

Translator's Preface

Between the Spring of 1949 and the Summer of 1950, Israel's Minister of Religious Affairs, Rabbi Judah Leib Maimon (Fishman) waged an unsuccessful campaign to establish a supreme religious council in Jerusalem. He hoped that such a council would go by the name "Sanhedrin," the same name that had been given to Israel's supreme court during the Second Jewish Commonwealth. By calling for the establishment of such a council, and by using the name "Sanhedrin," Rabbi Maimon hoped to expand the influence of Orthodox Judaism in the newly-established State of Israel, as well as to elevate the stature of the Jewish state in the eyes of the rest of the world, both Jewish and Gentile.

Maimon advanced his proposal primarily through a series of articles published in the national-religious newspaper *ha-Tzofeh* and the religious-scholarly journal *Sinai*. The essay was entitled *Hiddush ha-Sanhedrin bamedinateinu hamehuddeshet*, "The Renewal of the Sanhedrin in Our Renewed State." Near the end of 1950, the essay was published as a monograph. What follows is an annotated translation of that book.

Why a translation of *Hiddush ha-Sanhedrin*? A perusal of popular English-language books on Israel and Zionism would suggest that the Sanhedrin discussion of 1949-50 does not hold an important place in the annals of the nation. Rabbi Maimon generally receives a paragraph, and the Sanhedrin proposal might be mentioned in a footnote. Yet, for a brief period, the proposal did engender vigorous debate within some circles in Israel and the Diaspora. This translation makes the primary source document for an important and illuminating event in contemporary Jewish history available to English speakers.

I have been fortunate to be able to follow the advice of Joshua ben Perachiah. I wish to thank my *rav*, Professor Mark Washofsky, for all of his guidance as I prepared this thesis, and for directing me to this fascinating topic in the first place. Thanks also go to my *chaver*, Mark Strauss-Cohn,

who wrote his thesis in a similar field, translating and discussing sections of Eliezer Waldenberg's *Hilkhoh ha-Medinah*. We were able to gain insights from each other's research, and share our knowledge with each other. Also, if a book I needed was not in the library, I knew where to find it.

Most of all, I thank my wife Alanna for her encouragement, support, and for giving me the space and time to complete my work. I dedicate this thesis to her, and to Helaine, with love.

Translator's Introduction

Judah Leib Maimon: A Biographical Sketch¹

Judah Leib Fishman was born in Marcolesti, a small Bessarabian village, in 1875. His parents were Abraham Abimelech and Bubbe Goldah. He came from a learned family; his father was a scribe, and his paternal great-grandfather, Rabbi Abraham Hacoheh, was a student of the Vilna Gaon. The family name, Fishman, originated with Judah Leib's father. However, with the founding of the State of Israel, Judah Leib hebraicized his name by taking the surname of his maternal grandmother, Malkah Maimon, a descendant of Maimonides.

Recognized at an early age for his intellectual prowess, Maimon quickly surpassed the ability of the *melamdim* in his little *shtetl*. By age eleven, he was studying on his own, and at thirteen was considered an expert in the Talmud. His occupation with the literature of traditional Judaism did not stop him from reading other works as well. Encouraged by his father, Judah Leib read modern works on Jewish topics, the newspapers of the *haskalah*, and even *belles lettres*.

Along with an interest in books, Maimon developed an interest in communal affairs. In his teens, he helped to organize several benevolent societies, including a "Tikkun Soferim" which raised funds to purchase books for the *beit midrash* and a "Hevrat Etzim" which distributed free firewood during the winter.

It is important to note that Maimon came to his Zionist position from within a thoroughly religious framework. His father was a reader of Hirsch Kalischer's *Derishat Tzion*, and an early supporter of the proto-Zionist

¹This short account of Judah Leib Maimon's life draws primarily from *Eleh Toldot Rabbi Yehudah Leib Hacoheh Maimon*, a Hebrew biography prepared by his daughter, Ge'ulah bat-Yehudah Rafa'el (Jerusalem: Rav Kook, 1964). It is not meant to be a comprehensive biography, but rather a sketch. In the notes to *Hiddush HaSanhedrin*, I have provided further biographical details as they are suggested by his writing.

enterprise in Russia. Maimon recalls that his father owned

a copy of *Derishat Zion*, published in Thorn in 1866, with marginal notes written by Kalischer himself...my father paid a fair amount for that book, and would not loan it to anyone. Only after I married did he give me that book, and it remains in my library to this day.²

But Maimon's love of Zion was based in more than the reading of books. His family often took in visitors, including *sheluhim* from Eretz Israel and travelling *mattifim*, Jewish nationalist preachers. From them, he heard first-hand about the importance of settling Eretz Israel and rebuilding the Jewish nation.

At this point, Maimon found himself pulled in two directions: on the one hand, he was drawn to communal, political life; on the other, he wanted to continue his Talmudic studies. Encouraged by Rabbi Samuel Mohilever, he went to study in the famous *yeshivot* of Lithuania. Several notable rabbis of his day—including Yechiel Michael Epstein, author of the *Arukh Ha-Shulhan*—gave him his rabbinical ordination. But even in the *yeshivot*, he was constantly drawn toward political, communal work on behalf of the burgeoning *Hibbat Zion* movement. Significantly, it was during his days in the Lithuanian *yeshiva* world that he first came into contact with Rabbi Isaac Jacob Reines, who would go on to found the *Mizrahi*. It was also during this period that Herzl's *Jews' State*, which had a tremendous impact on Maimon, was published.³

Thus, Maimon's growth and development as a religious Zionist parallels the pattern of development of the movement as a whole. From the thoroughly traditionalist love of Eretz Israel represented by Kalischer, he became involved in the *Hibbat Zion* movement of the 1880's and 1890's. With Theodor Herzl's arrival on the scene, he became a political Zionist.

²"*Lema'an Tzion Lo Ahasheh*," p. 20.

³See pp. 64ff. for a discussion of Maimon's impression of Herzl's book and its reception by the *Hovevei Zion*.

Maimon's roots in both the *yeshivah* and the political world naturally led him to the religious Zionist movement, called the Mizrahi ("Eastern," the word is also a contraction of *mercaz ruhani*, "spiritual center"). He was present at its founding, and was among its leaders for the rest of his life.

Maimon lived in Marcolesti until 1905, when he accepted a rabbinic position in Ungeni, on the Bessarabian–Russian border. While there, he continued his Zionist preaching and organizing, and attempted to publish a journal, *ha-Yonah* ("The Dove"), devoted to Talmudic literature (it was banned by the Russian censor after one issue). He traveled throughout Russia and Europe on behalf of the Mizrahi, and was jailed by the Russians on several occasions. His service as rabbi of Ungeni ended in 1913.

Twice during his tenure in Ungeni, Maimon visited Eretz Israel, in 1908 and 1911. He made *aliyah* in 1913 and took on the task of improving religious Zionist education in Eretz Israel. These efforts resulted in the establishment of the Tahkhemoni school system, which later evolved to become the Israeli religious state school system.

When the Turks turned hostile to Palestinian Jews during the first World War, Maimon was exiled along with other Zionist leaders (including David Ben-Gurion). He spent most of the war years in the United States, building the Mizrahi movement together with his colleague Meir Berlin (later Bar-Ilan). In the Spring of 1919, he returned to Eretz Israel, now under British rule.

Maimon's accomplishments during the Mandatory period are impressive. In 1921, he founded a weekly newspaper, *ha-Tor* ("The Turtledove," based on Cant 2:12, "The voice of the turtledove is heard in our land"). A year later, he was instrumental in establishing the Chief Rabbinate.⁴ He continued to be a leader of the Mizrahi movement and of the

⁴*infra*, pp. 107ff.

Zionist movement in general, and served on the executive of the Jewish Agency beginning in 1935. After Chief Rabbi Abraham Isaac Kook's death in 1935, Maimon established Mossad Harav Kook, a leading publisher of Jewish literature.

During this period, Maimon developed a deep distrust and dislike for the British, as is evident in the pages of *Hiddush ha-Sanhedrin*. He was enraged by the White Paper of 1939, which put an end to *aliyah* just as Nazi Germany was preparing to embark on its extermination of the Jews. He was outspoken in advocating armed struggle against the British, and was a supporter of Menahem Begin's *Irgun Z'vai Le'umi*. As a Zionist leader and member of the Jewish Agency executive, Maimon was among the people rounded up in a massive British operation known as "Black Sabbath." Dragged from his home and driven to the prison at Latrun on Shabbat, he spent two weeks in detention and was released only after embarking on a hunger strike. He later remarked: "I have had the honor of being imprisoned by the Czar, the Turks, and the British, but only the British forced me to profane the Sabbath."⁵

Maimon represented the views of religious Zionists in a speech to the United Nations Special Commission on Palestine (UNSCOP) in 1947. Following the United Nations' decision to partition Palestine and create a Jewish state, Maimon turned his attention to the character of that state. In an article in *Sinai*, he expressed his opinion that a Jewish state must be different from other states, inasmuch as "religion" and "state" cannot be separated.⁶ This political theory is at the core of Maimon's call to reestablish the Sanhedrin; indeed, chapter one of *Hiddush ha-Sanhedrin* contains whole paragraphs taken directly from this earlier article.

⁵"Rabbi Maimon Dies at 87," *Jerusalem Post*, July 11, 1962.

⁶The article, "*ha-Dat v'ha-Medinah*" ("Religion and State") is among the few pieces of Maimon's writing to appear in English prior to this translation of *Hiddush ha-Sanhedrin*. It appears in *Religious Zionism: An Anthology*, ed. Yosef Tirosh (Jerusalem: WZO, 1975).

Maimon was a signatory to Israel's Declaration of Independence, and following its reading by David Ben-Gurion he recited a heartfelt *Sheheheyanu* blessing.⁷ He became a member of the Provisional Government and Minister of Religious Affairs, representing the Mizrahi party. After elections were held in January of 1949, he joined the first Government of Israel. It was in this role that he put forward his proposal to reestablish the Sanhedrin.

In addition to his efforts to increase the role of Jewish law in the Jewish state, Maimon fought on behalf of religious education for immigrant children, nearly resigning from the government in protest of its policies. He had in fact resigned on an earlier occasion, following the sinking of the *Altalena* in June 1948, rejoining only after Ben-Gurion agreed to appoint an independent commission to examine the affair.⁸

Maimon retired from active political life in 1951. In his final years he was plagued by ill health, but continued to take an interest in politics and literature. He died on July 10, 1962, and was buried in the Sanhedria cemetery in Jerusalem.

Judah Leib Maimon's *Hiddush ha-Sanhedrin*: A Summary

In **Chapter One** of *Hiddush ha-Sanedrin*, Maimon presents his conception of the relationship between religion and state in Israel. In contrast to the political reality among Western nations, Jewish political theory allows for no separation between these two realms. The Torah—Israel's Constitution—speaks of spiritual and political benefits and disadvantages together, seemingly without distinction. A Jewish State in Eretz Israel, therefore, must take a holistic approach to religion and politics.

Having pointed out this essential difference between Jewish political

⁷*infra*, p. 66.

⁸See Howard M. Sachar, *A History of Israel*. New York: Knopf, 1989. pp. 329-330.

theory and that of the nations, Maimon turns his attention to another. While other nations created their legal systems *after establishing themselves politically*, Israel had a fully developed legal system before it was constituted politically.

In the effort to give his proposal legitimacy, Maimon searches for evidence of a Sanhedrin in the earliest days of the Israelite nation. He contends that the Sanhedrin, in its earliest incarnation, existed even before the Revelation at Sinai. Seventy elders, together with Moses, served as a Great Sanhedrin throughout Israel's wilderness wandering. He searches the Rabbinic literature to find evidence for a Supreme Court during the period of the *Shofetim* and during the Monarchy. Though he admits that there is a paucity of evidence, he nevertheless points to several Rabbinic passages which speak of a Sanhedrin during the First Temple Period.

Finally, Maimon takes up the relationship between legislation and prophecy. The Rabbinic tradition stresses the primacy of the Sages over the Prophets in several passages; according to one, "had the Sanhedrin gone out of existence, they would have lost their authority to prophecy." The lofty pronouncements of the prophets were not evidence of their superior spiritual attainment, as "enlightened" socialist Zionists who stressed the "ethics" of the prophets would have us believe. While certainly ethical, they were in fact in complete agreement with (and subject to) the principles of Jewish Law.

In **Chapter Two**, Maimon leaves behind the earliest days of Israel's history and turns to the period of the Return from Babylon and the building of the Second Jewish Commonwealth. With this chapter, a theme is introduced which will dominate much of the book: the commonalities between the Jewish people's distant past and its present. As Maimon puts it, "We look to the deeds of the ancestors hoping to find an omen for their descendants." Seeing the past as a blueprint for the present and future, Maimon's goal in this chapter is to show that an alliance existed between the

political and religious leadership of the Babylonian *aliyah*.

Using sources in the prophetic books of Zechariah and Malachi, as well as in the scroll of Esther, Maimon reconstructs the history of the return from Babylon. Throughout the period of reconstruction, there was understanding and cooperation between the political and religious leaders—first, between Zerubbabel and Joshua. Concerning them, he writes:

Joshua, the high priest, hearkened well to the words of Zechariah's prophecy which described Zerubbabel: "I am going to bring My servant the Shoot" (Zech 3:8). And he believed with perfect faith that, as a result of Zerubbabel's *political* endeavors, salvation would *shoot forth*; that "Zerubbabel's hands have founded this house and Zerubbabel's hands shall complete it" (verse 9). Similarly, Zerubbabel the *politician* understood the value of the *high priest* and his place in the process of rebuilding and rebirth. "Not by might, not by power, but by My spirit—said the Lord of Hosts" (verse 6). And so these two leaders, one wearing the crown of priesthood, the other the crown of sovereignty, were united in their political and spiritual efforts to breathe new life into the nation through its Torah.

The political leaders didn't merely *tolerate* the religious, and vice versa; they saw each other as essential to the complete the task of political and spiritual upbuilding.

The second period of reconstruction, led by Ezra and Nehemiah, continued in very much the same vein. Maimon emphasizes Ezra's efforts to enhance and expand the role of *halakhah* in the Jewish State. Without political sovereignty, it would be impossible to live a complete Jewish life.

Maimon's reconstruction of this period is obviously in keeping with his understanding of the proper way to rebuild the State of Israel in his own day. Political and religious leaders need to work in concert for progress to be made. It must be acknowledged that of all of the politicians in the religious bloc, Maimon probably came closest to playing the role of a modern-day Joshua ben Hacaliah. He was an avowed political Zionist, even before Herzl.

He was willing to work with secular Jews in service of a greater goal. When he retired from the Knesset, David Ben-Gurion spoke about Maimon's role in the upbuilding of the nation. His remarks deserved to be quoted at length, for they show us the esteem in which he held his Minister of Religious Affairs:

...I wish to say a few words about my colleague and dear teacher, Rabbi Maimon. I have had the privilege of working with him for over sixteen years, though I have known him for over forty years. It has not been easy to work with him, for Rabbi Maimon is a tough, stubborn, zealous man who defends his views vigorously and militantly and in this respect has not changed to this day. It is amidst strife and conflict that we have learned to appreciate him. I know no other man among the veteran members of the Movement who arouses any greater feelings of respect and trust in his exalted faith and moral views, which would do honor to any good socialist. I have had the privilege of working with him not only for many years in the Zionist Executive but in the Government of Israel ever since the formation of the Provisional Government, and perhaps no one in the Government has caused me more headaches than Rabbi Maimon. But never have I accepted troubles with more love than those he caused, for I love this man with all my heart for his profound Zionist faith and his pure and perfect love of Israel, his unbounded loyalty to the State, and his great concern for the well-being of the nation and the State. He has often told me how one should love the State, not only with body but with soul, and I am afraid to give his definition of soul lest his opponents interpret it the wrong way. This is indeed an admirable Jew, erudite and learned in all the fine points of the Law, blessed with a wonderful memory, lover of the literature of Israel—not only the religious but the enlightened and critical as well—even when he opposes the views it expresses.

He is a wonderful representative of Judaism and the Law of Israel, overflowing with love for both and deeply concerned with the honor of the State. He dared to rebuke those rabbis in America who slandered Israel and considered themselves the custodians of religion in this country. I was very sorry to learn that he would not run for reelection to the Knesset. I feel that the absence of this man is a great loss to the nation's elected governing body. Despite his external appearance and, as it were, halting manner of speech, he

ennobles every gathering. I remember once when I attended a convention of the Israel Workers Party in Rehovot before World War Two. I arrived late, but upon my arrival—immediately after the departure of Rabbi Maimon—I found the entire convention in exceptionally high spirits. This was thanks to his inspiring influence on all present, old and young alike. Although the majority of the delegates were non-believers, Rabbi Maimon's words aroused feelings of respect, admiration, and affection.

I greatly regret his departure from the Government, more than I am prepared to express, and I am glad that his departure does not mean that he has left the affairs of the State. I am confident of his continued love and concern for and loyalty to our endeavors. Even if he should oppose any specific measure, he will desire with all his heart the success of the State and the Government. On behalf of all those present here and in the name of all the members of the Knesset, I wish to extend to Rabbi Maimon my sincere and heartfelt good wishes for a long life and to express my admiration for him. May he continue to enlighten the readers of his excellent and instructive articles, books, compilations, and memoirs, and be an honor and blessing to Israel.⁹

Ben-Gurion's feelings are evidence of a different mood in religious–secular relations during the early days of the State. While there were differences of opinion to be sure, the cynicism and distrust which exists today was not yet evident.

In **Chapter Three**, Maimon focuses on the establishment and development of the Great Assembly (*Kenesset Hagedolah*). As in chapter one, his primary goal here is to establish that something akin to a Sanhedrin existed throughout the period in question. The Great Assembly went through two stages of development, which Maimon describes at length, supporting his depiction with passages from Rabbinic literature.

In the earliest stage of its development, the Great Assembly was “great” in stature alone. In number, it was still very small—perhaps nine or

⁹David Ben-Gurion, *Israel: A Personal History*. New York: Funk & Wagnalls, 1971. pp. 392-393.

twelve sages from among the very first Babylonian returnees. Its mission was to maintain a connection with the larger Jewish community in Babylonia, and to oversee the distribution of money and goods being sent in support of the fledgling Jewish settlement in Eretz Israel. Later, under Ezra and Nehemiah, that “great” yet small council was expanded to one hundred twenty members— truly a “Great Assembly,” both qualitatively and quantitatively. As its size expanded, so did its mission. In this latter form, it was charged with interpreting the Torah and enacting legislation for the benefit of the Jewish society and polity.

Maimon paints a very positive portrait of the spiritual revival which took place under Ezra, Nehemiah, and the Great Assembly. He describes the effect which the Ezra’s public reading of the Torah had upon the masses:

The New Hebrew Yishuv in the renewed Eretz Israel heard the words of the Living God from the Priest–Scribe. These words, clearly explained, were like life-giving dew which caused holiness to sprout from the furrows of their hearts, saplings of God’s perfect Torah, whose roots were nourished in living fields, whose branches multiplied, whose foliage spread forth and gave shade to the life of the nation, individually and as a community. “Turn it, turn, for everything is contained in it” (M. Avot 5:22).

The clear explanation of Torah is the key to expanding the role of traditional Judaism in Eretz Israel.

Maimon concludes Chapter Three with a discussion of the ordering of the *tefillah* (“Statutory Prayer”) which tradition ascribes to the Great Assembly. Several of the petitions in the *tefillah* are concerned with the nation’s welfare. In Megillah 17b, their order is justified in what Maimon calls the “blueprint for the Redemption.” Most significantly for him is the fact that the petition which asks God to “restore our judges as at the beginning” precedes the ones which asks for the rebuilding of Jerusalem and the coming of the Messiah. The chapter ends with a bold statement which he will attempt to justify in later chapters: “*The Renewal of the Sanhedrin*

precedes the arrival of the Messiah!”

Chapter Four is a defense of the Oral Torah and the halakhic way of life. Only through the Oral Torah can Jews live a complete national life in their new state. Maimon discusses the importance of *takkanot*, positive social legislation, and of *midrash*, profound probing of the Written Torah in order to uncover its meaning. Both of these legal tools were in the hands of the Great Assembly, and through them they were able to bring the people to a fuller Jewish life.

The Samaritans, who did not acknowledge the authority of any “Oral Torah,” stood in the way of the Great Assembly and its followers. Their flawed understanding of the Torah led them astray; though ostensibly acknowledging the Five Books of Moses, they eventually came to disregard them as well. Maimon dwells on two of the Samaritans’ most serious offenses. They did not accept Jerusalem as the capital of the Jewish people, and they failed to understand the beauty of the Sabbath.

The centrality of Jerusalem and the observance of the Sabbath were important themes in Maimon’s own political life as he was writing these chapters. In 1949, Israel was weighing the merits of relocating the Knesset and the Government in Jerusalem (the Provisional Government was seated in Tel-Aviv), and the religious and secular sectors of society were struggling to determine the state’s mode of Sabbath observance. Given this background, it is understandable that he should emphasize these issues as he describes the successful national revival under Ezra, Nehemiah, and the Great Assembly.

Near the conclusion of chapter four, Maimon turns from the past and focuses on the present. If the Samaritans represented a threat then, today it is the secularists who pose the greatest threat to religious Judaism in the State of Israel. Maimon claims that a Sanhedrin composed of great minds and hearts will succeed in showing these lost souls the beauty of the

Tradition. These people, “wandering in the wilderness” and “stumbling along on roundabout paths and desert trails,” are not evil. They have only to be shown the beauty of Judaism by an honorable body such as the Sanhedrin, and they may return to a Jewish way of life—as was the case at the time of the Return from Babylon.

In **Chapter Five**, Maimon returns to the themes introduced in chapter one. The Jewish nation knows of no distinction between “religion and state.” Rather, as he says here and elsewhere in his writings on many occasions, “The Torah and The State need each other and fulfill each other.” Maimon begins speaking about the application of *mishpat ivri* (“Jewish Law”) in the Jewish State. It is a disgrace that the State of Israel, which has inherited such a rich legal tradition of codes and responsa, should turn to English common law or Ottoman law as the foundation of its legal system. Jewish law is more than adequate to meet the needs of Israeli civil law.

The second part of this chapter deals with the characteristics Maimon sought in members of the Sanhedrin. From a teaching of the Vilna Gaon, he learns that judges must be both “wise” and “clear-sighted”—in other words, they must have a comprehensive knowledge of the material and an ability to apply it to daily life. The Vilna Gaon himself is an excellent example of the kind of sage who would serve on the Sanhedrin.

Chapter Six begins with Maimon wondering about the efficacy of his series of articles thus far. He recalls his youth, when people grappled with ideas intensely and took things they heard and read seriously. There is a note of frustration in the opening paragraphs as Maimon recognizes that his proposal has not received wide-spread consideration.

But this opening is really a rhetorical device designed to prepare the reader for what follows. Maimon expresses his satisfaction at the several readers who *are* taking him seriously. He mentions their letters, one of which he reprints in its entirety. Significantly it is from a rabbi in Tel-Aviv

who is in complete agreement with the essence of the proposal, but is afraid to use his name because of his position as a rabbi. Maimon wants his reader to understand that the silence of the rabbis on his proposal should not be interpreted as disagreement. The Tel-Aviv rabbi's letter is evidence that *fear* is what is keeping them quiet.

The anonymous rabbi makes two requests of Maimon. Having read chapter five, in which Maimon makes the case for a return to Jewish civil law (*dinei mamonot*), he would like to know how the Sanhedrin will approach *dinei nefashot*—capital cases. Additionally, he feels that while Maimon has made a strong case on historical and political grounds, he has not yet adequately explained the *legal* basis for renewing the Sanhedrin.

Maimon responds to the “Anonymous Rabbi's” requests, taking up the latter one first. According to Maimonides, establishing a Sanhedrin is a *hiyyuv* (“religious obligation”) whenever the Jewish people dwells autonomously in Eretz Israel.

For it is obvious to anyone with eyes to see, ears to hear, and a heart to understand, that the commandment to appoint judges in Eretz Israel, in the form of a great Sanhedrin of seventy-one (*MT*, Hil. Sanhedrin 1:1-3) is *Toraitic in nature* and incumbent upon us whenever we dwell in the Land as an autonomous people.

To the rabbis who say it is not permitted to renew the Sanhedrin, Maimon answers: The renewal of the Sanhedrin in the renewed State of Israel is not only permitted, but *required*.

The rabbis' failure to grasp this point is due to their incomplete knowledge of all of the relevant texts. Specifically, they are under the impression that Maimonides himself was in doubt about the possibility of renewing the Sanhedrin before the arrival of the Messiah. This, Maimon claims, is not the case. Basing himself on manuscript evidence from his own library, Maimon claims that Maimonides never wavered in his belief that the

institution of *semikhah* (“ordination”) could be renewed before the arrival of the Messiah.¹⁰

Maimon dedicates **Chapter Seven** to the first question posed by the “Anonymous Rabbi.” The renewed Sanhedrin will not have the power to judge capital cases, since the death penalty could only be imposed when the Sanhedrin was seated on the Temple Mount. Throughout the greater part of chapter seven, Maimon argues that Judaism’s ultimate regard for the sanctity of human life makes capital punishment very “un-Jewish.” While technically a part of Jewish Law, the rules of evidence make it nearly impossible to impose the death penalty. The renewed Sanhedrin’s inability to impose the death penalty results not from the *inferiority* of Jewish law in this area, but from its decided *superiority*. In Maimon’s vision, the Sanhedrin will not impose the *death* penalty, but will instead breathe *life* into the Jewish people and their faith.

The final paragraph of chapter seven is vitally important. Having responded to the “Anonymous Rabbi’s” technical, halakhic concerns (though not in great detail), Maimon writes:

Please understand, Anonymous Rabbi, that this is primarily a matter of the heart. Those who do not feel it in their hearts will not be convinced by any responsum or rebuke. Of course we need to study in order to ascertain the correct path which will bring us to our desired end of a renewed Sanhedrin. We need to study—but not too deeply. My suggestion depends primarily on emotions, but it cannot be made a reality without a knowledge and love of Torah. Those who do not sense the value of my suggestion need to open up their hearts and their minds, so they will both understand it and feel it. The fault lies not with the idea, but with those who cannot understand it...

Maimon recognizes the importance of acting within the *halakhah*, but he is not primarily concerned with giving a halakhic *teshuvah* on the legality of his proposal. That task is left to others whose halakhic pronouncements

¹⁰*infra*, p. 83.

carry more weight than his own. During the period that *Hiddush ha-Sanhedrin* was being printed in *Sinai*, articles and responsa by several sympathetic rabbis appeared as well. Rabbis Haim Judah L. Auerbach, Nahman Shelomo Greenspan, and Shim'on Efrati wrote on behalf of the proposal in *Sinai*. Other rabbis whose favorable opinions appeared elsewhere include Shemuel Sperber and Eliezer Waldenberg. But, as he plainly states, *Hiddush ha-Sanhedrin* is “more for the heart than the head.”

It is in that vein that Maimon writes **Chapter Eight**, which is essentially a *derashah* in honor of Hanukkah (the chapter appeared in the Kislev–Tevet issue of *Sinai*). Like chapters two and three, this chapter is primarily concerned with demonstrating that previous moments of political rebirth have inevitably been accompanied by a spiritual revival. In Maimon's retelling of the Hanukkah legend, the Hasmoneans are portrayed as Mizrahi Zionists. In addition to the war they waged against the external enemies of the people, they needed to engage in a two-front ideological battle. To their right were people who cast a suspicious eye toward their activism, and “would not raise so much as a little finger on behalf of the people's liberation.” To the left were the Hellenized Jews who “loved the splendor and beauty of Japhet and distanced themselves from the tents of Shem.”

With God's help, the Hasmoneans won their battle. When they did, they reestablished the Sanhedrin, “without any ‘inquiries’ or ‘examinations’ as to whether it was the proper time or whether the generation was worthy.” Obviously, Maimon would like to see the “Hasmoneans” of his day—the national-religious rabbis—do the same.

Up until now, Maimon has probed the distant past in search of precedents. In **Chapter Nine**, he goes back only three decades, to the establishment of the Chief Rabbinate in 1921. His goal in this chapter is to convince the reader that the renewed Sanhedrin would not be a radical new invention, but rather an appropriate expansion of an existing institution.

Furthermore, he seeks to prove that the proposal would have found favor in the eyes of the first Chief Rabbi, Abraham Isaac Kook, had he lived to see the State of Israel.

According to Maimon, Kook believed that the Chief Rabbinate was the first step toward the renewal of the Sanhedrin. A significant portion of chapter nine consists of Rabbi Kook's speech at the founding conference of the Chief Rabbinate in 1921. In that published speech, he makes reference to a "committee of no less than twenty-three members, corresponding to the number of the Small Sanhedrin," which would meet every three months and chart the course of the Rabbinate. Maimon claims that Kook was even more forthright about his intentions in private conversations: at the proper moment, the Chief Rabbinate would evolve into the Great Sanhedrin.

Chapter nine concludes with reference to two conferences which dealt with Maimon's proposal. The first took place in Tiberias on the Tevet 28 (a date and place with great significance for his proposal), and was called by Maimon himself, for the express purpose of discussing the Sanhedrin proposal. The second was the annual conference of the Chief Rabbinate in Jerusalem, which took place on Shevat 18-21. Maimon was given the opportunity to make his case at that conference of the Rabbinate; the content of that lecture is the subject of Chapter Ten.

