulsion: the yearning for redemption after the great tragedy and the incentive to help the *Anusim* — those Jews forced to convert to Christianity, sometimes derisively called Marranos.

**Yearning for Redemption**

Since biblical times, there has always been a connection between religious persecution and religious redemption.

There are two extended passages of rebuke in the Torah. The first, in *Vayikra* 26, ends with God’s remembrance of the covenant. However, the second one, in *Devarim* 28, is followed by *Parashat Ha-teshuva*, the passage of repentance. It is in this section that God assures us that following the horrific persecutions, He will gather the exiles and bring them back to the Land of Israel:

And it will be, when all these things come upon you, the blessing and the curse which I have set before you, that you will consider in your heart, among all the nations where the Lord your God has banished you.

Then you will return to the Lord, your God, with all your heart and with all your soul, and you will listen to His voice according to all that I am commanding you this day, you and your children.

**Then the Lord your God will bring you back from your captivity**, **and He will have mercy upon you. He will once again gather you from all the nations, where the Lord, your God, had dispersed you.[[5]](#footnote-5)**

Furthermore, the prophet Yeshayahu connects the future redemption with the restoration of the judicial system, as mentioned above:

And I will restore your judges as at first and your counsellors as in the beginning; afterwards you shall be called City of Righteousness, Faithful Town.

Zion shall be redeemed through justice and her penitent through righteousness.[[6]](#footnote-6)

A similar pattern occurred again four hundred years later.

In 1948, following the Holocaust and the establishment of the State of Israel, Rav Yehuda Leib Maimon(1875–1962), who was one of the founders of the Mizrachi movement and a minister in the newly appointed government, called for the reestablishment of the Sanhedrin.

In his work, which is a collection of his many articles on this matter, *The Renewal of the Sanhedrin in Our Renewed State,*he explains his motivation.

The establishment of the State of Israel in 1948 is only the first step of fulfilling the prophetic vision of the redemption of the Jewish people. The next step must be connected to Torah and spirituality. In this book, he claims that Chief Rabbi of Mandatory Palestine Rav Avraham Yitzchak Kook supported the concept, and his creation of the Chief Rabbinate was the forerunner to reestablishing the Sanhedrin.

**Annulling *Karet* for the *Anusim***

Many Spanish and Portuguese Jews who lived as *Anusim* and were forced to practice the Christian religion arrived in Tzfat with the desire to repent and achieve atonement for their sins that they had committed during that period.

However, as many of them committed transgressions for which the penalty is *karet* (excision, literally meaning being cut off, interpreted as receiving an early death), the suggestion was for them to receive instead lashes that would have the power to annul this severe penalty.[[7]](#footnote-7)

Mahari bei Rav argued that with the renewal of *semikha* and the reestablishment of a Jewish supreme court, the *Anusim* could receive clemency from the severe punishment of *karet*.

However, this assumption is questionable on many levels, as argued by the rabbis of Yerushalayim. Let us examine this issue.

The [Torah](https://steinsaltz.org/glossary/torah/) ([*Devarim*](https://steinsaltz.org/glossary/devarim/) [25:1-3](http://www.mechon-mamre.org/p/pt/pt0525.htm)) rules that a Jewish court is required to punish a *rasha* with the punishment of lashes (*malkot* or *makkot).*

If there is a quarrel between men, and they approach the tribunal, and they [the judges] judge them, and they acquit the innocent one and condemn the guilty one (*rasha*).

Then it shall be, if the guilty one has incurred [the penalty of] lashes, that the judge shall make him lean over and flog him in front of him, commensurate with his crime, in number.

He shall flog him with forty [lashes]; he shall not exceed, lest he give him a much more severe flogging than these [forty lashes], and your brother will be degraded before your eyes.

There are three general categories of negative commandments for which lashes are given by a Jewish court. Of these three categories, two additionally incur the death penalty by the Heavenly Court. These two are [*karet*](https://steinsaltz.org/glossary/karet/) and *mita bi-ydei shamayim* (literally, death by the hands of heaven).[[8]](#footnote-8)

The Mishna (*Makkot* 3:15) quotes Rabbi Chananya ben Gamliel as ruling that:

**All who have incurred [the penalty of] *karet*, on being flogged are exempt from their punishment of *karet***, for it says, “[He shall flog him with forty; he shall not exceed, lest he give him a much more severe flogging than these,] and your brother will be degraded before your eyes.” Once he has been lashed, he is [considered] “your brother.”

This law raises several questions also discussed amongst the rabbis of Tzfat and Yerushalayim:

Is it the lashes themselves that exempt the perpetrator from further punishment, or is it the suffering and embarrassment involved which achieve this?

Normally, punishments are only imposed by a Jewish court when a warning (*hatra’a)* has been given prior to the transgression. Furthermore, two witnesses are required to establish that a sin has been committed. Does this “trick” of receiving lashes work if the transgression has been committed without these conditions?