Chapter Ten is noteworthy, for it shows us how Maimon made his case to the *rabbis*. We recognize the ideas from earlier chapters, but the presentation is different. Taking his cue from a distinction made by the Vilna Gaon between three seemingly equivocal Hebrew terms (*amirah*, *dibbur*, and *haggadah*), Maimon weaves together a rabbinic *derashah* on Deuteronomy 17:8-11, in which he describes the three major roles a renewed Sanhedrin would play in Eretz Israel. In his vision, the Sanhedrin would have the responsibility to: teach "basic Judaism" to a generation which has had no contact with its religion; interpret the *halakhah* in such a way as to

further the interests of Judasim in general, and religious Judaism in particular; legislate when the hour demands. He concludes by stressing his belief that the renewal of the Sanhedrin is not an *option* but an *obligation*.

In 1538, an abortive attempt was made to reestablish *semikhah* in Safed. There, Rabbi Jacob Berab was ordained by the rabbis of his community. Opposition to this act came from the rabbis of Jerusalem, led by Rabbi Levi Ibn Habib. The attempt at reviving ordination resulted in a great literary output, which Ibn Habib gathered and published as an appendix to his collection of responsa. This collection of letters, responsa, and polemical tracts is the *locus classicus* for any discussion of the halakhic aspects of renewing *semikhah*.

Among those who questioned the possibility of renewing the Sanhedrin in 1950 were some who believed that the matter had been decided halakhically four centuries earlier. The fact that Berab failed in restoring the crown of *semikhah* convinced them that such an endeavor was prohibited. **Chapter Eleven** begins with Maimon noting the many rabbis who have advanced this argument. However, he goes on to state that most of them have never actually *seen* either Berab's arguments in favor of renewing ordination or Ibn Habib's arguments against it. As a service to the rabbinical community, he reprints these sixteenth-century texts in the remainder of the chapter.¹¹

Hiddush ha-Sanhedrin concludes with an evaluation of the 1538 ordination controversy whose sources are reprinted in chapter eleven. In **Chapter Twelve**, Maimon argues that there are no real halakhic impediments to renewing *semikhah* and thus the Sanhedrin. The ever-underrated Berab was in fact the halakhic giant of his generation, who understood both the Talmud and the Mishneh Torah in a singularly profound

¹¹In chapter eleven (pp. 124ff.), I depart from a strict translation of Maimon's book, and instead discuss and evaluate the halakhic issues.

fashion. *His* arguments in favor of ordination in the present era, and the fact that he actually carried out the deed, should be evidence enough for us.

Furthermore, even Ibn Habib was not opposed to the proposal on halakhic grounds as much as on procedural ones. Had Berab approached Ibn Habib to discuss the issue first, instead of presenting him with a *fait accompli*, the latter would likely have approved.

Maimon does not see the Safed episode as primarily a halakhic disagreement, but rather as a clash between two differing conceptions of messianism. He places the episode in a larger historical context—the shadow of the Exile from Spain, Solomon Molcho’s messianic preaching, Don Joseph Nasi’s attempt to reestablish a Jewish state in the Galilee, and the wave of *aliyah* to Eretz Israel—and argues that, above all else, Berab and his followers were convinced that their actions would help to lay the groundwork for the coming of the Messiah.

Near the end of chapter twelve, Maimon makes a claim similar to that which he has made in previous chapters.

It is obvious to me that, were those great luminaries (i.e., Berab and his contemporaries, including Ibn Habib) alive today, *they would renew the Sanhedrin immediately, without any hesitation.*

Rabbi Levi Ibn Habib thus joins Rabbi Kook, the Hasmonean priests, Ezra and Nehemiah, Joshua and Zerubbabel, as men who understood that a Jewish state must be led by a Sanhedrin. He concludes with a charge to the rabbis of Eretz Israel:

“It is time to act on the Lord’s behalf.” The great hour is at hand, and the great ones, our rabbis, are obligated to rouse themselves and to feel the beating of *shekhinah’s* wings. They must hear the commanding voice which calls upon them to work diligently in preparation for the renewal of the Sanhedrin. If they are able to seize the moment, and not fall prey to doubts and weakness of will, we will succeed in expanding the influence of Torah-Judaism in our State and setting in its proper place.

Reaction to *Hiddush ha-Sanhedrin*

As Maimon predicted in the first chapter of *Hiddush ha-Sanhedrin*, opposition to his proposal came from both the right and the left. The non-Zionist Agudat Israel party saw in the proposal a dangerous innovation which might lead to religious Reform—an accusation which caused Maimon to bristle. Nearly a decade later, he reminisced:

The rabbis didn't understand the idea. Some of them worried that it would be a permissive body, a Reform joke, establishing religious reforms. I wanted to create a supreme academy which would have enacted legislation to make life possible. Reform? I am against reform with every fiber of my existence!¹²

Throughout the book, Maimon attempts to answer this charge by stating that the Sanhedrin will make *takkanot, velo tikkunim*—“religious enactments, not religious reforms.”

If the rabbis on Maimon's right were concerned that the proposal could lead to a “watering-down” of traditional Judaism, secular Israelis to his left were wary of any attempt to increase the role of religion in the Government. Some were concerned that, if a Sanhedrin were to be reestablished, it would become politicized and racked with scandal. The following joke circulated in Israel while Maimon was proposing the renewal of the Sanhedrin:

Ben-Gurion asks Rabbi Maimon, “Where are we going to find seventy-one Jews who are giants of Torah, brilliant, and also ‘haters of profit?’” “Don't worry,” Rabbi Maimon answers, “If the money is there, we can find men who hate profit.”¹³

He attempted to deflect their opposition by stressing the great benefits that a Sanhedrin would bestow upon the nation as a whole. Beyond the purely religious benefits,

¹²Nov 27, 1959, *Ma'ariv*. Interview with journalist Rafa'el Bashan.

¹³Geulah Bat-Yehudah, *Rabbi Maimon bedorotav*. Jerusalem: Mossad Harav Kook, 1979. p. 604.

It is clear that our Sanhedrin will become the most significant authority in the eyes of other religious leaders, that our honor will increase, and that the trust placed in us and in our State will grow stronger.¹⁴

The name “Sanhedrin,” he assumed, would resonate among the Gentiles in a way that “Knesset” did not. This body of Sages would give added legitimacy to the new State of Israel.

Fifty years after the establishment of the State of Israel, it is hard for us to imagine the secular and religious sectors of Israeli society cooperating on a matter such as this. Yet Maimon seemed to believe that such cooperation was not only possible, but forthcoming. In a 1959 interview, Maimon spoke about relations between sectors of society during the earliest days of the State:

In the early days of the State, relations with the secularists were different. There was an atmosphere of honesty and understanding. Even the Knesset approved of the establishment of a Sanhedrin. In those days, even Ben-Gurion’s friends supported the idea.¹⁵

Thus, looking to his left, Maimon saw signs of encouragement.

The strongest opposition came from the rabbis in the Diaspora. This angered Maimon greatly, because according to Maimonides they had no say in the matter. Maimon went so far as to suggest that they really had no right to even *express an opinion one way or the other*.

We must not underestimate the importance of Diaspora opposition to the idea. In Maimon’s view, it was that opposition which ultimately defeated his proposal. He felt that through their pronouncements, and the effect that those pronouncements had upon the rabbis of Eretz Israel, the *gedolim* living in America had succeeded in poisoning the atmosphere and stifling honest debate.

¹⁴Introduction, p. 10.

¹⁵*Ma’ariv*, op. cit.

Throughout the Fall and Winter of 1949-50, Maimon argued his case within the Mizrahi movement and the religious community as a whole. He was unsuccessful in gaining widespread support, though several key figures did publicly endorse the proposal. In both the Mizrahi World Council and the Israeli Rabbinate, discussion of the proposal was tabled pending the establishment of a “world body” to deliberate the matter. The condition amounted to a defeat, since creating such a world body to deliberate the Sanhedrin’s merits would have been as difficult as establishing the Sanhedrin itself.

Maimon exchanged letters with Rabbis Herzog and Uzziel (the Ashkenazic and Sephardic chief rabbis). They assured him that the delay was designed to *promote* the proposal and not to defeat it. He was correct in stating that the rabbis outside Eretz Israel had no *right* to express an opinion; nevertheless, it would be wise to allow them to do so, in order to build consensus among that very large and important part of world Jewry. They worried that decisive action by the Israeli rabbinate, though halakhically permissible, would cause an irreparable tear in the relationship between the State of Israel and the Diaspora.¹⁶

In the Spring of 1950, Maimon presented his proposal to the Rabbinate of Israel at its Conference in Jerusalem (see Chapter 10). He describes the chilly reception, and his interpretation of it, as follows:

I feel as though the rabbis were especially attentive during my lecture; but afterwards, they sat in silence, which is an obstacle to wisdom. They did not discuss or deliberate the matter at all. This silence can be explained in one of two ways: Either they were in agreement with my words, and “when the rabbis are quiet, you know that they agree,” or they did not see fit to discuss the matter, and considered my entire lecture a complete waste of time. Or, I might suggest yet another explanation for their silence, namely: *fear*. Much to our dismay, there are many rabbis who fear not only Heaven, but also flesh and blood. They are all afraid of what the other ones will say...

¹⁶Letter to Maimon from Rabbis Herzog and Uzziel, 19 Tevet, 1950.

Chapters eleven and twelve were published subsequent to this conference. However, Maimon seems to have recognized that the silence of the rabbis in Jerusalem effectively put an end to his proposal.

Conclusions

Rabbi Maimon was completely swept up in a wave of messianic fervor brought on by the realization of his life-long dream: the establishment of the State of Israel. He was frustrated by the fact that some rabbis saw in the State of Israel “the beginning of the Redemption.” Subsequent to the Sanhedrin proposal’s demise, he wrote:

The Redemption did not “begin” on November 2, 1917 with the Balfour Declaration, nor with the establishment of the State on Iyyar 5, 5708. They say that seventy years ago, at the laying of the cornerstone at Rishon le-Tzion, the Hafetz Hayyim said, “Look, it is beginning...the Redemption is beginning...

The “beginning of the Redemption” happened long ago, when we began returning to Zion. Now, seeing that we have renewed the State and possess a territory whose borders are rivaled only by those of King Solomon, I believe that this is not the “beginning,” but in fact the *majority* of the Redemption.¹⁷

Like Jacob Berab, Maimon was motivated by a desire to bring the Redemption even closer, and was less concerned with halakhic arguments than with stirring the hearts of his fellow Jews. His daughter writes that, while he did try to muster arguments in support of his proposal,

he relied more than a little on a miracle—the miracle of the founding of the State, which was so wondrous that even those of little faith could not help but feel it.¹⁸

Given that fact, we may conclude by applying the same analysis to Maimon’s 1949 proposal as Jacob Katz applies to Berab’s 1538 attempt.¹⁹ A person’s approach to messianism will color his approach to the halakhic basis for

¹⁷“*Im eshkahekh yerushalayim*,” in *Le-sha’ah ve-lador*, p. 309.

¹⁸*Rabbi Maimon be-dorotav*, p. 603.

¹⁹“*Mahloket ha-Semikhah*,” in *Halakhah ve-Kabbalah*, p. 228-229.

renewing the Sanhedrin. In 1538, Levi Ibn Habib's sanguine approach to the messianic fervor of his day allowed him to review the halakhah dispassionately. In 1950, rabbis who did not share Maimon's messianism were able to point to the various practical problems related to establishing the Sanhedrin and argue against the proposal on halakhic grounds.

About the translation:

This translation of *Hiddush ha-Sanhedrin bamedinateinu hamehuddeshet* aims to render both Rabbi Maimon's meaning and style in English. Hebrew sentence and paragraph structure are different from English, making a strictly literal translation unwise. Wherever necessary, I have shortened Maimon's sentences and paragraphs.

Some technical Hebrew terms are left untranslated in the text and explained in a footnote the first time they occur. Other, more commonly known Hebrew words (such as Eretz Israel and *aliyah*) are simply left untranslated.

Maimon did not make use of footnotes in *Hiddush ha-Sanhedrin*, relying instead on parentheses within the text. I have followed him wherever the reference is limited to a few words, e.g. Biblical or Rabbinic citations. More extensive parenthetical remarks which interrupt the flow of his argument have been made into footnotes and placed in square brackets. Unbracketed footnotes are my own annotations and observations.

Often, Maimon's citations are incorrect. Possibly, he was citing sources from memory and occasionally erred. It may also be that the typesetters had difficulty with his manuscript (very often, the letters ך and ך̇ are substituted for one another, leading one to search page "two" when the relevant material is on page "twenty."). In some instances, Maimon may have been referring to manuscripts in his extensive collection with different

systems of paragraph division. In all cases, I have silently corrected these references, bringing them into agreement with the standard printed editions of the Rabbinic sources.

The Hebrew presses in Eretz Israel conveyed emphasis by extending the spacing in a given word. I have used italics. Since italics are also used to write some Hebrew words, it is left to the reader to determine if an italicized Hebrew word is also to be emphasized.

Hiddush Ha-Sanhedrin
Bamedinateinu Hamehuddeshet

by

Rabbi J. L. Hacoheh Maimon

I dedicate this book to the memory of two brilliant rabbis

Rabbi Isaac Jacob Reines
founded the Mizrahi
died Elul 3, 5675

Rabbi Abraham Isaac Hacoen Kook
established the Chief Rabbinate
died Elul 10, 5695

Preface¹

This book was printed in installments in *Sinai*² and *Ha-Tzofeh*.³ Now, as I publish these chapters in a single volume, I have decided not to add or subtract so much as a single letter.⁴ The reader will find my words just as I first wrote them, in my state of profound emotion and inspiration. I have based my argument upon the words of Maimonides,⁵ without engaging in any sort of *pilpul*.⁶ I meant this book more for the heart than for the head⁷—hoping that, just as it flowed from deep within my heart, so it would enter the hearts of others.

I have reprinted all of Rabbi Jacob Berab's responsa on the question of renewing the Sanhedrin. It is clear to me that his thinking on the issue was based primarily on his belief that the Redemption was blossoming in his day—a belief inspired by the dreams and aspirations of his contemporaries, Solomon Molcho and Don Joseph Nasi.⁸ Berab no doubt participated in this messianic movement. Following the ingathering of Jews exiled from Spain,

¹This preface was written for the monograph publication of *Hiddush ha-Sanhedrin* in 1951. Therefore, though it appears at the beginning of the book, it was actually the last part to be written. Maimon's frustration is apparent, especially in the last long paragraph. Nevertheless, he concludes with a note of optimism, perhaps believing that the appearance of his articles in book form would rekindle debate and bring about the desired end.

²A bi-monthly journal published by Mossad Harav Kook, and edited by Maimon.

³The newspaper of the Mizrahi, and later of the National Religious Party.

⁴In fact, the book does contain minor changes, mostly at the beginnings and endings of chapters. They do not alter the meaning of the book, and only reflect its new form as a book rather than as a series of articles.

⁵*MT*, Hil. Sanhedrin 4:11.

⁶Talmudic dialectics. *Pilpul* refers to the practice of finding (or creating) difficulties and contradictions within and between Talmudic and later halakhic passages, and then attempting to solve them. Depending on who uses the term, it can be positive or negative.

⁷[As for the many who have engaged in *pilpul* over Maimonides' statement which concludes, 'the matter needs decision,' seeking to prove that Maimonides himself was unsure about the issue—in fact, there are some manuscripts in which these words don't appear at all, as was discussed by Rabbi Dr. Dov Revel in his article in *Horev*, 5:9-10.] The article is titled *Hiddush ha-Semikhah milifnei arba me'ot shanah*. In it (pp. 14-16), Revel argues that three *rishonim* take it for granted that Maimonides believed in the efficacy of such an ordination. They are: Menahem Me'iri (*Beit ha-Behirah*, Sanhedrin 43); Solomon Ibn Adret (*Hiddushei ha-Rashba*, Baba Batra 31b); and Eshtori Farhi, *Kaftor va-Perah*, ed. Luntz 149.

⁸*infra*, p. 166.

which occurred in his lifetime, and which was the realization of the prayer “Who gathers the dispersed of Israel,”⁹ he must have felt responsible to help realize the prayer which follows it— “Restore our judges as of old.”¹⁰

Unfortunately, that generation’s dreams and aspirations were not carried out. But now, we who have had the unique good fortune to see the renewal of the State of Israel have a special obligation to renew the Sanhedrin as well.

Our Sages said: “The passage dealing with the laws of inheritance¹¹ would have been written by Moses, except that the daughters of Tzelophechad had special merit so that it was written through them.”¹² I might add: The Sanhedrin may be renewed by the rabbis of Israel in our generation. But if they do not measure up, if they fail to overcome small-mindedness, if they cannot meet the lofty demands of this moment—then the Sanhedrin will be reestablished by some “Tzelophechads.” If that happens, who knows what our supreme and holy institution of Torah learning will look like?

So many rabbis today are given to say, “this generation is not fit.” And the people respond in kind: “these *rabbis* are not fit.” But both are wrong. If this generation has succeeded in establishing the State of Israel anew, then it *and* its rabbis are certainly fit to establish a supreme institution for Torah, an age-old yearning intimately bound up with our dream of Redemption.

Happy is the one who merits laying the foundation for the renewed Sanhedrin in our day.

J. L. Hachohen Maimon

⁹“Sound the great shofar proclaiming our freedom. Raise the banner to assemble our exiles, and gather us together from the four corners of the earth. Blessed are You, Eternal One, who gathers the dispersed of His people Israel.”

¹⁰“Restore our judges as of old, our counselors as before, and remove our grief and suffering. Rule over us, You alone, in love and mercy. Vindicate us in judgment. Blessed are You, Eternal One, Ruler who loves righteousness and justice.”

¹¹Num 27:1-8.

¹²Baba Batra 119a.

A Short Introduction

I am aware that the subject of my essay, “The Renewal of the Sanhedrin in Our Renewed State,” will bring criticism from various quarters. The fact does not escape me that my proposal to renew the Sanhedrin in the State of Israel will seem to many to be a far-off fantasy, a distant dream. There will be people, on my right and on my left, who will consider this idea not only with some hesitation but even with outright suspicion—the former, out of their fear of the *innovation* inherent in my suggestion, and the latter, because I want to revive something *ancient*. From both sides, I will be criticized, attacked, and completely opposed. Or, at the very least, they will brush the matter aside, saying:

“Here comes that dreamer!”¹

No doubt, many readers *do* relate me to that famous verse. And I must confess that from the moment the idea took hold in my imagination, I have dreamt a dream about the revival of the Sanhedrin, just as I dreamt about the renewal of the State of Israel. And the Dream Weaver continues to whisper in my ear: “Just as your dream of a Hebrew state came true before your very eyes, so too a day will come in which your dream of a Sanhedrin will be a reality.”

I arrived at my opinion about the renewal of the Sanhedrin in a methodical way. After having spent decades exploring the texture of Jewish life, past and present; after studying all of the literature written about the Sanhedrin and its mission; after considering our spiritual life and the changes which have come upon it in recent years—changes in thought and feeling which go unnoticed by the untrained observer—I have come to the conclusion that, along with the renewal of the Jewish *State*, we are bound to take concrete steps to renew the Jewish *Sanhedrin*, in all of its glory and

¹Gen 37:19.

splendor.

However, before I argue my position from the perspective of Torah, and from a historical perspective rooted in the life of our people, I feel it necessary to make absolutely clear what I, a dreamer and fighter for Israel, see as the nature and essence of our renewed state.

The State of Israel's spiritual sustenance must come from the Wellspring of Israel. Without the Torah, without the law contained within it, the State of Israel cannot be what it must be. Without tapping the wellsprings of Torah, without the blossoming of authentic Jewish law, without the expansion and rebirth of our *ancient* literature (in the broadest and deepest sense of the term), our state cannot truly be the State of *Israel*.

The membership of the Sanhedrin will be chosen from among the Sages of Eretz Israel. It will include our greatest Torah scholars—religious, intelligent, accomplished men. By virtue of its spirit, grounded in authentic Judaism, it will influence our new state, empowering and emboldening it, enlivening and invigorating it. The Sanhedrin will assist in bringing the *shekhinah* of Israel² to rest upon the State of Israel.

The reestablishment of our Sanhedrin is not dependent upon the favors of kings or resolutions in the U.N. General Assembly, nor upon the two-faced resolutions of governments which only embrace smaller nations when it serves their own interests, distancing themselves when they no longer need them. We don't need to whore after diplomacy, with its ever-changing, shifting ways. We don't need to waste our strength or our time haggling with the Arabs and their allies, or fighting them. Nor do we need to

²*shekhinat yisrael*. The *shekhinah* is God's immanent presence. Maimon's use of the term *shekhinat yisrael*, "Israel's shekhinah," is interesting because of its ambiguity. We expect to find the word *shekhinah* in the absolute form, or in a construct such as *shekhinat el*, "God's presence." Most likely, Maimon was referring to God's presence, attached to the Land, People, and State of Israel. But it is possible that he meant "Israel's presence;" in other words, a dimension of Israel which enters the world when the people returns to its land and properly constitutes its state. On page 30, he gives some context for his idiosyncratic use of the term.

pretty ourselves up for the leaders of other faiths. To the contrary. It is clear that our Sanhedrin will become the most significant authority in the eyes of other religious leaders, that our honor will increase, and that the trust placed in us and in our State will grow stronger.

For all these reasons, I am unable to keep these thoughts within me. My words may cause some unpleasantness for certain weak-willed people, skeptics, afraid of either the old or the new, who lack the daring sense of vision possessed by those thinking, feeling people who aspire to weave the fabric of religious experience into a tapestry which stretches to the last generation. But they will not force me to remain silent. Our task, simply put, is to elucidate, based on our Torah and on our history, the *need* to renew the Sanhedrin in our new State, the *command* to effect such a renewal, the *mission and role* of the Sanhedrin in our time, and the blessing and benefit which the Sanhedrin will bring to religious revival in our new State, and indeed to the State itself.

Chapter One

When we look carefully at the process of Jewish history, we find at the root two distinct conceptions of the existence of the people of Israel—namely, the material and the spiritual. The first conception is political; the second, religious. The *political* conception bases the existence of the nation on political life; the nation's success is dependent on material acquisition and the political goals. *The Conquest of the Land*—the settling of this “desirable, good, and spacious land,”¹ fortification in the face of external threats, and a self-reliance based on political strength—is the nation's aim. *The Destruction of the Land*—the end of political sovereignty in the ancestral homeland, Exile and wandering, subjugation and humiliation by alien powers—is the nation's downfall.

But the *religious* conception bases the existence of the nation on its spiritual and ethical life: the people's integrity of ethics and values, its knowledge of Torah and actions in accordance with its laws and statutes, a life of sanctity, purity, and modesty which brings the *shekhinah* to it—these are the people's aspiration and the measure of its success. A debasing of ethics and values, a neglect of Torah and an abandonment of its commandments, an “explosion of appetites” which lead to the removal of the *shekhinah*—these are people's downfall.

The political outlook maintains that life in Exile is not really life at all. Bodily and spiritual impoverishment, crookedness and deviousness, bitterness, despair and misery—these are the hallmarks of Exile. Pride and freedom, simplicity, honesty, bountiful joy and carefree life—these are the qualities of a nation living in its own land. This outlook necessitates that the people strive to become “a people like all other nations,” great, mighty, and populous,² governing their territory and dominating other peoples.

¹Berakhot 48b, and incorporated into the Grace after Meals.

²Deut 26:5.

But the religious worldview responds: Our Torah, which has impressed the religion of Moses and Israel upon our lives in their entirety, from the smallest detail to the greatest principle, in our tents and in the streets,³ from the most private, personal acts to the most visibly public—it is our Torah which has bestowed upon us sovereignty, even in the midst of subjugation. Because of this, our people must strive to become a kingdom of priests and a holy nation,⁴ to perfect itself and others under God’s dominion⁵—until the earth becomes full of knowledge.⁶

However, anyone who looks carefully at the words of our Torah and the vision of our prophets, anyone who understands Jewish history, will acknowledge that our Torah does not differentiate between these two worldviews, which are in fact both derived from one root—the *people itself*. Anyone who wants to truly grasp the character of our people and our Torah must make a clear distinction between the way of the Jewish people and that of other nations. Just as our people is different from all other peoples, so too is our *religion* different from all other religions. Among other peoples, *religion and state* are two separate entities, two distinct forces drawing strength from different realms; but in our case they are intertwined with one another, and anyone who seeks to separate them robs the nation of its very soul. Our Torah contains not only commandments “between man and God,” but also commandments “between man and his fellow, and his *state*.” The Torah’s legislation deals not only with the life of the individual and the community, but also with that of the state, in both its general rules and particular details. It is the Way of the Living God—and also a way of life. It

³An answer to the “enlightened” view of the *maskil* poet J.L. Gordon (1831-1892). His poem “Awake My People” (1863) exhorted his fellow Russian Jew to be “a man on the street and a Jew in your tent.”

⁴Exod 19:6.

⁵After the *aleynu* prayer at the conclusion of worship, which describes the Jewish mission as “perfecting the world.”

⁶Is 11:9.

speaks of material, *political* goals, just as it speaks of spiritual and *religious* goals.

These two types of promise are brought together in a single passage which speaks of blessing. First:

I will grant peace in the land, and you shall lie down untroubled by anyone; I will give the land respite from vicious beasts, and no sword shall cross your land. You shall give chase to your enemies, and they shall fall before you by the sword (Lev 26:6-7).

And then, in the same passage:

I will establish My abode in your midst, and I will not spurn you. I will be ever present in your midst; I will be your God, and you shall be My people (v. 11-12).

Below is another instance. First we find:

The Lord will ordain blessings for you upon your barns and upon all your undertakings: He will bless you in the land that the Lord your God is giving you (Deut 28:8).

Followed immediately by:

The Lord will establish you as His holy people, as He swore to you, if you keep the commandments of the Lord your God and walk in His ways (v. 9).

Thus we find political and religious promises side by side.

What we see with regard to blessings, we also see with regard to curses. First:

And as the Lord once delighted in making you prosperous and many, so will the Lord now delight in causing you to perish and in wiping you out; you shall be torn from the land that you are about to enter and possess (Deut 28:63).

—and then, in the same breath —

“The Lord will scatter you among all the peoples...*and there you shall serve other gods*” (v. 64).

Religious and political curses are thus brought together.

Furthermore, the Torah does not only claim that these two aspects do not conflict with one another; in fact, they join forces, each one strengthening the other. Religion is not merely some external trapping of the nation—it is its very life, the kernel of its existence. But whenever the people is scattered among the nations, it is destined to be swallowed up (God forbid) and stripped of its religion and its Torah. As long as the people is scattered and wandering among the nations, it cannot bring together these two aspects, and thus be revealed in its full stature. In exile, Judaism dries up. Its roots, no longer drawing in nourishment, wither. Its branches droop over the public way, collecting dust, and from time to time are broken off by barbarous strangers. A Jew living in a foreign land imbibes its culture, ingests its language and literature—and his Judaism grows more and more muddled, whether or not he is aware of it. “Jews living outside of Eretz Israel are like unwitting idolators” (Avodah Zarah 8a).⁷ However, in a Jewish state in Eretz Israel each Jew is able to maintain his unique Jewish identity. Therefore, “anyone who dwells in Eretz Israel is comparable to one who has a God” (Ketubot 110b)⁸

Thus we see that the Torah makes no distinction between the Jewish state and the Jewish religion. And we must emphasize one thing: *religion*—or, in other words, *the nation’s law and its Torah*—preceded the establishment of a Jewish state. All students of *general* history agree that law is the product of the state. To the question, “Which came first, the law or the state?” they answer decisively that the state came first. It led to the

⁷It is taught that R. Ishmael said: Jews outside the Land are like unwitting idolators. How? When a heathen prepares a feast for his son and invites all the Jews in his city, even though they eat their own food and drink their own wine, and their own attendant waits on them, Scripture regards them as though they had eaten sacrifices to his dead idols, as is said, ‘Whenever he invites you, you eat of his sacrifice’ (Exod 34:15).

⁸Our masters taught: A man should ever strive to live in Eretz Israel, even in a city whose inhabitants are mostly heathens, and should avoid living outside the Land, even in a city whose inhabitants are mostly Jews. For he who lives in Eretz Israel is like one who has a God, whereas he who lives outside the Land is like one who has no God. Therefore it is said, ‘To give you the land of Canaan, to be your God’ (Lev 25:38).

creation of rules and statutes, particularly those dealing with the state. Rome first existed as a sovereign state, and the state established Roman law, with its political and cultural legislation. But *Jewish political law preceded the establishment of the Hebrew State.*⁹

It is worthwhile to dwell on this important fact. The Jewish state is the fruit of Jewish law. Before a king ruled over Israel, the rules which govern kings existed, and before the Jewish state existed, its legal system was established. It had been given to Moses at Sinai—*in the wilderness*, before the Hebrew state was founded in Eretz Israel. While they were still in the wilderness of Shur, when they came to Marah, “there He gave them rule of law” (Exod 16:21).¹⁰

Furthermore, it is absolutely clear that, from the day on which the Israelites received their Torah at Sinai and became a “treasured people,” a unique nation in possession of unique laws and statutes, they also took upon themselves the responsibility to appoint *judges*. These judges would have jurisdiction over national matters, and would see to it that the actions of the people—both the individual and the collective—were in accord with Torah law. Immediately following the Ten Commandments we find the passage “These are the statutes.”¹¹ And the Torah provides further evidence: “Moses sat as magistrate among the people, while the people stood about Moses from morning until evening” (Exod 18:13). Moses tells Jethro, his father-in-law, “When they have a dispute, it comes before me, and I *judge* between one person and another” (v. 16).

In an early Rabbinic tradition, Rabbi Joshua ben Hananiah and Rabbi

⁹*ha-medinah ha-ivrit*. Throughout *Hiddush ha-Sanhedrin*, Maimon uses the term *ha-medinah ha-ivrit* and even *medinat yisrael* to refer to the Israelite monarchy and what is commonly called “the Second Jewish Commonwealth.” I have consistently translated *medinah* as “state.”

¹⁰In other words, *mishpat ivri* existed before the Revelation which takes place in Exodus chapter 20.

¹¹i.e., *parashat mishpatim*, Exod 21:1ff.

Elazar Hamodai maintain that a Sanhedrin of seventy was already functioning along with Moses, even then.¹² It seems, then, that Jethro advised Moses to appoint “lesser Sanhedrins.”¹³ The Torah contains a specific commandment to account for these judges: “You shall appoint judges and officials for your tribes, in all the settlements that the Lord your God is giving you, and they shall judge the people with due justice” (Deut 16:18). The Oral tradition follows by teaching that, in Eretz Israel, it is necessary to establish courts in each and every village and city (Makkot 7a).

These municipal and town courts were of lower stature than the Supreme Court which met in Jerusalem, in the Chamber of Hewn Stone, and whose role is described in the following passage:

If a case is too baffling for you to decide, be it a controversy over homicide, civil law, or assault...you shall promptly repair to the place that the Lord your God will have chosen, and appear before the priests and Levites, or the magistrate in charge at that time, and you shall ask them and they will tell you the law (Deut 17:8-9).

According to the received tradition, this high court was composed of seventy members, led by a chief justice— corresponding to the number of judges in Moses’ day (as we mentioned above, citing the Mekhilta), as commanded by God: “Gather for Me seventy of Israel’s elders...they shall share the burden of the people with you” (Num 11:16-17). The Oral tradition states: “The great Sanhedrin was composed of seventy men—not including the leader, Moses.” The role of this Supreme Court was truly great and important, and nearly all of the nation’s interests, material and spiritual, *religious and political*, were dependent on the pronouncements of the institution. It was in later centuries (before the destruction of the Second Temple) known as the

¹²[Mekhilta, Parashat Yitro, on the verse, “you will surely wear yourself out” (Exod 18:18). Additionally, Targum Pseudo-Jonathan Num 25:7 states that Pinchas was a member of the Sanhedrin.]

¹³[See Sanhedrin 17a, “We deduce the Great Sanhedrin from the Small Sanhedrins”, and Rashi’s comment ad loc, “The Small Sanhedrins are mentioned in *parashat yitro*.”]

Sanhedrin, but it had no particular name in this earlier period.

Unfortunately, we have no record of the proceedings of this supreme court in its earliest period, the period of the *Shofetim*. Despite the details which are recorded in the early prophets, the role of the *shofetim* is not altogether clear. With respect to foreign affairs, we know that their job was to step into the fray, to defend their people in times of trouble. But what was their role in *domestic* affairs? Of this we have no explicit evidence. And yet we can surmise, based on the fact that they were called *shofetim* and that, several times we are told that such-and-such the *shofet judged* Israel for so many years, that these *shofetim* performed the tasks of the judiciary—namely, to give judgement in civil cases. More explicit testimony describing the function of the *shofet* is mentioned in relation to Samuel the seer, who made the rounds of Bethel, Gilgal, and Mizpah, and acted as judge over Israel at all those places. Then he would return to Ramah, for his home was there, and there too he would judge Israel” (1 Sam 7:16-17).

From these verses, as well as from what is told about Samuel’s sons—that he appointed them “*shofetim* over Israel...[and they] were bent on gain, they accepted bribes, and they subverted justice” (1 Sam 8:1-2)—it is absolutely certain that the *shofetim* in those days performed the tasks of judges and heads of court.¹⁴

What is not mentioned explicitly in the sources is whether or not these judges received their authority from any supreme court. However, according to one ancient tradition, Samuel of Ramah headed a certain court which was the source of the ruling, “*Ammoni velo ammonit, mo’avi velo mo’avit*.”¹⁵ From

¹⁴Martin S. Rozenberg deals with this question in his article, “The *Shofetim* in the Bible,” (*Eretz-Israel: Archeological, Historical and Geographical Studies*, vol. 12 (Nelson Glueck Memorial Volume), p. 77ff.) Like Maimon, he sees the *shofetim* as filling a judiciary role to some extent. However, in his view the *shofetim* were *ad hoc* tribal leaders who came to prominence during a crisis and then remained prominent for the rest of their lives due to their military success. He sees no evidence of a judicial institution during the period of the *shofetim*.

¹⁵Yebamot 77a. “A male Ammonite but not a female Ammonite; a male Moabite, but

a political-historical perspective, this ruling had an incredible impact upon the dynastic line. It relates directly to both our distant past and our hoped-for future: the legitimacy of both the ancient House of David and the future Messiah descended from David are dependent on it. Such a weighty and important ruling could have come only from the deliberations of a *supreme judicial body* whose authority was beyond doubt.

With this, we arrive at a crucial point. The fact that Samuel of Ramah's court ruled *ammoni velo ammonit, mo'avi velo mo'avit* teaches us that, in addition to the *Written Torah*, there was also an *Oral* tradition. This tradition included both interpretations of Biblical passages and distinct laws which fall under the rubric of *halakhah lemosheh misinai*—"rules which were taught to Moses at Sinai."¹⁶ The written Torah records the law: "No Ammonite or Moabite shall be admitted into the congregation of the Lord" (Deut 23:4), without distinguishing between male or female. But Samuel the seer's court came and promulgated the ruling: *ammoni, velo ammonit, mo'avi, velo mo'avit*. Were this ruling not part of an ancient tradition of interpretation, could it possibly have been accepted by the entire people without question? Would they have allowed David, on the basis of this ruling, not only to enter the congregation, but to rule it as king? Is such a thing believable?

Also unthinkable is the possibility that this ruling was promulgated by Samuel the *seer*—in other words, that Samuel *himself* made the distinction between male and female Ammonites and Moabites. No. The task of interpreting the Torah was given to the *sages*, and not to the *prophets and seers*. Our sages taught on this subject: "It (i.e., Torah) is not in heaven"

not a female Moabite." The meaning and significance of this statement are explained in the following paragraph.

¹⁶"Laws given to Moses at Sinai." This term refers to a law "not hinted at or alluded to in Scripture and not deducible from the Biblical text by means of one of the authoritative canons of interpretation" (Maimonides, Introduction to the *Perush ha-Mishnah*). If no source for a law can be found, but the law is nevertheless universally accepted, it may be termed *halakhah le-Moshe mi-Sinai*. See Menachem Elon, *Jewish Law*, pp. 204-207.

(Baba Metziah 59), and no prophet is permitted to offer legal interpretations which have not been given to us by our teacher Moses.¹⁷ Clearly then, courts such as these (i.e., those of Samuel's day), which were not far removed from the period of Moses, Joshua, the elders, and the *Shofetim*, were in possession of ancient traditions by which they would explain the written text. When Samuel and his court distinguished between men and women regarding the verse "No Ammonite or Moabite shall be admitted into the congregation of the Lord," they were relying on just such a tradition. Only because of this was the ruling willingly accepted by all sectors of society.

It is not hard to understand how a supreme court such as this did not leave behind any trace. It had no location established by *tradition*. For wasn't the location of the Jewish high court in the capital city of the Jewish nation—or, in the Torah's words, "The place which the Lord your God will choose" (Deut 16:9)? But until the time of *David*, Jerusalem was not fit to serve as the seat of our high court. Only after David conquered Jerusalem and the Ark of God was brought to the holy city, do we find mention of "Jerusalem built up," a city in which stood "*thrones of judgement*" along with the "thrones of the house of David"—in other words, the throne of the kingdom (Ps 122:5).¹⁸ According to tradition, Benaiah son of Jehoiada was the head of the Sanhedrin.¹⁹ We find a more explicit reference concerning King Jehoshaphat of Judah, who appointed judges in all the fortified towns of Judah, and

also appointed in Jerusalem some Levites and priests and heads of the clans of the Israelites for rendering judgment in matters of the Lord, and for

¹⁷[See Megillah 3a; *MT*, Hil. Yesodei Hatorah 9:1.]

¹⁸Ps. 122: 3-5. Our feet stood inside your gates, O Jerusalem, / Jerusalem built up, a city knit together, / to which the tribes would make pilgrimage, / the tribes of the Lord, / —as was enjoined upon Israel— / to praise the name of the Lord. / There the thrones of judgment stood, / thrones of the house of David.

¹⁹[See Berakhot 4a, and Rashi ad loc. Cf. Targum R. Joseph to 1 Chron. 18:17, "Benaiah son of Jehoiada was appointed to lead the Great Sanhedrin and the Lesser Sanhedrin."]

disputes....He charged them, "This is how you shall act: in fear of the Lord, with fidelity, and with whole heart. When a dispute comes before you from your brothers...whether about homicide, or about ritual, or laws or rules, you must instruct them."²⁰

Evidence for the existence of a supreme court in the form of a "Sanhedrin" during the First Temple is found primarily in the Talmudic and Midrashic literature. According to the Talmudic legend, the Sages of Israel would "confer in the Sanhedrin" in David's day, on matters related to economic health of the nation (Berakhot 3b).²¹ In contrast, the Aggadah contains a complaint against David, because he carried out his decision against Uriah the Hittite outside of the Sanhedrin's purview. We also find, in the later Midrashic literature, that Ovadiah and Isaiah never prophesied except at the command of the Sanhedrin, "and were the Sanhedrin to have gone out of existence, they would have lost their authority to the prophesy" (*Aggadat Bereishit*, 14).²²

This passage, which is almost the only one in our Midrashic literature which touches upon the relationship between the prophets and the Sanhedrin, is worthy of special attention. In recent years, many non-believers have begun to speak with passion about "prophetic ethics,"²³—

²⁰The ellipsis after the word "disputes" is noteworthy. The words which Maimon omitted are *vayashuvu yerushalayim*, "and they returned to Jerusalem." Perhaps he omitted them because they lead to some confusion as to the order of events in the verse (i.e., if Jehoshaphat appointed them in Jerusalem at the beginning of the verse, how could he and his entourage return to Jerusalem afterwards?). The Israeli scholar Gedaliah Alon (*Mehkarim* I, p. 69.) proposes an emendation to *vayeshvu yerushalim*, "they had their seat in Jerusalem." While Maimon would certainly not have accepted this sort of emendation, it does make the Chronicler's contention that a fixed (i.e. "seated") judicial body existed during the Monarchy even stronger.

²¹"And after dawn's break, the sages of Israel would come in to see him and say, 'Our lord king, your people Israel require sustenance.' He would reply, 'Let them go out and make a living one from the other.' They would answer, 'A handful cannot satisfy a lion, nor can a cistern be filled by rain falling into its surround.'" The king is of the belief that sustenance will "trickle down" from the rich to the poor. The sages respond that, just as a cistern is filled only by *channeling* water to it, so to the poor will only receive their fair share of the economy by design.

²²Both Isaiah and Ovadiah begin with the word *hazon*, "vision," which equals seventy-one in gematria[חזן].

terminology entirely unknown to our *tradition*. It seems to me that earlier generations, those who believed in Torah from Sinai and in the “prophets of truth and justice,” have never even heard of such a term as “prophetic ethics.” This new term serves only to diminish. It makes a distinction between the Torah’s commandments and exhortations on the one hand, and “prophetic ethics” on the other—a distinction which those who made up the term use to emphasize “social justice.” It is strange and saddening to observe that, of late, even those who believe in the integrity of the Torah have begun to use this new terminology, without noticing that it negates that very integrity. The Torah of Israel is *perfect*, and the precepts of the Lord are *all just*.²³ The Torah—all 613 *mitzvot*, in complete detail—is the soul of Judaism, and no prophet had the power to subtract from it or add to it. “No prophet ever prophesied except at the command of the Sanhedrin, and were the Sanhedrin to have gone out of existence, they would have lost their authority to prophesy.” In other words: The prophets created no new idea along the lines of “prophetic ethics” or “social justice” which stands apart from the rest of the Torah; rather, their utterances to the people contained the same “ethics” which were given to Moses at Sinai, and which the Sages of their day, in the Sanhedrin, interpreted for the people according to Jewish *tradition*. Only by accepting this premise can we understand certain passages from the prophets which are incomprehensible to those who made up the notion of “prophetic ethics.”

An example: The creators of “prophetic ethics” think very highly of Samuel, who said, “Does the Lord delight in burnt offerings and sacrifices as much as in obedience to the Lord’s command? Surely, obedience is better than sacrifice, compliance than the fat of rams” (1 Sam 15:22). But in the war which Saul, the first king of Israel, waged against Amalek, he (Saul) committed a sin. While he destroyed the Amalekites, he showed mercy to

²³After Ps 19.

King Agag and let him live. In the eyes of the *prophet*, this was a sin too great to bear. “Because you rejected the Lord’s command, He has rejected you as king” (v. 23). So the victorious king surrendered, begging for mercy from the prophet: “I did wrong to transgress the Lord’s command...Please, forgive my offense” (v. 24-25). But the prophet hardened his heart and said once again, “You have rejected the Lord’s command, and the Lord has rejected you as king over Israel” (v. 26).

We have seen how God’s wrath burned against King Saul. And yet, when Nathan the prophet came to David and told him the parable of the poor man’s lamb, thereby reproaching him for putting his servant to the Ammonite sword (see 2 Sam 12:1-11), David simply said “I stand guilty before the Lord” (v. 12), and was forgiven in an instant! “The Lord has remitted your sin; you shall not die” (v. 14).

These two passages are incomprehensible if we assume that everything is dependent upon “prophetic ethics.” In the first case, Saul was guilty of *not* killing someone, and for this sin he was not forgiven. How can it be that, in the second instance, David is guilty of killing, and yet he is forgiven? Where is the “prophetic ethics” in this? Clearly, Samuel and Nathan did not judge on the basis of their *prophecy*. Torah law overrides ethics, which are merely based on human inclinations and emotions. It is only with this in mind that we can understand the passages in question.

The Torah can forgive a man his private sin, once he has confessed his guilt. But if the matter is of national concern, then one man’s feelings can not override the law—even if the feelings are of mercy and pity, and even if the man is the king of Israel. For this reason, the Torah cannot forgive Saul. He was commanded by God, speaking through Samuel and with the sanction of his court: “Now go, attack Amalek...Spare no one, but kill alike men and women, infants and sucklings, oxen and sheep, camels and asses” (1 Sam

15:3)! But Saul permitted himself to introduce some “reforms”²⁴ into God’s command, following the “ethics” which he felt in his heart. For this, God could not forgive him. God may forgive the man who sins—even one whose iniquity is great—but He cannot forgive a man who, though nipped from clay,²⁵ takes it upon himself to be more merciful than his God, thereby giving his own feelings of mercy more force than God’s commandment. This is the view of Torah. It is in line with this view, as understood by his *beit din*, that Samuel said, “Because you rejected the Lord’s command, He has rejected you as king.” These words were not spoken out of any sense of “prophetic ethics;” A prophet has no authority whatsoever to teach *halakhah* on the basis of his prophecy.

Thus did Maimonides write in the introduction to his *Perush ha-Mishnah*, explaining that God’s words concerning the testimonies, laws, and statutes which were commanded at Sinai, and even the *details of those commandments*, were not given to the prophets at all. What is more, he maintains that even when the prophet uses the accepted hermeneutic principles, he has no more power than anyone else in his generation. When it comes to powers of logic and deduction, Joshua and Pinhas are no better than Ravina and Rav Ashi.²⁶ They are equal in their application of both the Written and Oral Torah; neither one has any advantage over the other. *If one thousand prophets express one opinion on a halakhah, and one thousand and one scholars express the opposite opinion, we follow the sages, since they are in the majority*—“Incline after the majority.”²⁷ The Torah says

²⁴*tikkunim*. Used also to refer to religious reforms of the nineteenth and twentieth century. Maimon frequently contrasts *takkanot* (proper religious enactments) and *tikkunim* (despicable religious reforms).

²⁵Job 33:6.

²⁶The last two *amora'im*. According to *Iggeret Rav Sherira Gaon*, Ravina’s death in 499 C.E. marked “the end of instruction.” By mentioning the first two post-Mosaic prophets and the last two Talmudic sages, Maimonides emphasized the complete equality of prophet and sage in matters of logic and deduction.

²⁷Exod 23:2.

additionally

If a case is too baffling for you to decide...[you shall] appear before the priests and Levites, or the judge in charge at that time..." (Deut 17:8-9)

Note that it does *not* say "you shall appear before the prophet."

Examine Maimonides' words, and understand this truth: the Midrash is correct in stating that "had the Sanhedrin gone out of existence, they would have lost their authority to the prophesy." All that the prophets said concerning ethics, virtue, and righteous acts was said by the authority of the people's supreme judicial institution, which *existed even during the period of the First Temple*.

While this supreme religious-legal institution *existed* even then, the need to *expand its influence* was felt in particular by those who returned from Babylon in the days of Ezra and Nehemiah.

Chapter Two

The *aliyah* of the Judean exiles from Babylon to Eretz Israel during the “journey up”¹ is second only to the Exodus from Egypt in terms of national history. Though the national prayers contain no “remembrance of the Exodus from Babylon,” as is the case with the Exodus from Egypt—we must nevertheless view the return of the exiles to the land of their ancestors as a new and decisive rebirth for the Hebrew nation. Even now we recognize the great and inestimable consequences of that wondrous event and its spiritual-religious influence on our national life, though 2500 years have passed from the day of our Exodus—from Babylonian Exile.

Yet we know only little about the impression which the *aliyah* from Babylon made on the soul of the people, when it happened and immediately following. In the psalm “When the Lord restored the captives to Zion” (Psalm 126),² we find a remnant of this impression. It is striking in its inner simplicity and sincerity; even now, it has the power to move us. Though generations have come and gone between then and now, the Jewish heart still bursts with pride at that magnificent memory, and we feel ourselves drawn to that earlier period. We look to the deeds of the ancestors hoping to find an omen for their descendants.³

For four hundred sixty years, Jerusalem was the seat of the Davidic dynasty, capital of the kingdom and heart of the nation. From there, Torah went forth, and the word of the Lord to the people.⁴ Four times, enemies stormed her gates, despoiling her and robbing her treasure-houses; each

¹*yesud ha-ma’alah*, Ezra 7:9. The phrase *yesud hama’alah* was also a part of the name of an organization established in Jaffa in 1882, the *va’ad halutzei yesud hama’alah*, which provided aid and training to members of the First *aliyah*.

² NJPS: “When the Lord restores the fortunes of Zion.”

³*ma’aseh avot siman labanim*.. This chapter, as well as Chapter Eight, are fundamentally concerned with illustrating this principle. The events of the Return from Babylon should be seen as a blueprint for the present day.

⁴Is 2:3.

time, she was restored to her former glory. But near the end of this period, just as she had reached the apex of her splendor, the wicked Babylon came and destroyed the city of God—the pride of the nation—without mercy. This was God’s decree; the prophecy envisioned years earlier, that “Zion shall be plowed as a field, and Jerusalem shall become heaps of ruins, and the Temple Mount a shrine in the woods” (Mic 3:12; quoted in Jer 26:18 as well) was fulfilled just as the city reached her greatest beauty and strength.

As the sun set on Israelite prophecy and poetry, the Davidic dynasty fell. The capital was destroyed and left a waste; its king, officers, as well as its *sages* went into exile. Many people were annihilated amidst the troubles which befell them in those days: famine, plague, sword, and foe. The weight of despair came crashing down upon the remnant of the people which went as captives to Babylon. “The land of Chaldea, this—a people which has ceased to be” (Is 23:13). They were utterly demoralized. The Jews in Babylon sunk into a period of decline and deformity. Their identity was destroyed; they lost their sense of honor; assimilation and premeditated national suicide were the order of the day. Many of the exiles, now used to being walked upon, ceased to believe in the possibility of a national renaissance. They did not believe that the tiny, impoverished “remnant” could possibly rise after such a fall to live again in Eretz Israel. Despairing and dismayed, these weak-willed people said, “Our bones are dried up; our hope is gone; we are doomed” (Ezek 37:11).

But, thankfully, there were also to be found among the exiles a significant remnant of the Sages of Israel—prophets and members of the Sanhedrin. These men used all of their resources to foster a sense of hope and confidence among the masses. “God acted kindly toward Israel,” said the Sages, “by driving forth the captivity of Zedekiah while those who were exiled with Jehoiachin were still alive” (Gittin 88a). On this, Rashi comments:

“Since most of the Torah scholars were exiled with Jehoiachin.”⁵ Thanks to them, Torah did not depart from Israel while she was in Babylon. It is almost certain that, among “the group that was carried into exile along with King Jeconiah of Judah”⁶ was the *Great Sanhedrin* which existed during Jeconiah’s reign.⁷ *This Supreme religious authority continued to exist even during the Babylonian exile.* According to an ancient midrashic source, *Mordecai, son of Jair* was the head of the Sanhedrin during that period.⁸ Also almost certain is the fact that it was through this *supreme* religious authority that the three last prophets decreed that tithes and offerings needed to be maintained even in Babylon (see *Avot d’Rabbi Natan*, 20)⁹—in

⁵Rashi: “The exile of Jehoiachin (Jeconiah) preceded the exile of Zedekiah by eleven years. The ‘kindness’ here is the fact that the Temple was destroyed so soon after the first exile. Zedekiah’s generation was exiled while the sages who were driven out with Jeconiah were still alive. The sages were thus able to teach Torah to those who followed them into exile.” The Rabbis learn that the sages were exiled with Jehoiachin from II Kings 24:16, “a thousand craftsmen [*harash*] and smiths [*masger*].” The passage from Gittin cited by Maimon continues, “They were called *harash*, ‘dumb-makers,’ because when they opened their mouths, everyone around them was speechless; they were called *masger*, ‘closers,’ because once they closed a matter, no one would reopen it.”

⁶Esth 2:6.

⁷J. Shekalim 6:2. “When Nebuchadnezzar came here (i.e., to Eretz Israel), he established his camp in the arena at Antioch. The Great Sanhedrin came down to pay their respects to him, and they asked, ‘Has the time come for the house of the Lord to be destroyed?’ He replied, ‘The one I have just made your king—deliver him to me and I will leave.’ They went and told King Jehoiachin of Judea, “Nebuchadnezzar wants you.” When he heard this, he took the keys of the Temple, went up on its roof, and said, “Master of the Universe, in the past when we were faithful to you, we were in possession of the keys to Your house. Now that we are deemed by You unfaithful, here are the keys to Your house.” There are two accounts of what happened next: One holds that he threw them in the air and they still have not landed. The other says that something like a hand came down and took them from him.” See also LevR 19:6.

⁸[PRE 49; also, see Megillah 16b on the phrase “popular with the multitude of his brethren” (Esth 10:3), which says that once Mordecai became so close to the king, a small number of the Sanhedrin distanced themselves from him] The opening lines of Pirkei de Rabbi Eliezer are an exegesis of Esth 2:5, “In the fortress Shushan lived a Jew by the name of Mordecai, son of Jair son of Shimei son of Kish, a Benjamite.” The midrash explains that he is called “Jew” because he is concerned with Torah, and “Jair” (“enlightener”) because he *enlightens* people by teaching them the halakhah.

⁹ARNA, 20: “‘They made me guard the vineyards’ (Cant 1:6). This refers to Israel when they were exiled to Babylon. The prophets who were among them called them to task, saying ‘Separate your offerings and tithes!’ They answered, ‘By our lives! We were exiled for not tithing [in the Land], and now you say to us that we should tithe [outside the Land]?’ ‘They made me guard the vineyards, [but I hadn’t guarded *my own* vineyard].”

order that the “commandments which are dependent on the Land” would not be forgotten, and so that the connection between the Exiles and the Land would be strengthened.

We have mentioned, in the previous chapter, that the prophets were not allowed to make innovations based upon their *prophecies*. So, for example, the passage we find in the Talmud which states that

Rabbi Simai testified in the name of Haggai, Zechariah and Malachi concerning the two Adars that if the court desired they could make both of them full, or they could make both of them defective, or they could make one full and the other defective—and this was the custom in the Diaspora (Rosh Hashanah 19b)

is clearly not suggesting that the three latter prophets (cf. Sotah 48b) ruled this way *on the basis of their prophetic gifts*. Rather, they came to this decision and taught it in conjunction with the rest of the Torah sages who were with them in Babylon. Also of interest is the controversy between Mordecai and Esther and the Sages of Israel concerning the establishment of the holiday of Purim. This controversy is mentioned in the Babylonian Talmud (Megillah 7b), and recorded at greater length in the Jerusalem Talmud (Megillah 1:5).

What did Mordecai and Esther do? They wrote a letter and sent it to our rabbis, in which they said to them, “Do you accept for yourselves these two days for observance every year?” They replied to them, “Not enough for us are these troubles that have come upon us, but you want to add to our troubles the one of Haman!” They wrote them a second letter, saying “If you are afraid of that, well, it is written down and filed in the archives.”

Only after these events did the rabbis agree, and “the Jews undertook and irrevocably obligated themselves and their descendants, and all who might join them, to observe these two days in the manner prescribed and at the proper time each year” (Esther 9:27). Our Sages in the two Talmuds do not make explicit who “our rabbis” were, but it is nearly certain that they were the members of the supreme court which was still in existence in the

Diaspora, and which was later the foundation for the *Members of the Great Assembly*.¹⁰

How true are the words of our Sages: “Wherever Israel went in exile, the *shekhinah* went with them—when they were exiled to Babylon, the

¹⁰[In Megillah 7a, it appears that there are two opinions regarding this controversy.

Rabbi Samuel b. Judah said: Esther wrote to the Sages, “*Fix my story* for all time.” They responded, ‘Do you want to anger the nations?’ She wrote back, ‘I have already been recorded in the chronicles of the kings of Persia and Medea.’ Rav and R. Hanina, and Rabbi and R. Habiba learned: Esther sent a message to the Sages: “*Write my story* for all time.” They wrote back, “I have [already] written it down three times (Prov 22:20)—not four.” Subsequently, however, they found this verse (which relates to Amalek’s first appearance in the Torah): “Inscribe this as a reminder in a book” (Exod 17:14). *Inscribe this*—as it is written in Exodus and Deuteronomy. *As a reminder*—in the Prophets. *In a book*—as it is written in the Scroll of Esther.

However, I don’t believe that two conflicting opinions are expressed in the passage. Rather, Mordecai and Esther turned to the Sages on two separate occasions.

At first, they approached the Sages in the Diaspora, and asked them to agree to *fix* Purim as a two-day holiday for all generations. This is also the letter referred to in J. Megillah 1:5:

Eighty-five elders, including thirty-odd prophets hesitated to do this. They said, “It is written, ‘These are the commandments,’ which have been commanded through Moses, and no prophet is free to introduce new ones. Yet here Esther and Mordecai want to introduce a new one!

Eventually, these eighty-five elders agreed to fix the two days of Purim as follows: In unwalled cities, the holiday was celebrated on the fourteenth of Adar. In walled cities, it was celebrated on the fifteenth. But they gave honor to Jerusalem, which still lay in ruins, by deciding that only cities which had been walled *at the time of Joshua ben Nun* would read the Megillah on the fifteenth (see J. Megillah 1:1, which is the source for Maimonides, *MT* Hil. Megillah 1:1).

Later, when they had made *aliyah* to Eretz Israel and founded the “Great Assembly,” which was responsible for canonizing the Hebrew Bible and arranging the three divisions of Torah, Prophets, and Writings, Mordecai and Esther turned to them again. By this time, the body was 120 strong. Mordecai and Esther asked them to *write* the Scroll of Esther for posterity, and to include it among the Holy Books. When the Men of the Great Assembly agreed to this, they also enacted special rules governing the reading of the Scroll, not only in the cities, but also in the villages. See Megillah 2a, where it states that these times “were enacted by the Men of the Great Assembly.”]