And finally, doesn’t wholehearted *teshuva* mean full, complete repentance without lashes? If so, the entire enterprise is not needed!

***Teshuva* with lashes?**

The Rambam rules like the Mishna mentioned above:

Whenever a person sins and is lashed, he returns to his original state of acceptability, as implied by the verse: "And your brother will be degraded before your eyes." Once he is lashed, he is "your brother." **Similarly, all those who have incurred *karet* who receive lashes are absolved of *karet***. [[9]](#footnote-9)

However, in his *Commentary on the Mishna*,[[10]](#footnote-10) the Rambam seems to contradict himself as he explicitly requires *teshuva* as well to receive clemency for an offense incurring *karet*!

Rav Ya’akov Ettlinger (Germany, 1798-1871) explains that the Rambam’s position is based on the Gemara on *Yoma* 86a which states that one who commits a sin that incurs *karet* achieves atonement only by performing *teshuva* **and in addition** experiencing *yissurin* (suffering). This ruling appears in the Rambam’s *Hilkhot Teshuva*:

If a person violates [sins incurring] *karet* or execution by the court and repents, *teshuva* and Yom Kippur have a temporary effect and the suffering which comes upon him completes the atonement. He will never achieve complete atonement until he endures suffering for committing these [sins], as [[*Tehillim* 89:33](https://www.chabad.org/16310#v33)] states: “I will punish their transgression with a rod, and their iniquity with plagues.”

The verse in *Tehillim* mentions the rod (lashes) as well as plagues (*yissurin*). Thus, explains Rav Ettlinger, the Rambam requires lashes, which are ultimately a form of *yissurin.*

However, how can we explain the contradiction in the Rambam’s writings?

Rav Chayim Ozer Grodzinski (Vilna, 1863-1940) explains that there are two levels of atonement. Once the *rasha* receives lashes, he is considered “your brother” and may serve as a witness. However, for full atonement he is required to repent. This can be proven from the added words of the Rambam in *Hilkhot Teshuva:* “complete atonement.”[[11]](#footnote-11)

Rav Ettlinger points out that not all Rishonim agree with the Rambam. Rashi, the Ramban and the *Ba’al Ha-maor* hold the opinion that *teshuva* alone can achieve atonement for *chayavei karet*. Obviously, according to this opinion, there would be no advantage to creating a Sanhedrin for the purpose of achieving atonement.

**Behind the Dispute**

Historian Jacob Katz (1904-1998) explains that behind the practical dispute exists a theological dispute regarding the future redemption.[[12]](#footnote-12)

The “real” question, he suggests, is whether following the tragic events of 1492, man should actively be involved in bringing about the redemption. The rabbis of Yerushalayim believe in the passive approach, leaving our destiny in the hands of God. The rabbis of Tzfat disagree. These rabbis are not just quoting the Rambam’s halakhic theory, rather they are following the Rambam’s philosophy that the ultimate redemption can be achieved by the actions of men.

Some will say that this argument continues from then on amongst the religious leaders and communities, even today…

1. For a history of other attempts in Jewish history to reestablish the Sanhedrin, see *Techumin* 18, pp. 452-454, [↑](#footnote-ref-1)
2. *Hilkhot Sanhedrin* 4:11. As we will soon see, this theory is mentioned earlier, in the Rambam’s *Commentary on the Mishna* without the controversial conclusion. [↑](#footnote-ref-2)
3. Rambam, *Commentary on the Mishna,* *Sanhedrin* 1:3. [↑](#footnote-ref-3)
4. For a historical account of the Spanish Expulsion of 1492, see *Shiur* #13. [↑](#footnote-ref-4)
5. *Devarim* 30:1-3 [↑](#footnote-ref-5)
6. *Yeshayahu* 1:26-27. [↑](#footnote-ref-6)
7. Regarding the *Anusim*, Rav Moshe Sternbuch (*Moadim U-zmanim* 6:30) questions the need for lashes because he argues that these so-called transgressions were performed under duress (*oness,* the root from which the term *Anusim* comes) and surely *teshuva* would be sufficient under these circumstances. Furthermore, he questions whether this entire discussion harms those who seek to repent. [↑](#footnote-ref-7)
8. For the full list of the thirty-six transgressions that incur lashes, see Mishna*, Kereitot* 1:1. [↑](#footnote-ref-8)
9. Rambam, *Hilkhot Sanhedrin* 17:7. [↑](#footnote-ref-9)
10. *Mishna Makkot* 3:1 and 3:15. [↑](#footnote-ref-10)
11. *Responsa Achi’ezer* 1, 20:6. [↑](#footnote-ref-11)
12. *Halakha Ve-kabbala: Mechkarim Be-toldeot Dat Yisrael al Medoreha Ve-zikatah Ha-chevratit* **(**Magnes, 1986), pp. 227-228. [↑](#footnote-ref-12)