Concerning the verse from Proverbs, there are at least two possible interpretations. Traditionally, that verse has been cited in support of the tripartite division of the Hebrew Bible. When the Sages quote it to Esther, they are telling her that they will not establish a fourth division of the Scriptures, following *Ketuvim*. Rashi (ad loc.) offers another possible interpretation, citing three places in Scripture (Exod 17:8-16; Deut 25:17-19; 1 Sam 15) which mention Amalek. “These three places,” the Sages say to Esther, “but not a fourth.”

shekhinah went with them” (Megillah 29a). Israel’s *shekhinah*,¹¹ in the form of her Torah and its champions, was a source of inspiration to the Babylonian exiles. It breathed life into their “dry bones,” dropped life-giving dewdrops on their souls, and implanted the desire to return to their ancestral homeland in their hearts. When King Cyrus of Persia’s declaration was issued: “Anyone of you of all His people—may his God be with him, and let him go up to Jerusalem” (Ezra 1:3), many of the Babylonian exiles volunteered to make *aliyah* and settle on the soil of Israel.¹² The number of initial *halutzim*¹³ came to only 42,360. But we must take note that, at the head of this group of pioneers were two leaders: Zerubbabel son of Shealtiel, a descendant of the *king*, and Jeshua son of Jozadak, of *priestly* lineage (see Hagai 1:1; Ezra 3:2). The priests, members of the tribe of Levi, were the leaders of the nation in matters of Torah and religion from the very beginning of its existence. Our teacher Moses blessed the Levites as follows: “They shall teach Your laws to Jacob and Your Torah to Israel” (Deut. 33:10). Ezekiel’s prophecy contains the message that the priests and Levites shall “declare to My people what is sacred and what is profane, and inform them what is clean and what is unclean. In lawsuits, too, it is they who shall act as judges; they shall decide them in accordance with my rules” (Ezek. 44:23-4). Malachi, one of the last prophets and himself among those who returned from Babylon, attests that “the lips of a priest guard knowledge, and men seek rulings from his mouth” (Mal 2:7).

Those who ascended from Babylon understood this fact well; they placed at their head, alongside the standardbearer of the *kingdom*, a *priest* who would raise the Torah high. These two leaders thus became “twin

¹¹*supra*, p. 9 n2.

¹²Here, Maimon drives home the parallels between ancient and modern events, by using language which resonates with the Zionist movement. Cyrus issues a *hatzharah*; the returnees are called *halutzim*.

¹³“pioneers,” used to describe the first *olim* in the modern era.

gazelles,” infused with religious-nationalist spirit—the *kingdom* and the *priesthood*. It was in this spirit that they laid the foundation for the renewed State of Israel. These “two golden tubes,”¹⁴ *Zerubbabel and Joshua*, understood that Zion could only be established through the observance of authentic Judaism—the Torah of Moses and Israel. *Joshua*, the high priest, hearkened well to the words of Zechariah’s prophecy which described Zerubbabel: “I am going to bring My servant the Shoot” (Zech 3:8). And he believed with perfect faith that, as a result of Zerubbabel’s *political* endeavors, salvation would *shoot forth*; that “Zerubbabel’s hands have founded this house and Zerubbabel’s hands shall complete it” (verse 9). Similarly, Zerubbabel the *politician* understood the value of the *high priest* and his place in the process of rebuilding and rebirth. “Not by might, not by power, but by My spirit—said the Lord of Hosts” (verse 6). And so these two leaders, one wearing the crown of priesthood, the other the crown of sovereignty, were united in their political and spiritual efforts to breathe new life into the nation through its Torah.

Understandably, those who disparaged Torah law and Jewish tradition sought to separate religion and state. They used all means available to introduce a separation between the governor and the high priest. They clamored against Joshua son of Jozadak the priest, bringing all sorts of complaints and rumors, “airing his dirty laundry.”¹⁵ But Zechariah son of Berechiah, one of the last remaining prophets, understood that these were lies from the mouth of “the Accuser standing at his right to accuse him” (Zech 3:1). With all of his strength he fought the effort to separate these two realms. His prophecy:

Behold, a man called the Shoot shall shoot forth from the place where he is,

¹⁴Zech 4:12-14. In Zechariah’s vision of the *menorah*, he asks the angel to explain its symbolism. The two golden tubes (*tzanterot*) which funnel the oil symbolize “the two anointed dignitaries (*sh’nei b’nei hayitzhar*) who attend to the Lord of all the earth.”

¹⁵*Iehotzi begadim tzo'im*; a clever pun on Zech 3:3, “Now Joshua was clothed in filthy garments when he stood before the angel.”

and shall build the Temple of the Lord. He shall build the Temple of the Lord and shall assume majesty, and he shall sit on the throne and rule. And there shall also be a priest seated on his throne, and harmonious understanding shall prevail between them” (Zech 6:12-13).

Thus, *the first returnees from Babylon renewed the Hebrew political center in Eretz Israel with the willing endorsement of those who were rightfully designated to teach Jewish law to Jacob and Torah to Israel*, and there was “harmonious understanding” between them.

The words of the prophet Haggai:

Speak to Zerubbabel son of Shealtiel, the governor of Judah, and to the high priest Joshua son of Jehozadak, and to the rest of the people—“Be strong, O Zerubbabel—says the Lord—be strong, O high priest Joshua son of Jehozadak” (Hag 2:2-3).

Both of them—governor and high priest—needed be strong together to rebuild the land revive the nation.

For reasons unclear, Zerubbabel returned to Babylon and died on foreign soil. His partner, Joshua son of Jehozadak, also went to his eternal reward. Gone were the priestly “headdress” and the “crown” of sovereignty. Persian ministers were appointed to rule over Judah. Eretz Israel, which had gone into a period of political decline, was also left without strong *religious* authority. It was then that many of the nation’s faithful, deeply moved by the plight of their homeland, made *aliyah* to Judea. There they sought to repair the *state* of Israel, and to restore the influence of *religious Judaism* in the Hebrew Yishuv.

And once again, the leaders of the movement were: *Nehemiah son of Hacaliah, related to the dynastic line and Ezra son of Seraiah, of priestly lineage*. Together, they took up the political and religious leadership of the Hebrew Yishuv in our holy land.

Ezra son of Seraiah was a descendant of the high priest Hilkiah who

found a copy of the Torah in the Temple during Josiah's reign (see II Kings 22:8). He was among those unique people who "had dedicated himself to interpret God's Torah *so as to observe it*, and to teach laws and rules to Israel" (Ezra 7:10). He understood that, at its core, Judaism is concerned with "deed, not creed."¹⁶ The religion of Israel is a religion of laws and observances, of positive and negative commandments. This is its strength, its glory, and its splendor. Ezra also understood that "study is great, for it leads to practice."¹⁷ Therefore, in order that Jews might behave according to God's Torah, he "dedicated himself to *interpret*" that Torah, to delve into its depths and probe its hidden secrets.

The least complicated, clearcut rulings¹⁸ and the most difficult, detailed discussions of *halakhah* alike sing with life. They tremble with holiness, exalt our souls. They are longing, love, tenderness, a unity of faith and knowledge. Sparks fly from the divine flame deep within them, lighting up our hearts. Ezra the priest, "scholar in matters concerning the commandments of the Lord and His laws to Israel," (Ezra 7:11) knew with all of his heart and mind that the entirety of God's commandments and laws were the "immovable property"¹⁹ of the Hebrew nation, and that they were non-negotiable.²⁰ He knew that, *in order that they might be observed and upheld, we need the Hebrew State*. In that state, under clear blue skies, in the privacy of our own home, we will be able to run our lives—our personal, public, and *national*

¹⁶M. Avot 1:17: "*lo hamidrash ikar, elah hama'aseh.*"

¹⁷Kiddushin 40a: "R. Tarfon and some elders were reclining in an upper chamber in the house of Nitzah in Lydda when this question was raised before them: Which is greater--study or practice? R. Tarfon said: Practice is greater. R. Akiva said: Study is greater. All [the rest of the elders] said: Study is greater, for it leads to practice." Rashi adds, "and then, you possess both the knowledge and the deed."

¹⁸*halakhot pesukot*

¹⁹*nichsei ha'achrayut* Baba Batra 150b.

²⁰Compare this sentiment with Bialik, *Halakhah and Aggadah*. Bialik also bemoans the fact that he lives in a generation which is all *aggadah*, yet calls only for a return to a halakhic way of thinking. Maimon seems to have this idea in mind, and he rejects it outright. Not only the halakhic process, but each and every halakhah, is a source of joy and life.

lives—in accordance with a Judaism which is fulfilled through deeds and *mitzvot*.²¹ He “dedicated himself to interpret God’s Torah so as to observe it, and to teach laws and rules to Israel” — in such a way that the State and the Torah might go hand-in-hand. And Ezra, the man of *spirit*, found himself a very industrious man, a man of *action*, with a keen *political* savvy— Nehemiah son of Hacaliah. The two of them together worked to establish and strengthen the Hebrew people’s *political-religious* center in the land of the Hebrews.²²

Our Sages said of Ezra the scribe: “Had Moses not preceded him, Ezra would have been worthy of having the Torah given to Israel through him” (Sanhedrin 21b). And, “When Torah was forgotten in Israel, Ezra came from Babylon and established it” (Sukkah 20a). We might say of Nehemiah son of Hacaliah: “Had the kings of Israel and Judah not preceded him, Nehemiah would have been worthy of establishing the State of Israel; and when the Jewish state was destroyed by wicked Babylon, Nehemiah ascended from Persia and established it anew.”

It is written of Moses, the greatest of all prophets: “Moses charged us with the Torah as the heritage of the congregation of Jacob. He became king in Jeshurun when the heads of the people assembled.”²³ At God’s command, he gathered seventy men from the wise elders of the people, who helped him bear the yoke of preparing the people for Torah and and State. So too, Ezra and Nehemiah were surrounded by one hundred twenty of the greatest sages

²¹It is interesting to note Maimon’s shift in tense in this and the previous sentence.

²²*eretz ha’avarim*: Gen 40:15

²³[Deut 33:4-5. See also Nahmanides’ comment on verse five, attributed to “a few of the *aggadot*,” and compare it to LevR 31:4: “A king held captive (*asur*) in the tresses” (Cant. 7:6)—This refers to Moses of whom it is written, “The king was in *y-s-r--n*.”] The preponderance of exegesis on Deut 33:5 sees the king as God. Maimon interprets instead that it is Moses who becomes enthroned by appointing a body of leaders to teach and interpret the Torah with him. Nahmanides, while favoring the dominant interpretation, also cites the minority view: the king is Moses, and the point of the verse is to teach us that just as we revere God, we should revere God’s messenger who has power equal to a great and mighty king. The passage from Lev. Rabbah which he mentions relies upon the similarity of the words *וְרוּשִׁי* and *וְרוּסָא*.

of the people, organized into a “Great Assembly.” Their mission was to “build up a highway and clear a road”²⁴ to the people’s future—a road paved with gravel and with spirit. Ezra the priest and Nehemiah the governor understood that *the reestablishment of the State of Israel raised new questions, and that these questions demanded answers which were true to the Torah*. Therefore, they decided to take the Torah out into the street (Nehemiah 8:3), so that it would belong to all the people. At the same time as they laid the foundations of the State of Israel, they appointed a supreme religious committee, called “The Great Assembly.” Because of this, Israel became not only a people with a state, but also a people with a Torah. The New Hebrew Yishuv in Eretz Israel heard once again the words of the Living God, interpreted by the “Men of the Great Assembly” in the manner that they had inherited in a chain of tradition reaching all the way back to Sinai. All the Jews accepted, for all time, the *takkanot*²⁵ and “*hedges*” of this great body. Their interpretations and their *takkanot* were the cornerstone of renewal for the people. They affected their lives as individuals and as a community, touching upon economic and political concerns.²⁶

That is how the State of Israel was revived on the basis of Torah and Jewish tradition.

²⁴ Is 57:14.

²⁵“Enactments.” Generally speaking, *takkanah* refers to legislation by competent halakhic authorities. More specifically, *takkanot* may be distinguished from another type of legislation, *gezeirot* (“decrees”). Following Maimonides’ definition (PhM), Menahem Elon describes a *takkanah* as “an enactment that imposes a duty to perform a particular act for the benefit and welfare of the community or any of its members” (*Jewish Law*, p. 492).

²⁶See Elon, *op. cit.*, p. 554-558, for a discussion of the role of the Men of the Great Assembly in shaping the religious and political life of the new commonwealth through their legislation.

Chapter Three

We must confess: even after the creation of the State of Israel, which we hoped and longed for during the past 1900 years, we still sense an empty void which the State *alone* cannot fill. Along with the difficult and important work of developing the state's material wealth—its economy, and its humane and Jewish culture—we are still thirsty for a new motto, a redeeming word. The wise among our people—spiritual, thoughtful, individuals—long for some lofty idea, full of vitality, which will bring out the nation's *shekhinah* in all of its glory and holiness. Despite the honor we accord the renewed State of Israel, we still feel that something is missing. Still lacking is an ennobling spirituality, a divine spark, an inner light which comes from deep within the soul. Holiness and purity are absent. It is as though “the book is missing its point,” or—*the “point” is missing its Book...*

The perplexed of this age, the best of our youth, those for whom the nation's *Torah* is yet their soul of souls, who sense that the basis for reviving the Israelite nation is “not by might and not by power, but by *spirit*,”¹ wait impatiently, secretly daydreaming about a State of Israel which contains Jacob's ladder — “A ladder set on the *Land*, with its top reaching to the *heavens...*”²

Knowingly or not, many of have our eyes lifted to the mountains, to the very mountaintops, to the sages and rabbis of Israel. We listen carefully for some new pronouncement, an encouraging, lifegiving phrase. There are a very few who fought their entire lives in order to bring the spirit of Israel back to life in the ancestral homeland, and now thirst longingly for some idea with the power to invigorate the heart. We long for some new discovery, an expression of the eternal plan. And now, it seems as though a new word has

¹Zech 4:6.

²Gen 28:12.

arrived like a flash, emboldening the soul and exalting the spirit—*Sanhedrin*. It seemed as though this word would set hearts on fire; and indeed, there are some dreamers and visionaries who believe that it came to us as an act of supreme grace, flowing from the earliest sources, from ancient fountains. But a new word such as this can only be heard with a new, refined sense of hearing; an idea such as this can only be understood by a mind not befuddled by nonsense. A new word rolls like thunder across the Israeli sky, but so many ears cannot hear it. And those who can hear it see fit to stick it with that rusty old needle: “A new word? — what is *new* is forbidden by the Torah.”³ How right the Sages were when they commented on the verse in Isaiah: “Israel does not know, My people does not understand.’ Israel does not know its *past*, My people does not understand *what lies ahead*.”⁴ There is so very much to learn from our past—especially our ancient, distant past. Only once we have learned it will we be able to understand what to do in the future.

In order to understand the religious obligation to immediately renew the Sanhedrin in our renewed state, let us leaf once again through the pages of history, to the story of those first few who left Babylon. Let us read those pages. Indeed, the book lies open, reading itself to us. We must study these pages. By “study,” I do not mean a superficial glance at the events, or a ponderous, pointless tour through the footnotes. No, we must deeply penetrate these matters. We must understand and accentuate the *commonalities between that ancient time and the present*.

³M. Orlah 3:9 is concerned with whether various classes of produce are forbidden, and on what grounds. It states that *he-hadash asur min ha-torah bekhool makom*—lit., “what is new is forbidden from the Torah everywhere.” The intent is that the prohibition against eating new produce is found in the Torah, and is in effect everywhere (that is, in Eretz Israel and outside the Land). In the nineteenth century, Moses Sofer (the *Hatam Sofer*) turned the agricultural rule into an ideological statement: “Whatever is new is forbidden by the Torah, at all times and in all places.”

⁴Sifrei Ha’azinu 309. This translation is not true to the *midrash* in its context, but seems to be the reading that Maimon intended.

From the muck and mire of servitude and despair in Babylon, a Judaism which had been left for dead burst forth on the soil of Israel. This Judaism was purified, refined, and tested. It was traditional, Torah Judaism, able to inspire the “mourners in Zion,” to purify and refine them, “to give them a turban instead of ashes, the festive ointment instead of mourning, a garment of splendor instead of a drooping spirit” (Isaiah 61:3).

This was accomplished by Ezra and his court, known as the Men of the Great Assembly.

Maimonides has written (in the introduction to his *Yad Hazakah*): “Ezra’s court was known as the Men of the Great Assembly. They were: Hagai, Zechariah, and Malachi; Daniel, Hananiah, Mishael and Azariah; Nehemiah son of Hacaliah, Mordecai-Bilshan, Zerubbabel, and many other sages, totalling 120 elders” (compare the introduction to his *Perush ha-Mishnah*).

But the scholars of that era of Jewish history, which lasted until Simon the Righteous, “one of the last of the Assembly” (Avot 1:2), tell us little about the period. Even the Talmudic literature and its spiritual descendants, the literature which sustains us, is not as clear on the matter as it might be.

In particular, it is difficult to ascertain what Ezra’s goal was when he established this “assembly,” or the exact number of Sages which made up its ranks. One Talmudic tradition says: “The Men of the Great Assembly established the Blessings and Prayers for Israel” (Berakhot 33a). Another maintains: “One hundred twenty elders, including several prophets, established the order of the eighteen benedictions” (Megillah 17b). From these two sources, the early Rabbinic literature (cited above by Maimonides) concludes that there were one hundred twenty members of the Great Assembly. But another tradition, this one from the *Jerusalem Talmud*, speaks of “eighty-five elders, including thirty-odd prophets” (J. Megillah 1:2).

But whatever the number, one hundred twenty or eighty-five, it is certainly appropriate that such a great number of people would be called the *Great Assembly*. It is strange, then, that the Sages of the Talmud feel the need to justify this name. They say:

“Why were they called the Men of the Great Assembly? Because they restored the crown to its former glory. Moses said, ‘God, great, mighty, and awesome.’⁵ Jeremiah came and said, ‘Foreigners dance in His Palace—how is He awesome?’ Therefore he did not say ‘awesome.’⁶ Daniel came and said, ‘Foreigners oppress His children—how is He mighty? He didn’t say ‘mighty.’⁷ But then they (i.e., the men of the Great Assembly) came and said: ‘To the contrary! His might lies in the fact that He overcame his anger and showed mercy to the wicked. As for his awesomeness, were it not for this, one nation could not continue to exist scattered among the rest’” (Yoma 69b; cf. Pal. Berakhot 7:3, which reads, “Why were they called the Men of the Great Assembly? Because they restored the *greatness* to its former glory.”).⁸

Whether the number was one hundred twenty or eighty-five, the Assembly was certainly fit to be called “great,” not only because of its stature, but especially because of its size.

Even more puzzling is the fact that, on the one hand, the Great Assembly is considered to have begun *after* Ezra and Nehemiah, but on the other hand, “Hagai, Zechariah, and Malachi; Daniel, Hananiah, Mishael and Azariah,” all of whom lived *before or at the same time* as Ezra and Nehemiah, were among its members. How can we settle these contradictions?

This is the most logical explanation: The people’s supreme *spiritual*

⁵Deut 10:17: “For the Lord your God is God supreme and Lord supreme, the great, the mighty, and the awesome God...”

⁶Jer 32:18: “O great and mighty God whose name is the Lord of Hosts.” Jeremiah omits the word “awesome.”

⁷Dan 9:4: “O Lord, great and awesome God...” Daniel omits the word “mighty.”

⁸Neh 9:32-33: “And now, our God, great, mighty, and awesome God, who stays faithful to His covenant, do not treat lightly all the suffering that has overtaken us—our kings, our officers, our priests, our prophets, our fathers, and all Your people—from the time of the Assyrian kings to this day. Surely you are in the right with respect to all that has come upon us, for You have acted faithfully, and we have been wicked.”

institution was first organized by the first of the returnees, *as soon as they returned* to the Land. It makes sense that the leaders of such a pioneering *aliyah* would form a council, directed by Zerubbabel and Joshua the high priest. The members of this council, or “assembly,” oversaw the *aliyah*. They were in constant contact with those who were still in the Diaspora supporting the pioneers “with silver, gold, goods, and livestock” (Ezra 1:4), and they directed the material and spiritual affairs of those who went up. This “assembly” had a *difficult* start, with *few* members; it was a committee of either nine or twelve (see Rabbi Abraham Ibn Daud’s *Sefer Hakabbalah*; also, Abravanel’s *Nahalat Avot*),⁹ yet was nevertheless called the “Great Assembly” — because “they restored the crown to its former glory.” They saw “foreigners dancing in His palace, foreigners oppressing His children.” They said: “This, this is His might; this is His awesomeness.” It is clear, then, that “the Men of the Great Assembly” lived while foreigners still danced in God’s palace—in other words, *before* the building of the Second Temple. *Then, as the Hebrew Yishuv in Eretz Israel grew, questions about developing a Hebrew state consistent with Torah values also grew.* It was then that *Ezra needed to expand the number and scope of the council, or “Assembly,” adding the elders, the Sages and scribes who were in the new State of Israel. In doing so, he created a supreme religious council with the authority to expound and to judge, to explain the words of the Written Torah, “interpreting and giving the sense” (Nehemiah 8:8), and to enact legislation (but not reforms)¹⁰—all in accordance with Jewish tradition.*

The name “Sanhedrin,” which later became the name of the people’s

⁹Ibn Daud identifies those who returned with Zerubbabel as *rashei kenesset hagedolah*. The term *rashei*, lit. “heads of,” is ambiguous. It might mean that those men were the *leaders* of the Great Assembly, but it is also possible that *rashei* here means that they were the *first* members of the Great Assembly. Maimon follows this second interpretation; at its inception, the Great Assembly was a small council of immigrant Sages. See Gerson Cohen, *A Critical Edition with Translation and Notes of The Book of Tradition (Sefer Ha-Qabbalah) by Abraham Ibn Daud*.

¹⁰*takkanot (velo tikkunim).*

Supreme Court, was not yet known. Therefore, Ezra agreed to continue using the name “Great Assembly” for the supreme religious council, which had now become *greater* in number. The institution existed for about two hundred years, and had a *great* and lofty goal: To find the appropriate paths for the *new* Jewish State and the *ancient* Jewish tradition to walk together, as a united front—a glorious link in the chain of history.

The work of Ezra and his court—the Men of the Great Assembly—was great and important. Ezra understood that a “Return to Judaism” was a crucial element of the people’s return to the Land. But this Judaism needed *Torah* and Torah learning. Judaism without Torah, without tradition, is a fraudulent religion. Ezra knew well that a Judaism without sources, roots, or *mitzvot* to perform is a forgery, built on nothing. It cannot strike roots in the soil of Israel and find a permanent place on holy ground.

But in order to come to know traditional, *mitzvah*-oriented Judaism, it was necessary to return to the people’s source of life, to the Book. It was necessary to go back to the Torah which Moses placed before the children of Israel, from the mouth of the Almighty. *They needed to take the Book out of the Holy Temple—to the street.* They needed to take it out of the hands of the priests and Levites, and place it before the masses, so that anyone who wished could come and learn.

Ezra accomplished this important task.¹¹ Five days after the completion of Jerusalem’s walls, on the first day of the month of Tishrei—*Rosh Hashanah*—all of Israel, “men and women and all who could listen with understanding” — came to Jerusalem and “assembled...in the square before the Water Gate.” Ezra brought “the Torah of Moses with which the Lord had charged Israel,” and he read “the scroll of God’s Torah” from “upon a wooden tower made for the purpose.” He read, “facing the square before the Water Gate, from the first light until midday.” Ezra read, “and the

¹¹What follows is Maimon’s narrative retelling of Eza 8:1-9.

Levites made the people understand the Torah” by explaining the words of the Written Torah in accord with the teachings of Tradition (Nedarim 37b). The New Hebrew Yishuv in the renewed Eretz Israel heard the words of the Living God from the Priest–Scribe. These words, clearly explained, were like life-giving dew which caused holiness to sprout from the furrows of their hearts, saplings of God’s perfect Torah, whose roots were nourished in living fields, whose branches multiplied, whose foliage spread forth and gave shade to the life of the nation, individually and as a community. “Turn it, turn, for everything is contained in it” (M. Avot 5:22).

Ezra and the rest of the Great Assembly sought to make Torah more influential in all sectors of the nation, and to make Israelite religion the bedrock of the new Hebrew State. Their first task was to collect the five books of the Torah, together with the books of the prophets and the rest of the holy writings. They established a framework: Torah, Prophets, and Writings. They gave these books the imprimatur “Holy of Holies,” establishing them as the Written Torah. From this point forward, it was not possible to add or subtract books—only to interpret them in accordance with the principles of the Oral Torah which was given at Sinai.

We have also received three fundamental sayings from them which pertain to Jewish law, education, and the maintenance of Judaism: “Be deliberate in judgment,¹² raise up many disciples, and make a fence around the Torah” (M. Avot 1:1).

- They felt that if we desire a Hebrew state, in the fullest sense, then we must base it upon Jewish Law. We cannot learn legal principles from foreigners, “for their ‘rock’ is not like our Rock, that our enemies

¹²Or, “be deliberate in *the* judgement. The passage in Avot reads דַּלְּוָה, with the definite article. Maimon emphasizes this fact in his exegesis. The Men of the Great Assembly taught that Jews must be deliberate in their exercise of one particular legal system—Jewish law.

should be judges over us.”¹³ We must be “deliberate in judgment,” so that we commit no perversion. But the judgment must be *our* judgment—Jewish law, through and through. The Torah of Israel must be the arbiter between Jews, and it must be the basis for all Jewish life in Eretz Israel.

- But in order for the judges to know *our* law, to be teachers who can declare to the people “what is sacred and what is profane, and inform them what is clean and unclean, and act as judges in lawsuits,” we must “raise up many disciples.” We must imbue them with the spirit of the Torah, so that they will come to know it and love it. These students, by teaching Jewish law and explaining its commandments and injunctions, thus become a blessing to the Yishuv and indeed to the entire people. The people are then able to conduct their personal, social, and political lives in accordance with Jewish law.
- But, in order to guarantee adherence to the Torah, it is sometimes necessary to make a fence around the Torah. These fences guard the Torah itself, with all of the commandments by which we live.

The supreme court only needed to have seventy-one members. But it makes sense that the Men of the Great Assembly decided to bring the number to one hundred twenty. They hoped to make real the prophetic vision that “from Zion shall go forth Torah, the word of the Lord from Jerusalem” (Isaiah 2:3). To that end, they sought to establish strong connections between the Sages of Eretz Israel and Diaspora Judaism. At the

¹³Deut 32:31. The meaning of the verse is unclear. NJPS translates, “For their rock is not like our Rock, In our enemies’ own estimation.” Tigay (1996) rejects this translation, suggesting that the final clause be rendered “nor are our enemies’ guardians [equal to our Rock].” Maimon reads *pelilim* as “judges,” and his usage here follows Rashi’s comment on Exod 21:3: “*Before them*. But not before the nations. Even if you know that in the case at hand they judge in accordance with Jewish law, do not bring the case to their courts. For one who brings a legal matter between Jews before the Gentiles desecrates God’s name and gives honor and praise to idolatry. It is written, ‘For their rock is not like our Rock that our enemies should be judges over us.’ When our enemies judge, this is evidence of the superiority of that which they revere.”

time, the State of Israel was still ruled by the central government in Persia, which ruled over one hundred twenty provinces. These provinces were governed by one hundred twenty satraps (Daniel 6:2; see also Malbim's comment *ad loc.*).¹⁴ Each satrap governed one province, and carried out the policies of the central government. The Jews of the Diaspora were scattered among these one hundred twenty provinces. Therefore, in order to strengthen the bond between Eretz Israel and the Diaspora, and to enhance the status of the Torah which went forth from Zion to the Jews who lived in the provinces, the Great Assembly was enlarged to one hundred twenty members. In this way, there was a direct connection between each member of the Great Assembly and one particular Jewish community.

We should emphasize that, among the important *takkanot* of the Great Assembly, the fixing of the statutory "Eighteen Benedictions" is singularly important. The Men of the Great Assembly, "One hundred twenty elders, including some prophets, established the *order*" of the blessings (Megillah 17b). This is how the Sages explained the order:

"Why did they see fit to place the prayer for the Ingathering of the Exiles after the Blessing for Sustenance? It is written, 'You, O mountains of Israel, shall yield your produce and bear your fruit for My people Israel, for their return is near' (Ezekiel 36:8). And once the exiles have returned, judgment must be executed on the wicked. It is written, 'I will turn My hand against you and smelt out your dross as with lye,' and then, 'I will restore your judges as of old' (Isaiah 1:25-6). And once judgment has been executed on the wicked, then the sinners will be destroyed...once the sinners are destroyed, the righteous will shine brightly...they will shine brightly in Jerusalem...and once Jerusalem is built—David will come" (Megillah 17b).

¹⁴Malbim: 'He (Darius) divided his kingdom into one hundred twenty sections (similarly, Ahashuerus ruled over one hundred twenty-seven provinces; perhaps the seven additional provinces were governed by the seven ministers of Persia and Medea?). He appointed over each one a satrap, charged with overseeing the affairs of state in accordance with the king's decrees. The governors and ministers were chosen from among the local population, while the satraps, who were called the *king's* satraps, worked for him, and saw to it that the governors didn't act contrary to the king's decrees.'

This is the blueprint for the Redemption—according to the *order* of the *Tefillah* established by the Men of the Great Assembly.

First and foremost, “Redemption is joined to prayer.”¹⁵ Neither one suffices on its own! As we pray for the redemption of the Land and the People, so too do we *work*, preparing for the future redemption: Groups of pioneers make *aliyah*. They come to plow the soil of this wondrous Land—a land veiled in the clothes of mourning and eternal hope—to split mountains, break rock, move earth and pave roads. They build up the ruins, make the land productive once again. “When you see Eretz Israel producing bounty—there is no clearer sign of the Redemption than Eretz Israel’s abundance of produce” (Sanhedrin 98a, and Rashi ad loc). Once again, the song of the harvest is heard in the hills of Israel. People come from “the four corners of the earth” to settle her—*The Ingathering of the Exiles! Eretz Israel is renewed, and Jewish law with her*. Our Torah commands us to appoint “our judges as of old, our counselors as before.” *The Sanhedrin is reborn*. And then, only then, will the pride of the righteous be roused, and will the “elders of the remnant of Israel” the “survivors among their Scribes” see that Jerusalem is being rebuilt. Only after this will “the pride of salvation flourish” and the Son of David come...

This is the order of our prayers three times each day, and it is also the order of our Redemption: *after the ingathering of the exiles—the renewal of the Sanhedrin*. And only *after* our prayer, “restore our judges of old” is realized will we merit seeing the complete rebuilding of Jerusalem and the arrival of our righteous Messiah.

The Renewal of the Sanhedrin precedes the arrival of the Messiah!

¹⁵T. Berakhot 1:4. In its original context, it refers to the practice of saying the *blessing* of redemption immediately prior to standing for the statutory Prayer.

Chapter Four

“The renewal of the Sanhedrin precedes the arrival of the Messiah.” This sentence will undoubtedly stir up a tempest, and will anger many of my *superficial* readers. Some will no doubt scoff at the whole plan, forgetting that it is not my idea but that of the *Men of the Great Assembly*. I cannot deny that I am only a “Judah-come-lately”¹ who knows that the idea is true. I cannot second-guess myself, even in the face of massive opposition. For that which is true does not depend upon the assent of the majority. Quite the contrary: What value is there in an opinion which the masses accept on the basis of one man’s say-so? *The truth* can only be reached with painstaking effort, by pushing one’s mind and spirit, through the pangs of creative, spiritual effort. One arrives at this sort of truth only after a searching examination of all the Torah literature—legal and legendary, traditional and historical—and after sleepless nights. More than a function of one’s words or writings, this sort of truth is a part of one’s innermost soul. This sort of truth is a flash from on high, a sudden revelation, which only a certain few are able to comprehend and accept. *This essay is directed toward those certain few.*

I freely acknowledge: When I decided to continue writing this series of articles, I tried to seclude myself, in order to refine my soul and my thoughts, to be properly prepared to receive divine inspiration from a higher sphere. I fled from society and all its woes. And while I write this chapter in a large city, amidst a sea of people, I am nevertheless hidden away in a distant corner, far from the masses. I yearn for the chance to clarify for myself this certain truth—the *renewal of the Sanhedrin in our renewed State*.

¹*Yehudah veod likro*. A pun on Kiddushin 6a. There, a discussion is taking place concerning the laws of betrothal. The Talmud cites a Judean custom (Yehudah) which supports a certain practice, as well as a verse from the Torah (likro). It then asks, sarcastically, *yehudah veod likro*—“a Judean custom and *also* a verse from the Torah!” Maimon’s point is that *his* endorsement or advancement of the idea of renewing the Sanhedrin before the Messiah comes is really superfluous. Whatever he, or anyone else in his generation thinks about the matter, the fact remains that the Men of the Great Assembly, by fixing the order of the Tefillah as they did, acknowledged that the establishment of the Sanhedrin would precede the arrival of the Messiah.

To be sure, it is hard for me to be completely alone. I have been addicted to public life for some decades; indeed, I feel like the proverbial snail who, even when he travels to the ends of the earth, brings his whole household along with him. And yet I did, to some extent, succeed in secluding myself for a number of weeks. For nearly twenty days, I had no contact with people. While I was alone with my books, I restricted myself to considering just one question—the renewal of the Sanhedrin *in our time*.

It would be arrogant² of me to think that the Jewish world anxiously awaits my pronouncements on this matter. I will not boast by calling to mind the words of the Gaon from Castile, Rabbi Isaac Canpanton (teacher of Rabbi Joseph Caro) in his *Darkhei ha-Gemara* who states that “a man is only as smart as the books on his shelves.”³ However, neither will I clothe myself in humility and proclaim that I am “nothing but a garlic peel” next the giants of our generation.⁴ For nearly fifty years I have dreamt this dream. Throughout that period, I have examined thousands of books which contain some reference, however miniscule, to the Sanhedrin. During my period of seclusion I *carefully* examined everything which has been written or printed concerning the Sanhedrin. I say the following with no sense of self-pity or self-aggrandizement: I have seen books, in print or *in manuscript*, which

²*hutzpanit*.

³Isaac ben Jacob Canpanton (Campanton), 1360-1463. Maimon quotes from the final paragraph of that work, which continues as follows: “Therefore, a man should sell everything he owns in order to acquire books. A person who doesn’t own the books of the Talmud cannot be proficient in them, just as a person without medical books cannot be a good physician, or a person without philosophical books cannot be a philosopher. Concerning this, the sages said, ‘The more books, the more wisdom.’ And Rashi commented on the phrase in M. Avot 1:6, *Acquire a friend*, ‘A friend in the normal sense of the word. But there are those who say that it means books, for a book is a good friend.’ One who reads borrowed books is like the one spoken about in the verse, ‘Your life will hang before you’ (Deut 28:66), while, for the one who owns books, they are what bring him wisdom and knowledge, for she (wisdom) is ‘your life,’ and the length of your days” (Isaak S. Lange, ed., *Darkhei Hatalmud lerabbi yitzhak canpanton*. Jerusalem: Shalem, 1980, p. 72). Canpanton’s method for studying Talmud is summarized in his only extant work, *Darkhei hatalmud* (“Pathways of the Talmud”). His system for studying *gemara* and the *rishonim* was used by students in a direct line to Jacob Berab, who introduced it in Safed. See cp. 12.

⁴Bekhorot 58a.

have not been seen by any of the giants of our generation.⁵

As a result of all of this in-depth study, I have reached the same conclusion as I held before my period of seclusion. The Men of the Great Assembly, by whose teachings and prayers we live until this very day, gave expression in the order of the *Tefillah* to this obvious truth: “Restore our judges as of old” precedes “In mercy return to Your city Jerusalem”—and all the more so, “Cause the shoot of Your servant David to shoot forth soon.”

I have already stated, in chapter two, that Ezra the Priest and Nehemiah the Governor understood that “the reestablishment of the State of Israel raised new questions, and that these questions demanded answers which were true to the Torah.”⁶ The questions and problems piled up. The first question concerned the laws of Sabbath observance! Ezra was the first one who decided to take the Torah out into the streets of the city so that it would become the entire nation’s possession.⁷ In order to enlarge and enhance the Torah,⁸ Ezra enacted an important *takkanah*: he established

⁵There is no exaggeration in this paragraph. Rabbi Maimon was in possession of one of the world’s most extensive private libraries of Judaica, over forty thousand volumes. His daughter writes concerning his love of books: “He invested great effort in acquiring books, and he love to tell stories about how he came across them. In his travels on behalf of the Mizrahi movement, he spent what little free time he had in bookstores. He never put down a book which he had acquired until he had read it and thought about it” (Bat-Yehudah, *Toldot*, 90-91).

⁶*supra*, p. 35.

⁷Maimon was critical of the rabbinic leaders in his own day for their failure to emulate Ezra and Nehemiah in this regard:

Several times, residents of the secular villages have asked me why the chief rabbis do not visit them. I am sure that they would be received with all due honor, and that their visits would bring blessing and much holiness. Because if (to give an example) we are dismayed by the growing crises regarding Shabbat, kashrut, family purity, and the like, in a given city or village, it does no good for the community’s rabbi, or even one of the chief rabbis, to give the best sermon in the world about the sanctity of these matters—in the synagogue, among observant Jews (*Ne’um shelo na’amti*, 1952).

⁸Is 42:21, and Makkot 3:16. The Talmudic passage, which is read liturgically following the study of *Pirkei Avot*, understands the Biblical verse as follows: Rabbi Hananya ben Akashya says: The Holy One wanted to bestow benefit upon Israel—that is why God gave them Torah and Mitzvot *in abundance*, as it is written: “The Lord delights in their righteousness. Therefore God made the Torah large (*yagdil*) and glorious.”

that Torah be read in public on Mondays and Thursdays, as well as on Shabbat during the Afternoon Service.⁹

But in order that the people, of all ages, would be able to understand and take part in Torah study, he and his court—i.e., the Men of the Great Assembly—established that “there should teachers of children in Jerusalem.”¹⁰ They enacted further that “a scribe may set up his business next to another scribe,” and that teachers were allowed to open schools anywhere, even next to another school. This is work for the sake of heaven, and does not fall under the category of “encroachment,”¹¹ since “the jealousy of scribes increases wisdom” (Baba Batra 21a). In this way, the knowledge of Torah and its commandments was spread throughout the masses of the nation.

It almost certain that the reading of the “Haftarah”—that is to say, the reading from the Prophetic books *on every Shabbat and holiday* after reading from the Torah of Moses—was also a *takkanah* of the Men of the Great Assembly. We know that the Men of the Great Assembly enacted certain *takkanot* “in order to impart honor to Jerusalem” (For example, J. Megillah 1:1, which is the source for Maimoides statement in *MT*, Hil. Megillah 1:4).¹² For this reason, and also to strengthen the nation’s faith in the words of the prophets, they made a *takkanah*: to conclude with a reading from the Prophets on every Shabbat, Festival, and Holiday after the reading from

⁹[J. Megillah 4:1; Soferim, cp. 1-2. Compare also J. Megillah 1:1, Baba Batra 82a.]

¹⁰[Baba Batra 21a: “They enacted that there should be teachers of children in Jerusalem.” It is clear to me that *takkanah* came from Ezra and his court. See Berakhot 54a, in the Mishnah which states, “They enacted that they should say ‘from everlasting to everlasting.’” There, Rashi comments: “‘They enacted.’ Ezra and his supporters. This is in accord with the general rule laid down in *Seder Tana’im Ve’amora’im*, “Any place where it says ‘they enacted’ without specifying is a *takkanah* of Ezra.”]

¹¹*hasagat gevul*. Deut 19:14 (“You shall not move your countryman’s landmarks...”) is the source for this halakhic concept. Going into direct competition in proximity to an established business is prohibited in some situations. However, an exemption is made for teachers.

¹²The discussion there concerns the date on which the Scroll of Esther is to be read. In both the Mishnah and the Mishneh Torah, the text actually reads, “in order to give honor to Eretz Israel.”

Torah.

The prophetic literature was the first which emphasized Zion and Jerusalem, and set it apart as the eternal capital of the Jewish people. *Zion*, the City of David, the “city of the great king,”¹³ the center of the Hebrew *State*, and *Jerusalem*, “the holy city,” site of the Temple, center for the Israelite Torah—these two were joined together in the utterances of the prophets of Israel.¹⁴ For this was their vision and their goal: Israel settled on its Land and in its State, constantly purifying and sanctifying both itself and the Diaspora—through the spirit of the Torah and the Tradition.

Yet during the period of the Men of the Great Assembly, when the “adversaries of Judah and Benjamin”¹⁵—namely, the Samaritans—realized that they would be unable to disturb the building of the Temple in *Jerusalem*, they made their Jerusalem in *Shekhem*, and in place of Mount Moriah, they used Mount Gerizim. They built themselves a “temple,” proclaiming, “We have no share in the lot of the Son of Jesse or the Kingdom of the House of David, and no inheritance in Zion and Jerusalem.”¹⁶ The Samaritans, this “foolish people who dwell in Shekhem,”¹⁷ still recognized the holiness of the Pentateuch, but their scribes and “priests” falsified our Torah, just as they

¹³Ps 48:3.

¹⁴[See, for example: Is 4:3, “And those who remain in Zion, and are left in Jerusalem—All who are inscribed for life in Jerusalem—Shall be called holy”; Is 10:12, “But when my Lord has carried out all his purpose on Mount Zion and in Jerusalem, He will punish the majestic pride and overbearing arrogance of the king of Assyria”; Is 24:23, “Then the moon shall be ashamed, and the sun shall be abashed. For the Lord of Hosts will reign On Mount Zion and in Jerusalem, And the Presence will be revealed to His elders”; Is 40:9, “Ascend a lofty mountain, O herald of joy to Zion; Raise your voice with power, O herald of joy to Jerusalem—Raise it, have no fear; Announce to the cities of Judah: Behold your God!”; Is 41:27, “The things once predicted to Zion—Behold, they are here! And again I send a herald to Jerusalem”; and Is 62:1, “For the sake of Zion I will not be silent, For the sake of Jerusalem I will not be still”. There are many similar verses, in Isaiah and the other prophets. They are all derived from Is 2:3, “For Torah shall come forth from Zion, The word of the Lord from Jerusalem“.]

¹⁵Ezra 4:1.

¹⁶After 1 Kings 12:16.

¹⁷Sirach 50:26.

had before. Wherever possible, they made changes which emphasized the “holiness” of *Mount Gerizim*.¹⁸ But if in regard to the Torah of Moses they were only able to insert various falsehoods, they completely rejected the prophetic literature and the Oral Torah. *The words of the prophets*, which recognized “Zion and Jerusalem” as the ultimate center of the nation, and the nation’s Tradition, which verified it, consistently flew in the face of the Samaritans’ harmful, misleading beliefs. Therefore, they totally denied the validity of the prophetic literature and the Oral Torah, saying: “We have nothing save the Torah of Moses.”

In order to set themselves apart from these rejectionists; to implant a belief in the veracity of the words of the prophets and the Oral Torah within the heart of the masses of the House of Israel; and to strengthen the hope for the rebuilding of Zion and Jerusalem and the renewal of the Davidic dynasty—the Men of the Great Assembly enacted several *takkanot*, such as: “Blessings and Prayers, Sanctifications and Separations.”¹⁹ Through these *takkanot*, we come to a unclouded faith in the tradition of our Sages and in the Oral Torah. It is sufficient to recall the following blessings:

- The blessing “to wrap ourselves in fringes,” which emphasizes that we need to “wrap.” Simply “seeing” does not discharge us of our obligation, despite the opinion of those who reject the Oral Torah and maintain that, according to Written Torah it is sufficient to fulfill the verse “you shall look upon it.”²⁰
- The blessing over “destroying” leaven, which holds that leaven must

¹⁸[See my article, “Shekhem.” *Ha-Ivri*, 8:1-2.]

¹⁹Berakhot 33a, *berakhot utefillot, kedushot vehavdalot*.

²⁰Num 37:39, “That shall be your fringe; look at it and recall all the commandments of the Lord and observe them, so that you do not follow your heart and eyes in your lustful urge.” Thus the blessing “to wrap oneself” expands upon the biblical commandment to “look” at the fringes.

actually be destroyed; simply “nullifying” it is not sufficient.²¹

- The blessings concerning the commandment to establish an “eruv.”²² We say blessings over the “merging of courtyards”²³ and common thoroughfares, the “merging of cooked foods”²⁴ and the “merging of boundaries.”²⁵ By means of these blessings, said *beshem umalkhut*,²⁶ we establish that these “mergings”— despite their origins in the words of our Scribes, and the fact that they have the imprimatur of “Oral Torah”—are in force just as if they were commanded “from the mouth of the Almighty” and written in the Torah.

²¹Pesahim 4b.

²²Lit. “merging.” See notes below, adapted from *Artscroll Siddur*.

²³*Eruv Hatzeirot*. Through this “merging,” all homes which open into a common public area (such as houses surrounding a courtyard, or units in an apartment building) become one private domain. This allows people to carry items in the “formerly public areas” (e.g. stairwells, courtyards) and into each other’s homes. This “merging” is accomplished by having each household deposit a loaf of bread or a matzah in one residence, and by reciting the following formula: “Blessed are You, Adonai our God, Ruler of the Universe, Who has sanctified us with His commandments and has commanded us concerning the commandment of the eruv. Through this eruv may we be permitted to carry out from the courtyard to the houses, from house to house, from courtyard to courtyard, and from roof to roof, all that we require, for ourselves and for all Jews who live in this area.”

²⁴*Eruv Tavshilin*. Through this “merging,” Jews are able to prepare food for Shabbat if a Festival falls on Friday. One begins preparing some food for Shabbat before the *Festival* begins (i.e., on Wednesday or Thursday afternoon). Holding that “Shabbat food,” he or she recites the following: “Blessed are You, Adonai our God, Ruler of the Universe, Who has sanctified us with His commandments and has commanded us concerning the commandment of the eruv. Through this eruv may we be permitted to bake, cook, insulate, kindle flame, prepare and do anything necessary on the Festival for the sake of the Sabbath, for ourselves and for all Jews who live in this city.”

²⁵*Eruv Tehumin*. Through this merging, a Jew is able to enlarge the area in which he is allowed to walk. Normally, a person may travel 2,000 cubits in any direction. By performing *eruv tehumin*, he establishes his “dwelling place” somewhere else, and the 2,000 cubits is reckoned from there. This “merging” is accomplished by placing a sufficient amount of food for two Sabbath meals in that place and reciting, “Blessed are You, Adonai our God, Ruler of the Universe, Who has sanctified us with His commandments and has commanded us concerning the commandment of the eruv. Through this eruv may I be permitted to walk two thousand cubits in every direction from this place during this Sabbath (or Festival or Yom Kippur).”

²⁶“With [a mention of] God’s Name and Sovereignty.” *MT*, Hil. Berakhot 1:5. Blessings which do not contain God’s name (i.e., the tetragrammaton, pronounced *adonai*) and the words *melekh ha-olam* (“Ruler of the universe”) are not liturgically valid.

Additionally, the Men of the Great Assembly made a *takkanah* to read from the Prophets immediately following the reading from the Torah of Moses, thereby making it known that their words are as true and authentic as the holiness of the Torah. This is the rationale for the blessing which precedes the “haftarah:”

Who has selected good prophets, and delighted in their *truthful* words.
Blessed are You, Adonai, Who Chooses the *Torah...His people Israel, and the true and just prophets.*”

Torah, Israel, and the prophets are one. Following the “haftarah,” we recite blessings specifically for Zion and the Davidic dynasty:

Have mercy on Zion, for it is the source of our life...Blessed are You, Adonai, who makes Zion rejoice in her children.

Gladden us, Adonai our God, with the appearance of Your servant Elijah the Prophet, and with the rule of the house of David, Your Messiah....Let no stranger occupy David’s throne; let others no longer possess themselves of his glory...Blessed are You, Adonai, Shield of David.

All of this to keep them from the rejectionist approach of the Samaritans and other heretics, and to implant, deep within their hearts, a belief in the Tradition of Israel and in the testimonies of the *Prophets*—who emphasized the holiness of Zion and Jerusalem, and of the Davidic dynasty.²⁷

The primary work of the Men of the Great Assembly was to implant *faith in the Oral Torah* within the people’s hearts. To that end, the commandment to *observe Shabbat according to the received Tradition of interpretations of the Written Torah* held a place of unique importance. The ears of the *olim* still rung with the words of the son of Amotz:

Observe what is right and do what is just, for soon My salvation shall come,

²⁷It is worth noting the centrality of Jerusalem in Maimon’s own life’s work, given the emphasis he places on it in this chapter and elsewhere in *Hiddush ha-Sanhedrin*. He was outspoken in his belief that Jewish institutions in Eretz Israel should be headquartered in Jerusalem. He moved the World Headquarters of the Mizrahi movement there in 1935; furthermore, before the Government of Israel moved from Tel-Aviv to Jerusalem, Maimon relocated his Ministry of Religious Affairs.

and my deliverance be revealed. Happy is the man who does this, the man who holds fast to it: Who keeps the sabbath and does not profane it (Is 56:1-2).

The elders among the *olim* from Babylon certainly remembered the words of reproof delivered by the man “from among the priests in Anathoth:”

Guard yourselves for your own sake against carrying burdens on the sabbath day, and bringing them through the gates of Jerusalem. Nor shall you carry out burdens from your houses on the sabbath day.... If you do not obey My command to hallow the sabbath day and to carry in no burdens through the gates of Jerusalem on the sabbath day, then I will set fire to its gates; it shall consume the fortress of Jerusalem (Jer 17:21-22; 27).

Who were these, who turned the hearts of the people backward, who mixed a spirit of distortion within them,²⁸ to the extent that the masses began “treading winepresses on the Sabbath, and...bringing heaps of grain and loading them on to asses, also wine, grapes, figs, and all sorts of goods” (Neh 13:15)? Who were these teachers of lies and deceptions who led the *olim* to completely forget the Torah’s warnings and the prophets’ rebukes, and to intentionally defile the Sabbath? Here too, we can detect the hand of the Samaritans, or other lawless ones who denied the Tradition of Israel.

On the one hand, they asked: Where is it *written* in the Torah of Moses that it is forbidden to carry a burden from one’s house to the outside? The Fathers of the Tradition—i.e., the Men of the Great Assembly—certainly warned them concerning the “forty types of labor less one,” whose prohibition on Shabbat is derived from the Torah.²⁹ Included among those thirty-nine was the prohibition against carrying from one domain to another, based on the passage from Jeremiah mentioned above. But where—they asked—was the actual prohibition against carrying found in the Written Torah?

And on the other hand, heretics like these would ask (or perhaps even

²⁸After Is 19:14.

²⁹M. Shabbat 7:2.

scoff and ridicule with their fingers pointing to the words written in the Torah): “Mark that the Lord has given you the Sabbath...let everyone remain where he is: let no man leave his place on the seventh day” (Exod 16:29) According to the Written Torah, the Shabbat was not given for *delight*; rather, it was a “compulsory” day on which all Jews were shut up in their homes, within their four cubits. They were subservient to the Shabbat, and could not even take one step out of their houses. In response to that notion, the prophets said: “Call the Shabbat ‘delight,’ The Lord’s holy day ‘honored’”(Is 58:13) And:

Among the ways of honoring the Sabbath is wearing clean clothing. One’s Sabbath clothing should not be like one’s weekday clothing.³⁰

For this reason, “Ezra enacted that the people should wash their clothes on Thursday, in honor of the Shabbat” (ibid.).

In this instance, the heretical Samaritans were able to introduce a spirit of rebelliousness in the hearts of the masses—a rebelliousness against the prophets and the Tradition of Israel. But such is the fate of those who say “We recognize nothing save the Written Torah:” They eventually come to profane and do away with that Torah as well. The rebelliousness took root in the hearts of the masses, and they began to rebel not only against the words of the prophets, but also against what was *written* in the Torah. As time went on, they completely defiled their Shabbat.

Eventually, the Men of the Great Assembly came along, acting as the supreme religious institution in the renewed State of Israel.³¹ They began to interpret that which was said in the Torah on the basis of ancient traditions,

³⁰[*MT*, Hil. Shabbat 30:3. The printed edition contains a scribal error.]

³¹*medinat yisra'el hamehuddeshet*. Generally, the sovereign polity of that period is referred to as “the second Jewish commonwealth,” and the translation “State of Israel” is obviously an anachronism. The anachronism seems to have been Maimon’s intent, however, and it is proper to translate “State of Israel” in this instance and wherever *medinat yisrael* is used in reference to the autonomous body established after the return from Babylonia.

using the hermeneutic principles which govern Torah interpretation.³²

Through these various techniques, by comparing verses from different places within the Torah and the prophets to one another, and due to their deep knowledge of Hebrew language and grammar, the *Shabbat* was revealed to us in all of its magnificent restfulness and splendid holiness.

In the Shabbat prayers which *they enacted*, the Men of the Great Assembly attached three crowns to the Shabbat: rest, delight, and holiness (“Those who keep the Shabbat and call it ‘delight,’ the people who make the seventh day holy.”) Each of these crowns is inlaid with beautiful gems and pearls. These take the form of the *halakhot* which establish Shabbat as a day of *rest*, and of certain customs which are inseparably joined with the laws, and which are uniquely capable of bring out the beauty and grace of of Shabbat *delight* and *holiness*. The thirty-nine types of labor mentioned in reference to Shabbat are *halakhah lemosheh misinai*, said by the Almighty.³³ They, and the practices derived from them, such as: lighting candles before sunset on Friday evening *in honor of Shabbat*; the Shabbat prayers; the “kiddush” said over wine on Friday evening and on Saturday; the Shabbat foods, prepared before the onset of the Shabbat—all of these bring the Shabbat Presence to rest on every Jew’s home. They fill him with a living soul and bring delight and joy to his home.

Here we see the divine wisdom inherent in our Written Torah, which could only be revealed by the Fathers of our Tradition—i.e., the Men of the Great Assembly. The Torah says: “Let no man leave his place on the seventh day” (Exod 16:29). If the Giver of Torah wanted to shut the Jew up inside his house, so that he couldn’t go outside on Shabbat, why didn’t He command: “Let no man leave his *house* on the seventh day,” as is the case concerning the Passover sacrifice, where it is written, “You shall not take any of the flesh

³²*midot shehatorah nidreshet bahen.*

³³See p. 18, n¹⁶.

outside the house” (Exod 12:46)? But this the way of God’s Torah. “One verse yields many meanings.”³⁴ One verse may contain several warnings, which can only be explained and justified by the *Tradition*.

The verse in question contains two different warnings:

1) Not to carry from the private domain to the public domain.

This is learned from a *logical* principle by which the Torah is interpreted, “A matter learned from its context.”³⁵ The very same passage speaks about those who *went out* with their tools to gather manna on Shabbat. The warning, “let no man go out” was directed toward them; it therefore means, “let no man *bring out*” (see Eruvin 17b). In other words, let no man carry his tools to gather manna on Shabbat. This is no mere *drash*. It is in fact a characteristic of the Hebrew language to occasionally make use of an intransitive verb in place of the transitive. We find other examples of this in the Torah:

You shall set aside every year a tenth part of all the yield of your sowing that leaves (*ha-yotzei*) your field (Deut 14:22).

Here, the meaning is, “which the field brings forth (*ha-motzi*).”³⁶

Similarly, we find in the prophets: “The town that *goes out* (*yotzeit*) a thousand shall have a hundred left, and the one that goes out a hundred shall have but ten left.”³⁷ The meaning is, “the city which

³⁴Sanhedrin 34a “As the hammer splits the rock into many splinters, so will a scriptural verse yield many meanings.”

³⁵*davar lamed me’inyano*. The twelfth of Rabbi Ishmael’s thirteen hermeneutic principles, which are enumerated at the beginning of *Sifra* (the halakhic midrash to Leviticus), and read as part of the preliminary morning service.

³⁶[See Ibn Ezra ad loc., and also Onkelos, who translated אֲלֵקָה קָפַיִד, “which the field brought forth.”] Ibn Ezra comments there: “Judah Halevi of Spain, whose soul is in Eden, said that the word *hayotzei* is connected to with *zar’ekha*—meaning, ‘your seed which goes out onto the field.’ But in my opinion, which is in agreement with the plain meaning of the verse, *hayotzei* is connected to *hatevu’ah*—‘the produce which leaves the field.’ If someone nevertheless claims that ‘the verse says “*hayotzei*,” which is an intransitive verb,’ show him the verse “The town that *goes out* (*yotzeit*) a thousand....” The proof is in what follows, ‘shall remain one hundred.’”

³⁷Amos 5:3.

sends forth (ha-motzi'ah) a thousand or a hundred.³⁸ This is the traditional interpretation in our case as well. “Let no man *go* out from his place”—i.e., let no man *bring* out from his place. From here, we learn that the prohibition against carrying items from one domain to another is contained within the Torah.

b) Not to travel more than two thousand cubits from the city on Shabbat. “Let no man go out *from his place*”—We understand this to mean, “from the border of his city”—in other words, a distance of two thousand cubits surrounding the city, as is mentioned in the section of the Torah which deals with unintentional manslaughter: “I will assign you a *place* to which he can flee”(Exod 21:13). The reference is to a city of refuge. There, too, territory is added to the city; Scripture states:

If the manslayer ever goes outside the limits of the city of refuge to which he has fled, and the blood-avenger comes upon outside the limits of his city of refuge (Num 35:26-27).

It does not say, “outside the city;” rather, it says, “outside the limits of the city.” Therefore, the term “city” includes the “city limits” as well. They are two thousand cubits in all directions, as is stipulated earlier in the same passage:

You shall measure off two thousand cubits outside the town (Num 35:5).

Therefore, we possess a tradition which teaches that the prohibition against “going out” on Shabbat only prohibits one from leaving the city limits—in other words, two thousand cubits from the city. But within the city (even if the city is very large, spreading over a great deal of territory), Jews are permitted to come and go on Shabbat, to walk through the plazas and streets, and also through any vineyards and

³⁸See Rashi, ad loc.

fields contained within the city limits.³⁹

This verse, as it is *written* and as it is interpreted by the *Tradition*, shows in sharp relief the fitness of the words of the Sweet Singer of Israel: “The words of the Lord are pure words, silver purged in an earthen crucible, refined sevenfold” (Ps 12:7). In coming chapters we will, God willing, bring similar examples of how the Fathers of the Tradition knew the true explanation of each word in the Written Torah, and could provide both lenient and stringent interpretations.⁴⁰ But in order to reveal that which had been closed, to decipher the hidden meanings in our Written Torah and find the necessary and appropriate solutions to all problems which arose *due to changing times or circumstances*—they needed the power which comes with authority, organized and well-ordered, great both in terms of quantity and quality. They needed the form of the Great Assembly, whose wondrous influence was later felt during the Hasmonean period (which will be dealt with in its own chapter⁴¹) and in the Sanhedrin which was established afterwards.

In my opinion, the activities and accomplishments of the Men of the Great Assembly have not been sufficiently treated within our historical literature. Yet is clear that they laid the foundation for the compilation of our Mishnah, which is called “the Oral Torah” (see Shemuel Hanagid’s *Mevo ha-Talmud*).⁴² Also clear to me is the fact that almost all of the *halakhot* in the Mishnah and the Talmud find their source in the Written Torah; everything was received from the Men of the Great Assembly. If the Talmudic literature later states a given *halakhah* in the name of some later

³⁹[See Eruvin 51a, and compare Nedarim 26]

⁴⁰*lefaresh ba kalot vehamurot*.

⁴¹See Chapter Eight.

⁴²“The Talmud is divided into two parts: the mishnah and the commentary to the mishnah. The mishnah is the part which is called ‘Oral Torah.’ It is the foundation of the Torah which was transmitted from Moses to Rabbenu Hakadosh (Judah ha-Nasi)” (Shlomo Kohen-Doros, ed., *Mevo ha-Talmud*. Tel-Aviv: Shamgar, 1986, p. 8).

Tanna or Amora, this falls under the category of “they forgot them, then they returned and established them (anew).”⁴³ I did not invent this idea; we possess a tradition from our ancestors which states that the Men of the Great Assembly established *midrash*, *halakhot* and legends (See Baba Batra 15a, and the book *Torat Harishonim* by my late friend, Rabbi Isaiah Reicher,⁴⁴ Part III, Cp. 15. I will say more about this in the coming chapters, God willing.)

The Men of the Great Assembly understood that, with the renewal of the Hebrew Yishuv in Eretz Israel, there would arise some questions so important that the very life of the State depended on them. They felt obligated to seek answers to these questions which were based in our Tradition—a Tradition which gives us ample space in which to clarify the details of particular rules or *halakhot* in every area. We do this by seriously delving into and thoroughly understanding the words of the Written and Oral Torahs, which were both given to us by one shepherd.⁴⁵

As in times past, so too in the present day. Perhaps even more so. We need an authorized, centralized power which would serve as a center for the greatest Sages of Israel—the sharpest minds, the greatest thinkers, the giants of Torah. These Sages of Israel must not only have a great deal of Torah knowledge, but also of good sense and character. They must be Sages whose very lives will serve as a positive example and source of influence. Their heart must be full of love for every soul in Israel and for the *State* of

⁴³The principle Maimon refers to is found in Sukkah 44a. There is an apparent contradiction in two statements of R. Yohanan. On the one hand, he holds that a certain mitzvah is *halakhah lemoshe misinai*; another tradition has him ascribing the source of the same mitzvah to the prophets. The Talmud resolves the contradiction by introducing the principle of *shehakhum vehazru visadrum*, “they forgot them, then returned and established them.” Rashi elaborates on the three words as follows: “*They forgot them*. During the Babylonian Exile they forgot some of the Torah and the mitzvot; this particular one was completely forgotten. *They returned*. The latter prophets (i.e., Haggai, Zechariah and Malachi). *And established them*. On the basis of prophetic revelation (*al pi hadibbur*).”

⁴⁴Rabbi of Izmail in southern Bessarabia.

⁴⁵Moses.

Israel, as well as with respect and honor for the *Torah* of Israel and its *laws*. They must be exceptionally strong-willed and sure-headed, but must never show any favoritism. Only such a comprehensive and centralized scholarly force, in the form of a renewed Sanhedrin, will be influential enough to *draw near the distant ones* and to prepare the people for the spiritual, religious, and political work ahead—now, and for the future.

We permit ourselves to speak this obvious truth: There are many, many secular Jews who are already convinced that *science*, even at its most convincing, is unable to explain a single one of the riddles of the universe, or of existence. They are convinced that neither ancient nor modern philosophy has succeeded in shedding so much as a speck of light on what is concealed from us; it hasn't made the slightest tear in the veil that separates us from the hidden mysteries. Many of us are already aware that even all of the known sciences are unable to teach us the proper way of life.

Let us try, then, those of us who believe with perfect faith in God and in His Torah, to reveal all of the light and ethics, the *real* social justice contained within our own Torah. Let us cause the sun to shine brightly, and let us reveal the Spirit of God which hovers over the *tohu vavohu*⁴⁶ on which we stand. For all of us in this generation are wandering lost in the wilderness, stumbling along on roundabout paths⁴⁷ and desert trails. In our heart of hearts, we each hope longingly for some revelation from on high, we hungrily await some infusion of heavenly spirit—some of us out loud, some of us secretly, embarrassed to express such thoughts with our lips or our pen. Let us try, then, those of us in whose hearts the divine spark still burns, to make known God's voice which speaks to us from His Torah, from the entirety of the prophetic literature, from the *halakhah* and the *aggadah*, from ethical and Hasidic literature. Let us try to reveal our Hebrew soul—that

⁴⁶Gen. 1:2 NJPS, "unformed and void."

⁴⁷After Judges 5:6.

very soul which was hewn from the glorious throne of Israel's Rock and Redeemer—the age-old soul of Israel, in the form of our *ancient* Torah and Tradition which are ever-renewed before our eyes.

We can only attempt this feat of bringing the Shekhinah to dwell within the camp of Israel through the renewal of the Sanhedrin in our renewed State.

Chapter Five

I am sitting in my room, in my little hideaway on one of the hills of our precious land. I am enjoying my solitude, the silence which sings throughout the room, and the wondrous panorama of this “land of Hebrews” which presents itself to me through the window. Views such as these made this an appropriate center, already in ancient days, for lofty and sublime ideas, for prophecy and vision. It was the capital of the *aggadah* and holds an important place in *kabbalah* and Hasidic thought.

I sit and I muse: This land, which “the Lord God looks after,” on which “the Lord your God always keeps His eye, from year’s beginning to year’s end” (Deut 11:12)—is *our Land* and *our State*.

Silence surrounds me—the wonderful silence of Eretz Israel, still waiting for the brilliant composer who will come and reveal the secret of its sublime, subtle, song...

A multitude of memories begin to well up inside me, memories from more than fifty years ago. I remember the time at which I and my like-minded colleagues began to dream about the future State of Israel. In those days, we *hovevei tziyon*¹ saw the Jewish state as a cure for all our wounds, of body and spirit. We saw it as the fundamental solution to all of the difficult and troubling problems of our political, cultural, economic, and societal life.

In order to avoid becoming a laughingstock, we did not yet express the totality of our political dreams to the world at large. In articles and pamphlets, any place in which needed to speak concerning the Jewish state, we made use of pretexts, we mixed up our prooftexts, we clouded our words in darkness. Fear of the government and its censor weighed upon us. But in closed circles, among ourselves, we spoke openly about our political aims

¹lit, “lovers of Zion.” Proto-Zionists, primarily in eastern Europe and Russia, in the 1880’s and ‘90’s.

more than fifty years ago.

Yet we still had no clear idea of how we might arrive at such a Jewish state. We knew all too well that the time was not yet ripe for political Zionism. We knew already *then* that the wider world—as well as a great majority of our own people—would rise in opposition to our political aims, or would scoff at us and call us mad. Though we were not sure how, nevertheless we believed so strongly, we were so sure, that today or tomorrow—perhaps in that generation, perhaps one or two generations hence—the Jewish State would be established, with all its laws and statutes. From it would go forth Torah (yes, *Torah!*), knowledge, friendship and peace to all the world.

The publication of Herzl's *Jews' State* was, for us, the greatest event in our national life.² It didn't reveal to us any new ideas, but it gave a specific form to all that we had felt in the innermost chambers of our hearts. He was so bold as to reveal our innermost thoughts to the entire world; he made clear that our desire was a Jewish state. From that point forward, the political idea took root in our hearts; our aspiration to establish a Jewish state grew stronger. Now, we were only divided over the path to take, the means by which we would reach the ultimate goal: the Jewish State. We were divided over the character of the future Jewish state. Would it be socialist or capitalist? The politicians among us were divided over which governments and heads-of-state we should turn to in order to realize our grand idea, but all of us desired, above all else—The Jewish State. The slogan which defined all Zionist parties was: *We shall be like all other peoples, settled on their land and ruling themselves.*

Here, I must acknowledge this truth: I differed with my Zionist

²Theodor Herzl's *Der Judenstaat* was published in 1896. The common translation of the title, "The Jewish State," is incorrect. Herzl envisioned a state for the Jews which wasn't particularly Jewish. Maimon differentiates between Herzl's *medinat hayehudim*—a Jews' state—and his own vision of a *medinah yehudit*—a Jewish state.

colleagues over this slogan. In those days, I still “sat in the tent of Torah and lived within the depths of the *halakhah*.” The Mizrahi did not yet exist, and I—born in a Hasidic environment and brought up with Torah and with a sympathy for Hasidism—was very nearly the first religious Jew who became first a *hovev zion* and later a *Zionist*.³ My Zionism drew all of its strength, and its very existence, from the Israeli Torah—that Torah, both Written and Oral, in which I was so thoroughly steeped. As a result of this Torah perspective I thought, as I still do today, that this goal of becoming “like all other nations” is not Hebrew, not messianic, and not in keeping with the process of our history. I was entirely against this goal of becoming “like all other nations” in my youth, and now I am completely convinced that I was right. I believe that all spiritually-minded, clear-thinking people among us agree with me that “the state,” to use the language of the Gentiles, both eastern and western, is, in form, essence, and aim, nothing but a source of danger to the moral development of humanity. Wasn’t it in the name of “the state” that *they* slaughtered millions of people, the forces of youth and vitality? Didn’t they destroy the healthy, vigorous young? Weren’t the survivors, in the name of “the state,” left crippled in body and spirit?

My readers will surely respond: “*Our* state will be of a completely different type. It will be built upon the principles of integrity and social justice. Our state will be a symbol of cultured progressiveness, of peace and goodwill. Its principles and its institutions will be shining examples.” They will say to me: “Our state will not repeat the inhuman and unsuccessful trials and errors of the Gentile states. Our state will become a source of blessing for the entire world.”

But my masters and my colleagues, in the state and in the

³In his biographical sketch of Maimon in *Anshei Torah u-Malkhut* (Tel-Aviv: Moreshet, 1966), S. Don-Yehiyah calls him *aharon ha-rishonim*, “the last one of the first ones.” Maimon’s ability to make the transition from traditional Jew to *hovev tzion* to Zionist is due to a combination of factors including his upbringing and the fact that he was born in 1875. See the Biographical Sketch, *supra* pp. iii-iv.

government, I beg your pardon: Let us not overestimate ourselves or the others. If our state is like all the others, it will *behave* like all the others! I was privileged to be present on the fifth of Iyyar, 5708, when we declared the establishment of a the State of Israel in Eretz Israel. I was the first to recite the “*sheheheyanu*,”⁴ *beshem umalkhut*,⁵ on that historic occasion. I was also privileged to be a member of the first Government of Israel. I consider it not only an honor, but also a blessing. How fortunate I am, how good is my portion, for all of this. But believe me, when I hear speeches and arguments in the cabinet or in the Knesset over the Police Law which look to the laws and statutes of alien legal systems, I feel more than emptiness and tediousness. I feel a deep pain within my heart. I feel that the presence of the Israeli *shekhinah* is missing. Everything is practically as it is in all other nations, and the words of the prophet ring like golden bells in my ears: “And what you have in mind shall never come to pass—when you say, ‘We will be like the nations, like the families of the lands...’”(Ezek 20:32).⁶

Throughout our years of Exile, the people hoped and longed for its promised future in the Land of its past. But it longed not only for the *earthly* Jerusalem. Its soul yearned for more than the *territory* of the State of Israel—the material and political state. It yearned as well for the *heavenly* Jerusalem, for the “*airspace*”—for the spiritual, ethical state. In Eretz Israel they wanted not only “a land flowing with milk and honey” beneath their *feet*, but also a *sky of heavenly blue*, which resembles the throne of glory, over their *heads*. “Torah will come forth from Zion,” (Torah, not culture!)—that

⁴“Blessed are You, Lord our God, Ruler of the Universe, who has kept us alive, sustained us, and brought us to this moment.”

⁵*supra*, p. 52 n26 . By saying the *sheheheyanu* prayer with the appropriate liturgical formula, Maimon was indicating that he believed it to be a divine commandment to bless God upon seeing the establishment of the Jewish State. Maimon was convinced that the state needed to be placed within a traditional ritual context. In addition to this noteworthy *sheheheyanu*, he advocated the recitation of Hallel and the “*al ha-Nissim*” prayer on Israel’s Independence Day.

⁶The verse continues, “worshiping wood and stone.”

was the Hebrew hope which filled the empty places in the heart of the Hebrew people throughout its years of Exile.

The nation's eternal hope was always defined in terms of two fundamental principles: *place* and *purpose*. The complete redemption would take place in Eretz Israel, on Mount Zion, for it was there, "upon the mountains of Zion, that the Lord ordained blessing, everlasting life."⁷ But the *purpose* of the redemption, *its ultimate goal*, needed to be "that Torah will come forth from Zion, the word of the Lord from Jerusalem." The redemption of the Land and the ingathering of the exiles was never the ultimate goal. The flowering and upbuilding of the Land, *even its conquest to establish the State of Israel*, was, according to our messianic tradition, only a means to a more important end: *the flowering of the Torah and the expansion of Judaism's influence*. "Zion and Torah" were always joined together for the Hebrew nation. These two—"The Torah and the State"—need each other and fulfill each other.⁸

Let me say very clearly: *The State* of Israel must be authentic, rooted, and independent not only with regard to its political rights and its Hebrew language; its spirit, laws and statutes must be authentic as well. Our system of justice must be built upon the foundation of the Israeli Torah and Tradition. Jewish law is the crown of religious, halakhic, dynamic Judaism. In the field of *civil law* there is ample material, not only in the Talmudic literature, but also in the legal codes and the responsa which were compiled after the completion of the Talmud by the greatest minds of each generation. Our halakhic literature includes, aside from the Shulhan Arukh and its commentaries, more than *two thousand* responsa collections, containing over *one hundred thousand* individual inquiries into cases and controversies between people. The respondents brought a halakhic outlook, built upon the

⁷Ps 133:3.

⁸*ha-torah veba-medinah tzerikhot zo lezo u-mashlimot zo lezo*. This phrase is central to Maimon's religious-political philosophy, and appears often in his writing.

Talmudic literature; additionally, they brought a well-developed sense of reason which helped them to solve difficult questions. According to Talmudic tradition, we are no longer allowed to create new laws on our own. But precisely because our hands are tied in this regard, and we are unable to change any of the laws of the Torah in response to changing situations, needs, and ideas—the Hebrew court needed to be able to plumb the depths of the law, to arrive at its ultimate reasoning. It needed to use its powers of deduction, to find precedents and analogies within the earlier *halakhah* which would shed light on the new circumstances presented it. Later legal authorities needed to be not only “heroes in the battle of Torah;” they needed the additional weapons of good common sense, broad understanding, and excellent powers of reasoning. We clearly find this in almost all of our *legal* literature which deals with civil law.⁹

How sad and humiliating, then, that nearly all of the powers-that-be in our State are unable to rid themselves of the idea that *general* law must be the basis of our state’s legal code, as if it were impossible for the Hebrew State to be established on the basis of our own Jewish law.¹⁰ And at the same time, the French historian Vaissete has written in his book, *Histoire General de Languedoc*, that in southern France they have long been aware that the *laws of the Jews are far superior to the laws of other peoples*. In my

⁹Israeli legal scholar Menachem Elon makes a similar point (“On Power and Authority: The *Halakhic* Stance of the Traditional Community and Its Contemporary Implications” in Daniel J. Elazar, ed., *Kinship and Consent: The Jewish Political Tradition and its Contemporary Uses*. New Brunswick: Transaction, 1997). He argues that the Jewish *kehillah* of the Middle Ages was an autonomous collective, analogous in some ways to the state. As such, Jewish law as developed during the period is suited for use as one of the sources of Israeli law.

¹⁰Elon (*Jewish Law*, pp. 1611-1618) discusses attempts by religious Jewry to establish the State of Israel upon the foundation of Jewish Law, as well as the reasons behind their failure. Essentially, the religious community was unprepared for the establishment of the State, and had done little during the previous years to lay solid foundations for their proposals. In 1948, most Israelis saw Jewish Law as outmoded and unfit for modernity. Had the rabbinical courts been more active during the Mandatory Period, that perception might not have existed, and there might have been a weightier body of recent precedent for the Knesset and courts to consider as they debated the merits of various legal systems.

opinion, the State of Israel without Torah, and the *Voice of Torah (not "culture")*¹¹ is a state without its inner kernel, stripped of its spine. A Hebrew state which does not reopen the wells of Torah, *which does not revive and expand Jewish, Torah-true, traditional law*, is nothing more than a body without a soul, a "golem without the divine name."¹²

In order to carry out this important work—of showing the state the proper path, of opening up the wellsprings of our tradition which have been shut up by foreign culture, of showing *ourselves and our children who will follow us* the beauty of our Torah and its commandments and laws—for *the sake of this important service, we need to renew the Sanhedrin in our renewed state*. No governmental Ministry of Religious Affairs, no Religious Front¹³ in the "Knesset," not even the Chief Rabbinate as currently constituted¹⁴ is able to take this work, with all its consequences, on its shoulders.

With the creation of the State of Israel, broad horizons have opened up before Torah-true, religious, traditional Judaism as well. Many important tasks—both immediate and long-term, and very difficult—have been given to it. The day is near on which it will be called upon to answer the most

¹¹*torah vekol torah (lo kultura)*. The European "kultura" in place of the Hebrew *tarbut* creates a wordplay. It also hearkens back to the earliest days of Zionism. At the 1901 Zionist Congress, a party known as the Democratic Faction emerged. Among its proposals was the expansion of the Zionist program to include educational and cultural activities (following Ahad Ha'am). While the Orthodox Zionists were willing to work with the secularists on a political program, they were completely opposed to making the expansion of secular "kultura" a Zionist goal. One year later, the Mizrahi was founded (Shimoni, *Zionist Ideology*, 127ff.).

¹²The Golem is a legendary creature which could be brought to life through the power of God's name. Once animated, it would come to the aid of the Jews during times of trouble.

¹³The two Zionist religious parties (Mizrahi and HaPoel Mizrahi) joined together with the two non-Zionist religious parties (Agudat Israel and Poalei Agudat Israel) to form the "Religious Front" for the first Knesset elections in 1949. They received 12% of the vote—enough to make them a necessary coalition partner to Ben-Gurion's Labor party (Sachar, *History*, p. 377-8).

¹⁴"[A]s currently constituted" is an important qualification in this sentence. In chapter nine, Maimon will argue that the Sanhedrin must naturally evolve from the Chief Rabbinate.

difficult questions—questions which arise with the creation of the State and with the many new discoveries, both within the world-at-large and within our own world. Only a Torah-true, religious institution in the form of a Great Sanhedrin of seventy-one will be able to provide these answers. Those seventy-one members must be from among the nation's greatest scholars; they must be both *wise* and *clear-sighted*.¹⁵

I emphasize those two words: *wise* and *clear-sighted*. I learned this from a teaching of the Vilna Gaon.¹⁶ He would say: One verse in the Torah says, “for bribes blind the clear-sighted” (Exod 23:8). A second verse says, “for bribes blind the eyes of the wise” (Deut 16:19). *Jewish* judges must meet these two conditions: they must be *wise* in matters of Torah, proficient in all of its areas, familiar with all of its treasures. But they must also be *clear-sighted* with regard to the ways of the world, familiar with human nature, able to distinguish between the truly innocent and the liar or hypocrite. Thus Maimonides stated:

Only *wise and understanding* men, who excel in the wisdom of the Torah and possess great knowledge are appointed to either the great or small Sanhedrin (*MT*, Hil. Sanhedrin 2:1).

According to the Vilna Gaon, two statements attributed to our Sages illustrate this rule (Sanhedrin 7b). The first is that of Rav Nahman bar Isaac concerning the verse, “Render just verdicts by morning” (Jer 21:12).

If the matter is a clear to you as the morning light, render a verdict; if it is not, then render no verdict.

The second is that of Rabbi Jonathan on the verse, “Say to wisdom, ‘You are my sister’”(Prov 7:4).

If the matter is a clear to you as the fact that your sister is forbidden to you, render a verdict; if it is not, then render no verdict.

¹⁵*hakhamim upekeihim*.

¹⁶Maimon was especially attracted to the Vilna Gaon. His paternal great-grandfather studied in the Gaon's yeshiva in Vilna. One of Maimon's more significant works is a biography of the Gaon, *Toldot HaGra* (second, expanded ed., 1956).

Rav Nahman's teaching refers to the *clear-sightedness* of the judge, to his ability to distinguish between truth and craftiness just as one can distinguish between blue and green, or between light and darkness, in the morning. The second teaching, of Rabbi Jonathan, speaks about the judge's *wisdom* in matters of Torah; the entire subject matter must be readily available to him, and as clear in his mind as the fact that his sister is forbidden to him. Only when the judges are both *wise* and *clear-sighted* can we hope that they will dispense true and upright justice.

The Vilna Gaon's words befit his own stature. I have heard a tale, a true story: A Jew in the town of Sokolov had one beautiful daughter, whom he married off to one of the scholars in Sokolov. About two years after their wedding, the husband was possessed of an evil spirit toward his wife. Two witnesses testified that they had seen her, on more than occasion, seclude herself with another man. The husband brought his case to Rabbi Joshua Tzeitels, the greatest Torah scholar in Sokolov at that time.¹⁷ He summoned the witnesses, who gave their testimony to him; based on that testimony, the man would be forced to divorce his wife. The wife's father, who was an important man in the community, cried out that they were false witnesses, and that they were telling these lies about his precious daughter because of jealousy toward his family. The wife herself vigorously denied the witnesses' testimony. Rabbi Joshua Tzeitels had a difficult time deciding the case.

In the meanwhile Rabbi Joshua Tzeitels needed to travel to St. Petersburg on business. Since the Vilna Gaon was very much admired by the scholars in Sokolov, he decided to travel by way of Vilna in order to meet this Jewish genius face to face—and, incidentally, to ask him if he would help him decide the case. When he came before the Vilna Gaon, Rabbi Joshua told him the whole story, gave him the witnesses' testimony, and asked him to express

¹⁷In his *Toldot HaGra*, Maimon discusses Rabbi Joshua Tzeitels' relationship with the Vilna Gaon at some length (pp. 146-149).

his opinion—the Torah’s opinion—in the matter. The Vilna Gaon listened to Rabbi Joshua’s words intently, and said:

“I am neither a prophet nor the son of a prophet. I cannot express my opinion until I have heard the words of the witnesses for myself.”

Upon hearing the Vilna Gaon’s response, Rabbi Joshua decided to invite the two witnesses and the couple to Vilna at his own expense, so that the Gaon could decide the case. They came to Vilna. Once the Gaon had listened to the complaints of the husband and his wife, outside the presence of the witnesses, he called for the witnesses to come to his academy, but not together. They rehearsed their testimony, word-for-word, just as they had before Rabbi Joshua. When the second witness concluded his testimony, the Vilna Gaon stood up and cried out:

“They are false witnesses! They are false witnesses!”

The Gaon’s students, including Rabbi Joshua who was also present, were shocked into silence. Fear and dread fell over the witnesses; trembling, they admitted that the husband’s relatives, who held a grudge against the wife, had bought their testimony and their souls. For money, they had uttered a false report against an innocent Jewish girl. When the witnesses had left the *beit-midrash*, Rabbi Joshua approached the Gaon.

“Teach me, O my Master: How could you tell that they were false witnesses?”

The Vilna Gaon answered: “I have already told you that I am neither a prophet nor the son of a prophet. But I do know the Mishnah. Didn’t *Rabbenu Hakadosh*¹⁸ teach us in his Mishnah:

How did they examine the witnesses? They brought them into the chamber...they kept the eldest of them, and said to him, “Tell us how you know....” Afterwards, they brought in the second one and examined him. If

¹⁸“Our Holy Rabbi,” i.e., Judah ha-Nasi (ca. 135-220); according to tradition, the redactor of the Mishnah.

their statements *were found to be* in agreement....¹⁹

At first glance, this is surprising. Why did Rabbenu Hakadosh, who arranged the Mishnah, and whom Maimonides considers ‘a precise speaker and more proficient than anyone else in the holy tongue,’ use the superfluous phrase, ‘if their words *were found to be* in agreement?’ He could have simply written, ‘if their words agreed, their testimony stood.’

“In fact,” the Gaon continued, “Rabbenu Hakadosh is teaching us an important lesson about human nature. It is a general principle that no two people speak in exactly the same manner. Whenever two people relate the same event, they will inevitably tell the story in their own words. What is important is that the essential facts of the story correlate; if so, there is reason to believe their story. But, if the two versions not only agree with regard to the facts, but are also told in exactly the same way, then there is reason to suspect that they made the story up, and spoke with one another beforehand, agreeing on just how to tell the story! This is why the Mishnah is so precise: ‘If their words *were found to be* in agreement.’ In other words, if after delving deeply into their testimony *we find it to be* in agreement, and feel that the two witnesses are telling one story, then we can rely on their testimony. But if *their words agreed*, both with respect to content and style, to the extent that there was no need for us to delve into the testimony at all, then we can be almost certain that the testimony is made-up.

“In this case,” the Gaon concluded, “I listened intently to the two witnesses’ testimony, given while they were separated. Upon hearing that they were not only in agreement with regard to the facts, but that each one had given me the exact same testimony with changing a single word, it became clear to me that they had rehearsed their testimony with each other in advance, and that they were lying. But in order to be sure, I began to scream that they were false witnesses. These liars were shocked by my

¹⁹M. Sanhedrin 3:6.

words, and were seized by trembling. They thought that the spirit of prophecy was coming out of my mouth, and so were quick to admit to their lying. But I arrived at the conclusion that they were not reliable based solely on our *Mishnah*.”

This sort of wisdom—to plumb the depths of the words of our earliest scholars with a supreme intelligence, seriousness, and assuredness; together with this sort of clear-sightedness—to look carefully at the ways of our world with a critical eye, in order to understand both the external and the internal, the intellectual and the spiritual, aspects of people’s lives; these, among others, are the qualities we require of the sages of Israel who will become members of the renewed Sanhedrin.

Chapter Six

I freely acknowledge: From the day on which I began publishing my essay on “The Renewal of the Sanhedrin in Our Renewed State,” I have been troubled by doubts: For whom do I write? On whose behalf? Am I not aware that the printed word, like the spoken word, has lost its value in recent years—that it no longer carries the same weight in the mind of the hearer or reader? I know that, when it comes to the written or spoken word, there have clearly been better days. In earlier times, the influence of the *darshanim*, *maggidim*,¹ and *mattifim*² was mighty. Through their utterances, they would conquer the heart. Those who heard them became excited and angry; they took great satisfaction—and important instruction—from their words.

In my youth, when I studied in the *yeshivot* of Lithuania, I recall once hearing the Kelmer Maggid³ preach to the congregation. Through his sermons, he was able to penetrate simple minds and stony hearts. When he called the people to task, calling curses down upon them, crying out with a loud voice that echoed with the cries of generations, shaking his head, his beard, his entire body—the people responded in kind: shaking, crying, tears flowing, eyes lifted heavenward, confessing from within their deep depression. The weeping did not cease when the Maggid stopped preaching, or when he left town—indeed, his cries did not dissipate even after years had

¹*darshan* and *maggid* are synonymous, and refer to Jewish preachers in the traditional mold. Some were attached to a particular community or synagogue, while others travelled from town to town, taking up a collection after they spoke.

²*mattif* also means preacher, but more specifically, a Jewish nationalist preacher. Ehud Luz, following Rabbi Mordecai Eliasberg, describes two major differences between the *mattif* and the *darshan* or *maggid*: “First, the *maggid* took his material from biblical and rabbinic texts, whereas the *mattif* relied on incidents drawn from Jewish history. Second, the thrust of the *maggid*’s message was to scorn the world and its vanities, whereas the *mattif* had to inspire his listeners to labor diligently and despise idleness. In particular, he had to ‘exalt agricultural labor and livestock raising over commerce, which had been the Jews’ mainstay throughout their Exile,’ since ‘our ancestors had always been farmers and shepherds’” (Ehud Luz, *Parallels Meet*, 107-8).

³Rabbi Moses Isaac Darshan (1828-1899). A harsh opponent of the *maskilim*, he used his charisma and his oratorical gifts to stem the tide of the Haskalah throughout the Russian Pale of Settlement (Luz, 16).

passed. Their echoes reverberated about the town; his melodies and his message continued to ring in the people's ears.

I recall that the written word made a much greater impact on the mind of the reader in those days as well. Every article in the newspaper captured the heart and soul. Each word written without self-aggrandizement or foreign influence would go straight to a person's innermost being⁴ and leave a lasting impression.

But times have changed. The written and spoken word these days barely makes an impact. We bring forth a word which has pierced and burned our very soul, like a white-hot spit—a word which we believe should be said out loud—but it makes no echo whatsoever. It remains an orphan. In fact, it sometimes happens that a word we speak or write makes exactly the wrong impression. It seems to me as if the living connection between the people and the written or spoken word has been lost. You write, you speak, your goal is to awaken the slumberers and set icy hearts aflame—and in the end it seems as though you're throwing words into empty space. No one is paying any attention. For this reason, I thought long and hard about whether to continue this essay. And yet, I write this chapter with a sense of satisfaction.

This week, I enjoyed a few hours of tranquility. I received several letters from near and far—from important rabbis, estimable Torah scholars, and “dear readers”—expressing their opinions on my proposal regarding “The Renewal of the Sanhedrin in Our Renewed State.” However, not all of them were in complete agreement with me. Among the writers were some who were completely against my proposal. In their opinion, the Sanhedrin will be reestablished *solely* by Elijah the Prophet, or by the Messianic King who will come after him. In the coming chapters, God willing, I hope to provide a halakhic response to their contentions.

⁴Lit. “penetrate by way of the fat that covers the entrails;” Lev 3:3.

Yet, in spite of the opposition, I was happy to discover that there are in fact people reading my essay in a serious and thoughtful manner. It is this fact that gives me a sense of satisfaction and tranquility. I know that people experience moments of inspiration; a great idea, with the potential to change the world, enters their mind in a flash. I believe that my idea to renew the Sanhedrin, which I conceived more than half a century ago, is such an idea. What is more, I believe that the time is ripe to realize the potential inherent in this idea. And yet, I am also aware that ideas such as these take time—perhaps a great deal of time—to be improved, refined, and finally realized.

Among these letters, which I hope to deal with in coming chapters, I came across one letter from a *rabbi* who “wishes to remain anonymous.” It is a serious, interesting letter. I believe it appropriate to reprint it here, verbatim (except for the exaggerated honorific titles). Afterwards, I will provide an immediate response. Below is the letter of the anonymous *rabbi*:

Sir! I have drunk deeply of your essay concerning “The Renewal of the Sanhedrin in our State.” It electrifies me and excites me greatly, and I hungrily devour your words. We have merited the attainment of *political*, territorial authority; it is an absolute necessity that we also attain *spiritual* authority. We must work shoulder-to-shoulder with our government on behalf of our nation and our renewed state. But this spiritual authority must be established in the form of a *Sanhedrin* which will unite the spiritual, Torah-true, traditional lifeblood of our living people. It seems to me that your proposal has kindled a religious fervor which whispers in the hearts of many who are concerned about the fate of Jewish tradition. I believe that the unified spiritual leadership—more specifically, the *Torah-true* leadership—which will result from a reestablished Sanhedrin in

Jerusalem will be of great assistance in slowly doing away with the ephemeral barriers which separate Jews around the world. It will bring them back to authentic, traditional Judaism—united in essence and practice. The Sanhedrin which will oversee the spiritual and religious affairs of the nation will exert great spiritual and moral influence on the State of Israel, and on the Jews of the Diaspora as well. For there is a certain magic in the name “Sanhedrin.” The mention of this name makes us long for our distant and glorious past. The Sanhedrin will more strongly unite us in pursuit of the great goal—the revival of the soul of our people, the strengthening of Israel’s Torah and the establishment of basic, authentic, Jewish law in the State of Israel.

Yes, you have revived me with your words—especially the last chapter, which dealt with the value of Torah-true, traditional Jewish law. I believe that any Jew whose heartstrings are tied to the Torah and the Tradition, any Jew with a feeling heart and a poet’s soul, will happily receive your proposal to renew the Sanhedrin. But I must ask: Why do you place such an emphasis on *civil law*, without so much as mentioning the importance of Jewish law as it pertains to *capital cases*? Are you of the opinion that we need to study the “theories of criminal law” advanced by foreign nations, given that we haven’t made use of our Jewish capital law for centuries? I will be grateful if you would see fit to dedicate a chapter of your important essay to my question. Please let us know your thinking on this subject: Will this Sanhedrin, which you *justifiably* call for, be able to try capital cases, or will it be limited to property cases?

Permit to express a few more thoughts with regard to your important proposal. I am aware that, in certain circles within the religious world, your proposal is met with disparagement and derision. The newspaper *ha-Kol*, which believes itself to be an Orthodox organ, has mocked your words.⁵ But this “Voice” is not the voice of Jacob, nor the voice of the Torah. We pay no heed to its “heavenly voice.”⁶ However, I am sad to see that even among my own rabbinical colleagues there are those who downplay or oppose your proposal to renew the Sanhedrin *in our time*. Some of them believe that this generation is unfit, and that the Torah does not give us the permission to renew the Sanhedrin in our own day. It would be appropriate if, in the chapters which follow, you would try to illuminate these matters from a Torah perspective, so as not to leave yourself open to opposition. I must conceal my name. I hope you will forgive me, but I am a *rabbi*.⁷

Hoping that you will see fit to honor me with a public response, I remain convinced by your suggestion.

A rabbi in Tel-Aviv who wishes
to remain anonymous

I never expected that my proposal concerning “The Renewal of the Sanhedrin in our Renewed State” would be received with complete agreement from all sides. I am aware that the “Maker of new things” is also the

⁵“The Voice,” daily of the Agudat Israel party.

⁶*uvevat-kol zo ein mashgihin kelal*, a reference to Sanhedrin 59a.

⁷*tislah la'avoni, ki rav ani*. A pun on Ps 25:11, which reads *tislah la'avoni, ki rav hu*, “pardon my iniquity, though it be great.”

“Warrior.”⁸ If my call for the renewal of the Sanhedrin kindled spirits within some circles, it certainly aroused immediate opposition in the hearts of others. I knew that short-sighted, small-minded people would at best respond with indifference, incomprehension, and dismissive silence—and perhaps even with anger. None of this should discourage anyone from thinking about or working on behalf of this idea. We must clearly, forcefully, and publicly elucidate the most important tasks which will fall to the renewed Sanhedrin. If this initial groundwork is done well; if we are diligent in our work of preparing people’s hearts for the task; if we avoid needlessly upsetting anyone; if we don’t chase after pyrrhic victories; if we keep our sights on the real goal, which is to save Judaism and elevate the stature of Torah—then there can be no doubt that the better elements among our opponents will come around to our proposal and assist us in our work. For it is obvious to anyone with eyes to see, ears to hear, and a heart to understand, that the commandment to appoint judges in Eretz Israel, in the form of a great Sanhedrin of seventy-one (*MT*, Hil. Sanhedrin 1:1-3) is *Toraitic in nature*⁹ and incumbent upon us whenever we dwell in the Land as an autonomous people. Furthermore, *this commandment is not conditional upon the arrival of the Messiah*, as Maimonides wrote in the *second edition* of his *Perush ha-Mishnah*.

I emphasize: *the second edition*. Many religious people have erred in thinking that, since Maimonides wrote the *Perush ha-Mishnah* at the dawn of his career, it should not be given too much weight. Specifically, they believe that we must be careful wherever we find contradictions between the *Perush ha-Mishnah* and the “*Yad Hazakah*.” Menahem Azariah da Fano¹⁰ has written:

⁸*oseh hadashot* and *ba'al milhamot* are two epithets for God, which appear consecutively in the *yotzer* or prayer of the morning liturgy.

⁹I.e., *deoraita*, as opposed to *derabbanan*, “of Rabbinic origin.”

¹⁰1548-1620.

(Maimonides') *Perush ha-Mishnah* was written in his youth, and we shouldn't pay attention to contradictions (between it and the Mishneh Torah) (Responsum 117).

But he, like many of the great rabbis, was not aware that Maimonides had endeavored to emend and correct the Commentary even after he wrote the Mishneh Torah. Maimonides was sent a *she'elah* concerning just such a contradiction between what he had written in his comment on Mishnah Shevi'it 10:5 and what he had codified in Hilkhhot Shemitah Veyovel 9:22. This is his reply:

What we wrote in our compendium (i.e., the Mishneh Torah) is undoubtedly correct. This is also what we have written in the Commentary to the Mishnah. You see a contradiction between the Commentary and the compendium because *you have the first edition, which was written before we had thoroughly explored the matter...now, having explored the matter thoroughly, we see that it is as we wrote in the compendium. You should know that there are many similar instance in the edition of the Commentary in your possession, in which we have followed after some great scholar, but later the matter became clearer to us and we have been persuaded by the arguments against his opinions. I make you aware of this.*¹¹

This is just what happened with regard to the question of the Sanhedrin. Many Jewish sages maintained that Maimonides' change in thinking is reflected in the different opinions he expresses in the Mishneh Torah¹² and the *Perush ha-Mishnah*.¹³ Despite all their efforts to introduce a forced contradiction into Maimonides' thinking, I have succeeded in obtaining a copy of the *Perush ha-Mishnah*, Seder Nezikin and Kedoshim, which was

¹¹[Responsa of Maimonides, ed. Friedman, #240. Also included there is a comment by Rabbi Abraham, Maimonides' son.] In the portion of Maimonides' responsum which Maimon omits, he gives the reason for his previous error: "We followed the interpretation of the author of *Sefer Hadinim*, Rabbi Hefetz, who was in error. The fact that we followed his understanding was an error on our part, due to the fact that we had not examined the matter closely enough. But once we had examined the matter closely, the interpretation which we codified [in the Mishneh Torah] became clear to us."

¹²*MT*, Hil. Sanhedrin 4:11.

¹³Sanhedrin, cp. 1.

printed in Venice between 1520-1526. In the margins are *manuscript* comments, corrections, and additions of Rabbi Bezalel Ashkenazi (author of *Shitah Mekubetzet*).¹⁴ It is clear that these comments, corrections, and additions are based on *Maimonides' later edition*; commenting on chapter ten of Sanhedrin, the fourth of the thirteen principles of faith, the following addition is found:

Know that the foundation of our Torah is the creation of the world *ex nihilo*, as we have explained in the Guide.

Since Maimonides wrote the Guide of the Perplexed in his old age, after he had completed the Mishneh Torah, this (among other things) proves clearly that Rabbi Bezalel Ashkenazi's additions and corrections were made on the basis of the *later edition* of the Commentary to the Mishnah.

What follows is from the Commentary to the Mishnah, Sanhedrin chapter one:

It seems to me that, if there would be complete agreement among the Sages and scholars to take a certain man from within the yeshiva and place him at the head—provided that this occurred in Eretz Israel, as we have explained—his appointment would hold good, he would be ordained, and could then ordain whomever he wished. If you hold otherwise, you could never again have a Supreme Court, since all of its members must, in any event, be ordained. The Holy One, blessed be He promised that it (i.e., the Supreme Court) would return, as Scripture states:¹⁵ “I will restore your judges as of old, and your counselors as of yore. After that you shall be called City of Righteousness, Faithful City.”¹⁶

This is the *manuscript* addition to these words:

If you should say that the Messiah will appoint them, even though they are

¹⁴Bezalel Ashkenazi (c. 1520-1591/4), a Jerusalem-born halakhist. Ashkenazi was a leader of the rabbis of Egypt, and later Jerusalem. He was an active community leader, and also took great interest in preserving Rabbinic and halakhic literature. His *Shitah Mekubetzet* preserves the writings of many of the *geonim* and *rishonim*.

¹⁵Is 1:26.

¹⁶Sanhedrin, cp. 1.

not ordained, *this is falsehood*. For we have already explained in the introduction to our book that the Messiah will not add or subtract anything from either the Written or Oral Torah.¹⁷ I hold that the Sanhedrin will be restored before the coming of the Messiah, and that it will be a sign of his arrival, as Scripture states: “I will restore your judges as of old, and your counselors as of yore. After that you shall be called City of Righteousness, Faithful City.”

וירחק לי כי כשתהיה הסכמה מכל החכמים ויה
 והתלמידים להקדים עליהם חיים מן הישיבה וישימו אותנו לראש ו
 וכלבר שיהיה זה בארץ ישראל כמו שזכרנו הנה החיים הנהח תתקדם
 לו הישיב ויהיה סמוך ויסמוך הוא אחר בן מי שיצא שחם לא תחמר
 כן חי חפשי שתמנח בית ריון הגדול לעולם לפי שנצטרך שיהיה כל חי
 מהם סמוך על כל פנים והקדמה יעד שישובו כמו שנאמר ואשיבה ס
 שופנד כבראסונה ויועיד ככתחלה אחרי כן יקרא לך עיר הנדק

ואם תשאר שהחיים יחזקו אותם ואפי' יהיו
 אינם סמוכים ית' שחר כי כבר ביארנו בהקדמה
 שפרטנו כי החיים לא יאומרו בתורה ולא יגרעו
 בתורה ולא כפי' וזהו שחם כי הסנהדרים
 יהיו אולם ביאת החיים ויהיה קוץ הארץ
 על אחת ואשיבה שופנד זכ' ואחרי' יקרא
 לך עיר הנדק

From *Perush ha-Mishnah*, Orders Nezikin and Kodashim, ed. Venice (1520-1526), with marginal notes in Bezalel Ashkenazi's hand.¹⁸

It is clear beyond a shadow of a doubt that Maimonides maintained his opinion that the Sanhedrin would be restored before the arrival of the Messiah—“provided that this occurred in Eretz Israel”—even after he had written the *Mishneh Torah* and *Guide of the Perplexed*.¹⁹ *And now that we have succeeded in establishing the State of Israel and gaining complete independence in our own Land, we may not relieve ourselves of the*

¹⁷i.e., the Messiah is bound to follow the *halakhah*.

¹⁸Maimon includes this reproduction in the text, indicating that he attached great importance to it.

¹⁹A great deal rests on Maimon's ability to prove that Maimonides' “final word” on the matter was unqualified support for the idea of renewing *semikhah*. As Katz notes (*Mahloket ha-Semikhah*, p. 41, n. 107), in his introduction to the *Guide*, Maimonides himself maintains that when an author expresses differing ideas in two separate places, we must discover which one he held last (*Guide*, ed. Pines p. 17—19).

responsibility to perform the positive commandment to appoint judges in the form of a Sanhedrin. We should remember the words of one of the early Sages, the author of the *Sefer ha-hinukh*²⁰ who concludes his lengthy explanation of the command to appoint judges as follows: “Any community which is fit to establish a court and does not has forsaken this positive commandment. Their punishment is great, because this commandment is an vital aspect of the fulfillment of the Torah.”²¹

We will return to this matter, God willing, in the chapters ahead when we speak about the controversy between Rabbi Jacob Berab and Rabbi Levi Ibn Habib.²² We will see that many of the later sages, *completely unaware of the second edition of the Commentary to the Mishnah*, engaged in *pilpul* over Maimonides’ words, futilely attempting to prove that subsequent to writing the Commentary he changed his mind and felt that “the matter required decision.” For now, I feel obliged to respond to the anonymous rabbi’s surprise at the fact that I had not included capital cases among the tasks of the renewed Sanhedrin. I must also disabuse anyone of the notion that, when it comes to capital cases, we need to turn to the laws of other nations, which are superior to Jewish law.

²⁰“Book of Instruction.” This work, generally attributed to Aharon ha-Levi of Barcelona (13th c.), discusses each of the commandments in the Torah. It is arranged by weekly Torah portion, and lists first the positive and then the negative commands. For each commandment, the author examines the basis of the commandment, its “roots” (i.e., rationale), specific rules related to its observance, and its applicability.

²¹*Sefer Ha-hinukh*, positive commandment 491.

²²Chapter 11.

Chapter Seven

When I speak about “The Renewal of the Sanhedrin,” I add an important qualification: “In Our Renewed State.” In my opinion, the political authority must not only sit alongside the supreme religious power, but they must truly be wedded to one another. And anyone who has the slightest sense of authentic, traditional Judaism, who has a sense of pure idealism and a spark of ability—anyone who understands the freshness and vitality of Torah—is obligated to work, with all his heart and soul, to realize this goal. I believe with perfect faith that religious-nationalist forces like these are still to be found. Anyone with his finger on the pulse of the nation can sense that “Israel is no widower,” that there is still hope for the Jews. There are yet among us important, influential people. However, they lie dormant and scattered, coming to life and exercising their influence only at certain moments in the service of some cause or another. We need to awaken these dormant forces, and gather them together *here*, in our renewed state. It is from among them that the members of the Sanhedrin will be selected. Their pious devotion and their understanding of the national genius of our people—expressed in Torah and its laws—will assist them in carrying out many important tasks on behalf of the *spiritual life* of the nation with that same urgency and forcefulness. Their efforts will cause Torah Judaism to burst forth and flower once again.¹

The principle tasks of the renewed Sanhedrin do not relate at all to *capital cases*. Its task, in my opinion, is not to impose the *death* penalty; rather it must bring Torah Judaism back to *life*, to strengthen its influence. It must do this *not by coercing, imposing fines and penalties; but rather by*

¹Perhaps Maimon is holding out an olive branch to the *gedolei hador* who live in the Diaspora. In the early days of the state, Orthodox rabbis in America were outspoken in their anger at the state of Judaism in Israel. They mounted campaigns focused on certain issues, and tried to dictate policy to the sovereign state. “Come here,” Maimon seems to be saying, “and your opinions will be valued; you will even find a place in the renewed Sanhedrin.” The implied corollary: “If you remain in the Diaspora, keep your opinions to yourself.”

unstinting explanations, broad and deep; by studying and teaching; by revealing all the beauty, the social justice, the holiness, and the glory of God's Torah, both Written and Oral. As with monetary cases, so too with capital cases—we do not need to rely on the “righteousness” or “sensibility” of foreign legal systems. Professor Jhering, in his book *The Spirit of Roman Law*,² acknowledges that *the Sages of the Talmud, more than anyone else in their time, succeeding in penetrating the depths of the law.* Who are we to disagree? We, along with everyone who places Torah at the center of his being, are certain that our Sages did not rely only on their deep wisdom or broad intelligence to arrive at justice. All of their rulings, in the fields of civil and capital law, are based on our divine Torah—for “Justice is the Lord’s.”³ It is with this in mind that I call for the renewal of the Sanhedrin, whose members must not only *know* the Torah, but must *believe*, with a strong inner conviction, that it and its statutes are *divine*.

Anyone who has both this perfect faith and also a deep knowledge of the intricacies of capital cases in Jewish law will acknowledge two things. First, there is a deep sensibility and wisdom inherent in the details of Jewish capital law; these details shed light on some hard-to-understand matters. But there is also—as is befitting an area which has an impact on human life—a sense of awe, fear, and trembling which has *no parallel in foreign legal systems*. Consider this awe-inspiring saying:

A judge should always feel as if he has a sword resting on his neck and the gates of Hell open beneath him. He should remember who he is judging and *before Whom* he judges, and Who will punish him if he departs from the truth (M. Sanhedrin 7:1; MT, Hil. Sanhedrin 23:8).

²Rudolf von Jhering (1818-1892), German legal scholar. He emphasized the social and psychological aspects of the judicial process, while ridiculing “concept jurisprudence” and the strictly logical, mechanical decision of cases. The work to which Maimon refers, *Geist des römischen rechts*, was published in four volumes between 1852 and 1865.

³Deut 1:17.

Such a dire warning to judges is not found in any other legal system. In Jewish law, judges about to deliberate in a capital case “would limit their intake of food and would not drink any wine the entire day” (Sanhedrin 40a; *MT*, Hil. Sanhedrin 12:3). Furthermore, members of the Sanhedrin were forbidden to eat during the day on which a death sentence was carried out (see Sanhedrin 63a). All of this shows, in stark relief, the essential difference between Jewish and foreign law, especially as it pertains to capital crimes.

For “In His image did God make man” (Gen 9:6). This is a profound and fundamental idea which is expressed only in God’s Torah—*Israel’s Torah*—from the very creation of humanity (see Gen 1:26). The idea that humanity was created in God’s image (and not vice versa!) is a product of Israelite faith. It awakens both self-respect and respect for others. This same respect for life must be extended even to the undesirable, the poor, and the disadvantaged.

When two litigants come before you, one decent and the other wicked, you must not think: “Since this one is wicked, I can assume that he will lie, while the other one can be expected to tell the truth. Therefore I will tilt the case to the wicked one’s disadvantage.” Concerning this, Scripture states, “You shall not subvert the rights of the impoverished in their disputes.” Even though he is impoverished with regard to the commandments he has kept, do not subvert justice in his case (*MT*, Hil. Sanhedrin 20:5).

Within ancient cultures—even the most enlightened, like the Greeks—it was not considered a sin for parents to discard their children by throwing them to wild animals or tossing them into the sea. The hills echoed with the sounds of screaming children, the rivers carried away the corpses of babies who had become a burden to their parents. They did not feel guilty for performing this murderous act, and the judges did not see fit to punish them for their sins. *Nowadays*, this sort of murder causes all people to tremble. *Nowadays*, we bring the full force of the law to bear on murderers of this sort. But the Torah of Israel, more than 3,050 years ago, was the first to proclaim

the law: *Thou shalt not murder*. Not even a child, not even an infant, *not even a fetus in its mother's womb—Thou shalt not murder!*

“Whoever sheds the blood of a person within a person”—who is a “person within a person?” The fetus in its mother’s womb. Even someone who kills it will have his blood shed (see Sanhedrin 57b).⁴

“Every creature that lives shall be yours to eat; as with the green grasses, I give you all these” (Gen 9:3). Humans are given permission to kill any animal in order to eat its flesh, “But for your own life-blood I will require a reckoning: *I will require it of every beast*; of man, too, will I require a reckoning for human life, of every man for that of his fellow man” (v. 5). God does not only require a reckoning when the killer is a man who has had the “beast within him” awakened; reckoning is also required when the killer is in fact a *beast* which man is permitted to kill. If a beast kills a man, God requires that its blood be shed—for “In His image did God make man.” This teaching is the bedrock of God’s Torah, and from this bedrock was hewn the cornerstone of Jewish law as it pertains to capital cases.

Rabbi Akiva, one of the Fathers of the Halakhah in the period after the destruction of the Temple, used to say: “Precious is humanity, which was made in God’s image; even more precious is it that humanity was made aware of this fact, as Scripture states: ‘In His image did God make man’” (M. Avot 3:14). He would also interpret as follows:

Anyone who sheds blood is considered as one who takes away from God’s form. How so? It is written, “Whosoever sheds the blood of man, by man shall his blood be shed,” because “in His image did God make man” (GenR 34).

His high regard for the value of human life led him to completely oppose the

⁴In order to arrive at this understanding, the *midrash* “repunctuates” the verse. Instead of “whosoever sheds the blood of a person—by a person (בְּאִשָּׁר) shall his blood be shed,” it reads, “whosoever sheds the blood of a person within a person (בְּאִשָּׁר)—his blood shall be shed.” The preposition “ב-” can be understood as both “by” and “within,” making this *midrash* possible.

death penalty. He said that, had he served on a Sanhedrin, it would never have executed a single person (see Makkot 7a). Yet even those who were prepared to impose the death penalty would say that a Sanhedrin which sent one person to his death in seven years, or even seventy, was “murderous” court (ibid.). *According to this Talmudic view, the judge who rushes to condemn in a capital case is considered a murderer himself.*

Because of this, Jewish law treats capital cases completely different from all other cases procedurally. While monetary disputes and cases involving damages were tried by a court of three, capital cases could only be tried before a court of twenty-three (see M. Sanhedrin 1:1). Jewish sensibility holds that “the Holy One, blessed be He is sad when the blood of the *guilty* is spilled, and all the more so when the blood of the *innocent* is spilled” (Hagigah 15b); it is therefore inappropriate to try a capital case before an ordinary court of three. According to Jewish law, any court of three “must be composed of men who each possess the following seven characteristics: wisdom, humility, reverence, a hatred of material wealth, a love of the truth, a love of all living things, and a good reputation” (*MT Hil. Sanhedrin 2:7*). Yet even these seven qualities do not qualify one to judge capital cases. They must be tried before a tribunal of at least twenty-three, whose members must be (in addition to the above characteristics) “wise and understanding men, outstanding in their knowledge of Torah and in possession of far-reaching knowledge” (*MT Hil. Sanhedrin 2:1*). Only such an assembly may judge capital cases. And there is a further stipulation with regard to the judges in a capital case:

We do not appoint a very old man or a eunuch, because they are heartless people.

Similarly, we do not appoint a childless man, because the judges should be merciful (*MT Hil. Sanhedrin 2:3*).

Jewish law placed great value in human life, and for this reason did not see fit to make a person’s fate dependent on people like those mentioned above

who, though possessing all the requisite qualities, tended to be heartless. Rather, judges in capital cases should be merciful people who understand the value of human life and the pain of human suffering.

It is worthwhile to mention here one aspect of *our law* whose essential justice eludes the understanding not only of some foreigners, but also of many of *our own people*. I refer to the law set forth by the Sages of the Talmud: “If a Sanhedrin is unanimous in finding a person guilty of a capital crime, he is set free” (Sanhedrin 17a). Maimonides codified this law as follows:

If in trying a capital case all the members of the Sanhedrin forthwith vote for conviction, the accused is acquitted. Only when some cast about for arguments in his favor and are outvoted by those who are for conviction is the accused put to death (*MT Hil. Sanhedrin 9:1*).

This law shows us the *cautiousness* of Jewish law in all its splendor and glory—especially when a human life hangs in the balance. Maimonides explains the rationale for this law:

It is known that arguments which take place between opposing sides, as well as the careful examination and study of facts, are what bring the truth to light and make it clear without a doubt. Doubts, comments, and questions go a long way toward bringing one to the desired end. The Philosopher himself said that doubts make men wise.⁵ Anyone who seeks the truth through any scripture or science should understand that doubts cannot be resolved except through debate designed to reach the truth. Those who mock the teaching of our Sages of Blessed Memory—who state that if a Sanhedrin is unanimous in its decision to execute someone, that person is set free, but if there is a minority which voted to acquit, then the person is executed—fail to grasp this point. If no faction has taken the opposing point of view and raised doubts

⁵“The Philosopher” is most likely Aristotle. In *Metaphysics*, Book II, he wrote: “It is just that we should be grateful, not only to those with whose views we may agree, but also to those who have expressed more superficial views; for these also contributed something, by developing before us the powers of thought. It is true that if there had been no Timotheus we should have been without much of our lyric poetry; but if there had been no Phrynus there would have been no Timotheus. The same holds good of those who have expressed views about the truth; for from some thinkers we have inherited certain opinions, while the others have been responsible for the appearance of the former.”

and questions, then it is possible that they have not brought out the truth. They may have all erred together.⁶

This law seems strange to simple judges, both Jewish and non-Jewish. Yet it attests to our claim that Jewish law has recognizes the value of every life created in God's image, and is therefore extremely careful and deliberate when a human life is on the line. Only after intensive examination of the facts on both sides, and the bringing of arguments by those who would acquit and those who would convict, is a verdict announced.

A guiding principle in Israel's Torah, and in Jewish law, states: "The Holy One, blessed be He, does not consider someone's evil intentions as actions" (Kiddushin 40a). *No one was ever executed by a Jewish court for thinking about killing another person* (the same cannot be said of the "more enlightened" Gentile courts, which put people to death for thinking about killing someone, or desiring to kill someone). According to Jewish law, one who has not killed is not tried as a murderer, even if he is found with all sorts of destructive weapons in his possession and it is clear that he intends to use these implements of death to commit murder. Moreover, Jewish law clearly states:

One who intends to kill one person but instead kills another may not be sentenced to death by the court (*MT*, Hil. Rotzeah 4:1).

The person in question not only prepared to use a deadly weapon; he did in fact commit murder. However, because he intended to kill one person, but in fact (inadvertently) killed someone different—Jewish law does not subject him to a capital trial!

And furthermore:

Witnesses saw a person pursuing another, intending to kill him, with a sword

⁶[I have found this passage in its entirety in *Midrash Shemuel* on Avot 5:17, where the passage is attributed to Maimonides. See also I.J. Reines' *Orah Vesimchah*, Part 6, cp. 7.] In printed editions of *Midrash Shemuel*, the pertinent mishnah ("Any argument for the sake of heaven...") is numbered 5:19.

in his hand. They said to him: "Torah states, 'Whosoever spills the blood of man, his blood will be spilt.'" He answered them: "In spite of that..." They turned away, and when they looked again the man was dying and the sword was in the hand of the killer, dripping with blood. Shall I assume that he is to be found liable? Scripture states (Exod. 23:7): "Do not bring death upon those who are innocent and in the right." (Mekhilta, *Mishpatim* 20; also, Yalkut Shim'oni ad loc.).

The judges in this case had good reason to believe that the man who pursued the victim was in fact the murderer. The witnesses testified that they had given him a warning, and that he had said, "in spite of that..." They found him standing over his still-quivering victim, holding a blood-stained sword (a Gentile court would certainly sentence a man to death based on this evidence!). *And yet, Jewish law states that unless the witnesses actually see one person kill another, the suspect is believed to be innocent and in the right.* Any court which would condemn him death would itself be considered murderous.

Maimonides' explanation of this law penetrates to the very depths of the heart:

Do not be put off or astounded by this law. For the realm of the possible includes those things which are highly probable, those which are highly unlikely, and everything in between. There is a broad spectrum of possibility. Were the Torah to permit judges to decide capital cases based on what is highly probable and almost certain (such as the case described above), it would set the judges on a "slippery slope." They would next base a decision on something a little bit less likely, or perhaps even somewhat unlikely, until they were executing people based solely on their own conjecture and imagination. Therefore, the Blessed One closed the doors on this sort of decision, and said that guilt could only be established if the witnesses were absolutely certain, beyond a shadow of a doubt, that the accused committed the crime. If our practice is to acquit when there is good reason to presume guilt (but no certainty), we might set free a guilty party; but if our practice is to convict on the basis of our presumptions, *we might someday execute an innocent person And it is better to set free a thousand*

criminals than to wrongly execute a single person (Sefer ha-mitzvot, Positive Commandment 290).

This is the judgement of the Torah of God, who “issued His commands to Jacob, His statutes...to Israel. He did not do so for any other nation; of such rules they know nothing!”⁷

It is for precisely this reason—the extra care which must be taken when adjudicating such serious crimes—that *we do not even consider the possibility that the reestablished Sanhedrin will have any authority whatsoever to judge capital cases*. An important rule states: “Capital cases are only tried in the presence of the Temple—namely, when the Sanhedrin is in the Chamber of Hewn Stone” (*MT*, Hil. Sanhedrin 14:11). There, in that chamber within the Temple, in the place where the Divine Presence rests, one could hope that the members of the Sanhedrin would not stumble on a matter of *halakhah* and shed innocent blood. For this reason, “forty years before the destruction of the Second Temple, Israel stopped trying capital cases. Because, though the Temple was still standing, the Sanhedrin had been driven out and no longer met in their site in the Temple (*ibid.*, *halakhah* 13).

Because it will not yet be meeting in the Chamber of Hewn Stone, the Sanhedrin whose renewal we hope for in the State of Israel will have no power to judge capital cases. It will, however, have many important tasks. It will enlarge the Torah and strengthen our State, *without resorting to any compulsion or coercion*. It will accomplish this through its wisdom, intelligence, and understanding. *We must all understand that the fortunes of Torah Judaism can only rise with the renewal of the Sanhedrin.*

Please understand, Anonymous Rabbi, that this is primarily a matter of the heart. Those who do not feel it in their hearts will not be convinced by any responsum or rebuke. Of course we need to study in order to ascertain

⁷Ps 147:19-20.

the correct path which will bring us to our desired end of a renewed Sanhedrin. We need to study—but not too deeply. My suggestion depends primarily on emotions, but it cannot be made a reality without a knowledge and love of Torah. Those who do not sense the value of my suggestion need to open up their hearts and their minds, so they will both understand it and feel it. The fault lies not with the idea, but with those who cannot understand it. They do not know that, throughout Jewish history, whenever the *State* has been renewed, we have endeavored to return the crown of *Torah* to its former glory. This is what Ezra did, and the Men of the Great Assembly—and the *Hasmoneans* walked in their path as well.

Chapter Eight

“For the name ‘Sanhedrin’ I proclaim, give glory—to the Hasmoneans!”¹

It was the Hasmoneans who restored the crown to its former place. Once the period of the Great Assembly had ended and their influence had waned, the Hasmoneans—Mattathias and his sons and grandsons—were the ones who reestablished the Supreme Court of seventy-one as a supreme influential force; this court later became known by the name: *Sanhedrin*.

However, this supreme influential force which was *reestablished* by the Hasmoneans was not a new invention. From the very moment that Israel came into the world, after they received the Torah, there were already seventy men, “wise, discerning and known to the tribes,”² leading them, with Moses, the teacher of Israel at their head. They judged and deliberated on behalf of the people, dispensing true justice and fair verdicts. When we, through these chapters, elevate this fact from the depths, when we uncover the cipher which allows us to read the “human story”³ engraved upon the pyramids of history, we do not seek to create something new. Rather, we refer to institutions which existed in the past, and which we are *obligated* to reestablish now. This obligation to “renew the Sanhedrin in our renewed State” cannot be nullified by shoulder-shrugging, by dismissive laughter, or by heated opposition from any quarter. The idea of renewing the Sanhedrin is the thread which once again establishes a connection between the Jews and their Tradition and Homeland, for it allows them once again to be inspired by the spirit of their collective heart, the heart of the entire people.

The Hasmoneans sensed this fact during the earliest years of their War of Independence—in those days.

¹After Deut 32:3.

²Deut 1:13.

³*cheret ha'enosh*, Is 8:1.

The *spiritual* influence of the Men of the Great Assembly and their students stretched for approximately two hundred years; their seedlings burst forth in all their glory—in the days of the Hasmoneans.

Yet when we, in recent times, attempt to look back on the Hasmonean period, from which we are separated by thousands of years, we see only mighty towers, skyscrapers at a distance; the actual brickwork—those fine lines—is hidden from us by the darkness of that same great distance. We see only the *general* trends, a grandiose and magical picture. We fail to see the precise lines. We need to muster all of our powers of observation, to use powerful “spiritual lenses” in order to penetrate that faraway time, and to understand the details to which we have paid but scant attention.

The Hasmonean period is portrayed as a wondrous historical phenomenon, a sudden occurrence, and, we might say: a *national, religious, and revolutionary* phenomenon. The precious few who came to Eretz Israel during that period are represented in a magical, story-like manner. Even the small ones, the dark, depressed, traitorous Hellenizers, whose name stands as a disgrace in the people’s history—even they unintentionally come to mind when we try to delve into that distant period. Yet many details, great and small, various occurrences both apparent and hidden, which played some greater or lesser role in weaving the fabric of that historical phenomenon have been swallowed by the depths of time; they have been blotted out and we cannot discern them.

The Great Salvation, in the form of various providential saving acts, appears to us in all its glory. But those acts themselves, their development, appear to us (if at all) only as if through a thick, dark cloud.

Many years later we observe that generation, and see that they were divided into two extremist parties who waged an excessively zealous and hateful war with each other. One party appears to us in all its glory and splendor, in the form of a *religious faction*, faithful to the people and its

Tradition. While its members are not a *majority* of the Jewish settlement in Eretz Israel, they are nevertheless the “humble of the land,”⁴ who “lead many to righteousness” and “shine like the stars.”⁵ Opposing them, there bursts forth as if from deepest darkness a party of “covenant-breakers,”⁶ of assimilationist–Hellenizers who were prepared to sell out their people and assist her persecutors.

We stand dumbstruck before this divided portrait, and we ask ourselves: Is it really possible that, on the holy soil of Eretz Israel, beneath its blue skies which “resemble the throne of glory,” amidst its longed-for air, an air alive with spirit,⁷ a group of “children who refuse to heed,”⁸ of traitors and assimilationists, could arise and thrive? Is it believable that a *large number of Jews, settled on the Soil of Israel* could become “covenant-breakers,” defilers of the nation’s holy places, going so far as to sacrifice pigs on the altar and place a human image in the Sanctuary?

Yet the chronicles of that period verify this sad truth. What remains is to search out the factors which led to such a sad situation, to pay careful attention to the *unfolding* of those events, in order to truly understand them, and to understand their consequences as they appear to us.

However, in order to clearly understand those factors and events, we must *briefly* review the history of the first *olim* from Babylon, the grandparents of the Hasmoneans—and we must also *introduce one new idea*.

⁴Zeph 2:3. “Seek the Lord, All you humble of the land, Who have fulfilled His law; Seek righteousness, Seek humility. Perhaps you will find shelter on the day of the Lord’s anger.

⁵Dan 12:3.

⁶Dan 11:32.

⁷*avir shel hayyei-neshamot*. Maimon inverts the phrase “*nishmat hayyim*,” “breath of life” (Gen 2:7).

⁸Is 30:9.

We know that, after the Cyrus Declaration:⁹ “Anyone of you of all His people—may his God be with him, and let him go up to Jerusalem that is in Judah”—only a small segment of the tens of thousands of exiled Jews left the land of its Exile and returned to the Land of its Ancestors. We, *in the present*, who know all about the “lovingkindness of nations”¹⁰ and the value which should be given to declarations and promises made by strangers to Israel, can understand just why the *aliyah* ceased *in those days*. Various peoples surrounded the Hebrew Yishuv which was reestablished by Zerubbabel and Joshua and by Ezra and Nehemiah: the Ashdodites, the Ammonites, the Edomites, and the *Arabs* besieged it from all sides, encroached upon its borders,¹¹ and set stumbling-blocks in the path of its development. Additionally, officials in the Persian government who were stationed in *Jerusalem* and received their instructions from above—from the “Commissioner” or “satraps” of the province of “Beyond the River”—did not permit the New Yishuv to develop and expand.

There is also one ancient source to which *historians have not paid attention*. Based on it, it appears that Cyrus, who had proclaimed, “Anyone of you of all His people—may his God be with him, and let him go up,” nullified his own declaration and *issued a decree cutting off aliyah* (just like the “Mandatory Government” of our time, which has now gone to its eternal rest— “There is nothing new!”¹²). Below is the *midrash*:

⁹*hatzharat koresh*. In this paragraph, Maimon emphasizes the parallels between the period in which the second commonwealth struck root and the period of the British Mandate. He achieves this goal both by overt reference (below), and by subtle word choice. Thus, *hatzharat koresh*, which echoes *hatzharat balfour*. Note also the preponderance of words like *aliyah*, *yishuv ivri*, and *netziv* (“governor,” but also “Commissioner,” the title which Herbert Samuel held during the Mandate). We might even suggest that *ever nahara*, translated in the Bible as “Beyond the River,” be rendered “Transjordan.”

¹⁰*hesed leumim*, from Prov 14:34. Baba Batra 10b: “Even all the acts of charity and lovingkindness that the peoples of the world perform are deemed a sin for them, because they perform such acts only to enhance their greatness.

¹¹*dacheku et raglav*, after Berakhot 43b.

¹²Eccles 1:9.

Cyrus went walking about the city, and saw that the city was deserted. He said: “Why is this town so deserted? Where are the goldsmiths? Where are the silversmiths?” They answered him: Didn’t you issue a decree, telling all the Jews to go forth and build the Temple? The goldsmiths and the silversmiths are among those who went to build the Temple.” Right then, he decreed: “*Those who have already crossed the Euphrates may stay across it; those who haven’t crossed it—may not cross.*”¹³

There is certainly a kernel of history in this midrashic tradition. The “accusation” which was written up at that time against the inhabitants of Judea and Jerusalem¹⁴ seems to have influenced the *central government* to change its policy, *and it closed the doors of Eretz Israel in the face of New Olim*. Therefore, the New Yishuv in Eretz Israel remained weak and withered for generations, thanks to the “promises” of those “whose mouths speak lies.”¹⁵

Despite their numbers, this small *yishuv* would have nevertheless been considered a mighty, unified force,¹⁶ had they all been “on the same page.”¹⁷ However, to the despair of the leaders of that pioneering aliyah, the *olim* were united *only* by the *national* ideal of a *Return to Zion*. With respect to *cultural* and *spiritual* outlooks, they were divided into two distinct streams, with completely different programs. One stream absorbed the sublime ethical teachings of its generation’s sages and prophets; the other stream, while perhaps *nationalistic* in spirit—they were, after all, *olim* and builders—had nevertheless been influenced by foreign culture. Among the members of the latter stream were many of the “officers and prefects,” the “enlightened” elements within the nation who “took the lead,” going so far as

¹³CantR 5:5, on the verse “I arose to open to my beloved.”

¹⁴Ezra 4:6.

¹⁵Ps 144:8.

¹⁶Lit. “an entire world,” after M. Sanhedrin 4:5.

¹⁷Lit. “one piece of parchment.” Menahot 34b.

to intermarry.¹⁸

Fortunately for the nation, there were leaders with the fortitude to overcome these foreign and domestic obstacles. *Ezra and Nehemiah* sensed the impending danger to the nation and the land brought on by the evil spirit of these assimilationist “nationalists.” They saw that the nation’s strength grew out of its authenticity and its ability to remain a “people apart,”¹⁹ a united *people*, specially treasured and keeping to the spirit of the nation and its Torah. Therefore, they wielded all their influence and power in an effort to distance the nation from foreign influence, and to separate the returnees from the foreigners. To this end, they attempted to strengthen the hand of religious Judaism by creating a supreme religious organization in the form of the Great Assembly. Its members enacted not only “blessings and prayers” designed to implant within us a love of Torah and Eretz Israel, but also “sanctifications and separations,” which give us the knowledge “to distinguish between sacred and profane, between light and darkness, between Israel and the nations.”²⁰ From the term “terrestrial court”²¹ by which the midrashic literature refers to the Great Assembly and from all that we have written about it in the preceding chapters, it is clear that this “Assembly” was in fact a supreme judicial council, similar to the “Great Sanhedrin” established later by the Hasmoneans. It, too, used all of its influence in order to erect barriers and boundaries between us and the rest of the nations of the world. The “Great Assembly” continued to exist for some time, until *Simon the Just*, who was among the “last of the Great Assembly.”²² With his death, the “Great Assembly” went out of existence, the supreme judicial council disintegrated,

¹⁸Ezra 9:2.

¹⁹Num 23:9.

²⁰Berakhot 33a.

²¹i.e., terrestrial court, in contrast to the celestial court. Maimon’s point is that the word “court” is used to refer to the Great Assembly.

²²M. Avot 1:2.

and the glory of religious Judaism began to sink appallingly.²³ The “covenant-breakers” once again raised their heads, and when the Land was conquered by the wicked Greek kingdom, the regime, with its cheap culture, helped the assimilationists rise to power. Joseph son of Tobiah, nephew of the High Priest Onias, who had ingratiated himself with the Ptolemaic dynasty in Egypt and risen to the position of chief tax-collector in Judea, used his influence to strengthen Hellenistic culture among his fellow Jews. His sons who followed him—the “Tobiads”—established the *Hellenistic* party. Spawned of backsliding and anarchy, the Hellenists craved the caprice of Greek culture. Their existence led to the establishment of an extremist party known as the *Separatists*.²⁴ This party sought to separate itself completely from life; it forbade even those things which were permitted it.

The common people moved back and forth from party to party—and the “wicked Greek kingdom” sought to take advantage of the situation by wiping Israel out as a nation²⁵ and despising the Rock of its Salvation.²⁶

But “a great miracle happened there.” From the deep darkness there appeared an old man whose face shone with the wisdom of a priest, whose muscles held the strength of a soldier, and whose voice—the voice of a lion—proclaimed, “Whoever is for the Lord, and for the people, come here!”²⁷

A very few trembled at his call, and became heroes, raising the banner of revolt. They revolted against the *external* enemy who had defiled the holiness of the nation and the Land, and also against the *internal* enemy, who disdained the homage due a mother²⁸ and the tradition of the fathers.

²³*Iaredet pila'im*, Lam 1:9.

²⁴*nazirim*.

²⁵After Ps 83:5.

²⁶*Tzur Yeshu'ato*, after the Hanukkah hymn *Ma'oz Tzur Yeshu'ati*.

²⁷After Exod 32:26, Moses' call to the people after the building of the golden calf. Maimon adds the phrase “for the people.”

²⁸After Prov 30:16.

For the war was not only against a foreign enemy, but also against various domestic parties, on the right and the left.

From the *right*, there were thousands of people who cast a suspicious eye toward Mattathias the *elder* and his *young* sons who had gathered together to raise the banner of the nation and to call it to freedom, liberty and salvation. While these suspicious people were among the “*hasidim*”²⁹ who were prepared to sacrifice their lives in order to sanctify the nation, to hide in the clefts of rocks and the crevices of cliffs, and even to be burned alive so as not to defile the Sabbath (true stories!)³⁰—nevertheless, they would not raise so much as a little finger on behalf of the people’s liberation and the redemption of its land from the foreigners.

And from the *left* there were thousands, or perhaps tens of thousands, who loved the splendor and beauty of Japhet and distanced themselves from the tents of Shem. These people assisted those who defiled the oil stored in the nation’s Temple, and mocked anyone who had pity on a little jar of pure oil.

Between these two streams stood one party, free of any feebleness or cowardice, a small party of people imbued with faith and a belief in Redemption. It fell to this tiny minority to fight a defensive war on both the foreign and domestic fronts, on behalf of *Religion and State* together.

“The few, pure and righteous, defeated the many, impure and wicked.”³¹ When we speak about Mattathias and his sons we are accustomed to emphasizing their battles with the Greeks and their victories over the wicked kingdom. We hold up the image of Judah the Maccabee’s mighty sword which took vengeance on the nation’s enemies, and we never fail to

²⁹“pious ones.”

³⁰2 Mac 6:11. “Others who had assembled in the caves near by, to observe the seventh day secretly, were betrayed to Philip and were all burned together, because their piety kept them from defending themselves, in view of their regard for that most holy day.”

³¹After the *Al Hanisim* prayer for Hanukkah, recited during the *Amidah*.

mention his and his brothers' battles with the Hellenistic traitors. Yet we nearly forget their efforts *within the nation*, internally, to strengthen the Israelite Torah, and their important activities on the landscape of religious Judaism. With awe born of glory and exultation, we mention *the mighty Maccabees*, those *powerful "hammers"* who performed wondrous feats on the battlefield with their swords and bows. Yet we completely forget the *Hasmonean Priests*, the nation's sacred vessels, servants of its religion and its Torah, who, even as they held weapons in their hands, dedicated their hearts and souls to strengthening religious Judaism. We forget that the Maccabees grasped the *sword and the scroll together*.³² While they frequently found themselves engaged in a *defensive* war, they never forgot their obligation to their nation's Torah, and they tried with all their might to illuminate matters of Torah and of faith. They left this task in good hands—those of the Supreme Court, which was first called the "Court of the Hasmoneans"³³ and then, by the grandchildren of the first Hasmoneans, by the name Sanhedrin.

In subsequent chapters, God willing, we will speak about the tasks of this Supreme Court. Here, we must make mention of the fact that, without any "inquiries" or "examinations" as to whether it was the proper time or whether the generation was worthy, the Hasmoneans established the Sanhedrin.³⁴ That Sanhedrin spent centuries engaged in the clarification and

³²*hasa'if vehasefer kerukhim hayu etzlam*. In *Sifrei*, Ekev 4 (ed. Finkelstein p. 84), *sefer* and *saif* are said to have "descended together from heaven. God said to [Israel]: If you keep the Torah written on this [scroll], you will be saved from this [sword]. If not, you will be struck by it." The anti-rabbinic thinker and writer Micha Josef Berdyczewski (1865-1921) had juxtaposed the *saif* and the *sefer*; the *sefer* symbolized everything rabbinic and degenerate in Judaism, while the *saif* stood for the new Hebrew culture which would grow in Eretz Israel. Maimon's use of the phrase *sefer vesa'if* is an implicit response to Berdyczewski: The two symbols are not inimicable to one another, and authentic Judaism knows when to grasp each.

³³Avodah Zarah 36b.

³⁴By the time this chapter was written (Winter, 1949), Maimon's proposal was being subjected to "inquiries" and "examinations," by the Israeli Rabbinate and the World Mizrahi. His grand idea, which he had hoped would catch fire and come to fruition in an almost magical fashion, was dying a slow death in committee, as it were. See my Introduction, p. xxiii.

explanation of Jewish law, and in expanding the influence of the Written and Oral Torah, both inside and outside the Hebrew State.

As we light the *little* lights of Hanukkah with those *great* events in our minds, we must remember, especially now, that these lights—humble candles which shed a small, secret light—are holy to us. They are remnants of holy fire from the darkness of the distant past, sparks of holiness which sustain us in the present, and flashes of hope for the future. These lights remind us that we walk the same path as did the Hasmoneans in those days. While the Israeli Defense Forces grasp a sword and *defend* our new state, we must reestablish the Sanhedrin, that it might become the *armor* which defends Israel's Torah.

Just as “in those days”—so too, “at this time.”³⁵

³⁵*hakol, kemo, “bayamim hahem—bazeman hazeh.”* From the Hanukkah liturgy.

Chapter Nine

I have behaved badly, and have ruined my reputation.

In recent years, and specifically since the Hebrew State was proclaimed and I was privileged to join the Government of Israel, my star had ascended and my reputation had grown among religious Jewry. But I sinned. I began to speak, in print and out loud, about “the renewal of the Sanhedrin.” I wrote several chapters on this subject, I delivered a few speeches to small groups of religious Jews. It seemed to me that I had succeeded, to a small extent, in kindling a flame in people’s hearts. But recently I have begun to sense that my proposal to renew the Sanhedrin has weakened my influence among religious Jewry—and especially among *the rabbis*...

It is fact, and a sad one, that the politician, the writer, even a minister in the government, is honored so long as he does not depart from his party’s line. He must not take after Abraham, who “if the entire world stood on one bank, he stood on the other” (GenR 42:8). Let this “honorable” one think for himself, let him go to the people with some new idea or proposal which those who “honor” him have not yet approved, and watch his star descend and his influence wane.

But I have sinned, for I have made my proposal to renew the Sanhedrin public without consulting with those very people whose council I should have sought out (or so they think). Among them are some who even suspect that there is some self-promotion inherent in my proposal,¹ or some alien idea² hidden between the lines. Because of the sins of our generation, they no longer believe that there are politicians and writers who have no ulterior motives and who are only concerned with the welfare of their people

¹The “self-promotion” to which Maimon refers is his own candidacy for the Sanhedrin. Maimon himself only discusses the *type* of person who would sit on the Sanhedrin, but never suggests specific names.

²Some people to Maimon’s right felt that he was looking for a license to institute religious reforms (*tikkunim*). He vigorously protested this claim. See my introduction, p. xxi.

and its Torah. They do not believe that such people exist, whose sole aim is the elevation of their people's spirit and the revival of its soul.

But much to my regret—*or perhaps to theirs*—I continue to sin. Once again I put forth my proposal regarding the renewal of the Sanhedrin. The spirit which has animated me ever since I began dreaming about my people's rebirth whispers to me without pause: The renewal of the Sanhedrin is the only way to expand the influence of religious, Torah-true, traditional Judaism within the State of Israel. *The Sanhedrin* represents a return to our Source of Life, to the roots of our belief, to the living wells of Torah Judaism. Only by means of a supreme religious force, in the form of a Sanhedrin, can we hope for a great, spiritually influential Judaism which is sustained by our greatest minds from throughout the ages. Only a Sanhedrin gives us hope for a Judaism of Torah and Tradition, worthy of its name. Only by means of a renewed Sanhedrin can we hope for a Judaism worth our sacrifices, a Judaism that will be worth passing on to our descendants. In my opinion, the Sanhedrin is *the only way* to join the Israeli Torah to the State of Israel which was created by Hebrew will, with the aid of the Israel's Rock and Redeemer.³

With all of my passionate yearning for a holistic, traditional Judaism in our new state, I pronounce this magical word—*Sanhedrin*. It is the only word which can cause our Torah-true, law-based Judaism to flourish. I believe with perfect faith that the renewal of the Sanhedrin will be a blessing to our state, to our Torah, and to Judaism all over the world.

They accuse me of being aflame with some fantasy? Well in fact, it *is* a flame! All of traditional Judaism is a divine flame, and in order to renew its youth and enlarge its influence on the people's life and soul, we need that flame. We need to bring together all of the appropriate forces in order to kindle this flame. We need to kindle a burning passion to “renew the

³*asher haratzon ha'ivri yatzar otah b'ezrat tzur yisrael ve-go'alo.*

Sanhedrin,” by delving deeply into that body’s essence and its future mission. To all of religious Judaism, and especially to rabbis of every stripe, we must demonstrate the value inherent in the Sanhedrin, as well as that body’s unique program and fundamental tasks in the present day. We must put forth great effort, in writing and speech, on behalf of this idea. But above all, this must be done with honesty and integrity. There can be neither tendentiousness nor fear of any mortal...

I call heaven and earth to witness: Thirty years ago, when the Chief Rabbinate of Eretz Israel was established, its founders said to each other that they were laying the foundation for the renewal of the Sanhedrin. Some of the rabbis who took part in the founding meeting of the Chief Rabbinate are still alive today; they can testify that this writer, too, invested great energy in that task.⁴ It happened when Herbert Samuel was High Commissioner. We had hung our hopes for the development of the Hebrew Yishuv on him—and we were disappointed. Our master, the great, righteous, *Rabbi Abraham Isaac Hacoheh Kook* (z'l) had already become Rabbi of Jerusalem, our eternal capital. He had a notion to heighten the stature of the rabbinate in Eretz Israel by obtaining legal recognition from the Mandatory Government which had promised us Eretz Israel as a Jewish National Home. *In those days*, almost everyone in the Yishuv acknowledged that establishing Jewish law was the first item on our agenda. It was clear to everyone that the courts which existed then would not suffice. Due both to their external form and their source of authority, they would be unable to draw in the younger generation. That younger generation would not be willing to hand over the adjudication of legal, economic, and ethical matters to those courts. And so, many leaders of the Yishuv started a movement to establish *batei mishpat*

⁴A thorough discussion of the founding of the Chief Rabbinate of Eretz Israel may be found in Aryeh Morganstern’s *Ha-Rabbanut Harashit Le-Eretz Israel: Yisodah ve-irgunah*. Jerusalem: Shorashim, 1973.

shalom in the cities and villages.⁵ But this movement aroused opposition, not only from those who felt that what is new is forbidden by the Torah—but even more so from the *Mizrahi* which worked mightily on behalf of the *renewal* of our national life in our own Land. For, while we worked toward a national renewal, we felt that the national feeling needed to be directed toward *our* nation—in other words, national-religious Judaism. This feeling was spurned by the founders of the “*mishpat shalom*;” therefore, in our opinion they did more harm than good.

Let it be remembered: The *Mizrahi* was the only faction within Orthodoxy in Eretz Israel which fought with all its strength against the secular “*mishpat shalom*” which was founded by a few “enlightened” people together with one rabbi. We, members of the *Mizrahi*, said then: Throughout the years of our Exile we have kept our national character, our distinctiveness, and our traditions. We have also held onto our legal system and our own law books, made up of laws and statutes which are built upon our particular world-view—a world-view which grows out of our grounding in the divine Written and Oral Torah. Throughout our years of depression, whenever evil befell us, we have guarded this precious holding. We have lived according to it in good times and bad; it has been our guiding light, our *urim* and *tummim*.⁶ It has been our arbiter and mediator in every case between a man and his fellow.⁷ Only the power of enforcement, through the rod or the strap, through fines and prison sentences, was lacking. Yet even this did not present a problem, because the legal system had power in the

⁵The *Mishpat Hashalom Ha'ivri* (Jewish Court of Arbitration) was founded in Jaffa in 1909-10. A discussion of its role in the Yishuv can be found in Elon, *Jewish Law*, pp. 1592-1596. The major criticism which Elon levels against the Court of Arbitration is not that it was insufficiently concerned with Jewish law; rather he notes that its judges were unwilling to work entirely within the legal system to which they looked only for “guidance.” “Looking to Jewish law as a source of ‘guidance’ may be useful to the legislator but cannot be of practical benefit in the arbitral process” (p. 1595).

⁶Exod 28:30; Num 27:21.

⁷*bein ish lerei'eihu*. “*Rei'ah*” is always understood to mean “your fellow Jew.”

minds of the Jewish people; everyone heeded its judgments. We did not need to look to other nations and their “law-books” to find *justice*. We had *our own rabbis and judges*.

We said this after the Balfour Declaration, and we repeat it now that we have been privileged to live in a Hebrew State in our Land: It will be a sin, and a *national disgrace* if we uproot our ancient, original Jewish Law and rip away all of the merits which are present in our national soul. I recall an early meeting, before the establishment of the Chief Rabbinate, at which Rabbi Kook said something along these lines: “The dispensing of justice must take place in our traditional court system. The Torah gives the rabbis of Israel the authority to enact certain beneficial *takkanot*. But we must never introduce any alien notions.⁸ I am certain that Eretz Israel will be ours, whether or not the British or the Arabs agree. The divine promise to our patriarch Jacob, ‘the ground on which you are lying I will give to you and your descendants’ (Gen 28:14) carries more weight than any promise made by even the most powerful government, for ‘God is not capricious like man’ (Num 23:19). But we must prepare ourselves for that great hour. To that end, we need one Chief Rabbinate, which will immediately begin preparing the hearts, and will develop new areas of our legal system so that we will eventually realize the divine promise, “I will restore your judges as of old...”

In his address at the establishment of the Chief Rabbinate, Rabbi Kook emphasized that which he had previously said in private gatherings which I was privileged to attend. This speech was previously published in a special edition of “*Hator*;⁹” I see fit to reprint it now in the course of my own essay, since it contains many important points which are relevant to our efforts to

⁸*z'murat zar*. The word *z'murah* is primarily “shoot, twig, sprout.” By extension, it becomes “rod,” and takes on legal connotations.

⁹Vol. 21-22, (24 Adar I, 5681); the speech was delivered on 14 Adar I, 5681 (Feb 22, 1921).

renew the Sanhedrin:¹⁰

We are now called upon to create a national institution, to plant living seedlings which will bring forth fruit to sustain our nation in the future. We must not look upon this task as the creation of a discrete and completed institution, but rather as the *beginning of a process which will, we hope, continue to develop over time*. Rabbi Johanan ben Zakkai saved the nation's soul in Yavneh, where he planted "the vineyard of the Lord" (the Sages spoke of "a vineyard in Yavneh").¹¹ We are now planting the vineyard of the Lord in Jerusalem. Sometimes, one plants a vineyard from seed, sometimes from seedlings, and sometimes from shoots. I believe that we must now plant the very first seedling, even the seeds. They will provide us with shoots from which subsequent generations will plant the vineyard—the vineyard which will be "the shoot that I planted, My handiwork in which I glory."¹²

Certain laws and processes govern the judiciary and the appointment of judges. We are obligated to undertake any improvements or renovations to the palace which is our legal system which are in accord with the Torah and the spirit of believing Israel (i.e., traditional Judaism).¹³ The national renaissance is engaged (or at

¹⁰Maimon's reprinting of Rabbi Kook's differs from the version found in Rabbi Kook's collected writings. In the body of the text, I have translated Maimon's reprinting; where the divergences are noteworthy, I have included them as footnotes.

¹¹Is 5:7, "For the vineyard of the Lord of Hosts is the House of Israel, and the seedlings he lovingly tended are the men of Judah." The phrase *kerem beyavneh* appears several places in the Rabbinic literature. It is often understood not as a vineyard proper, but as a reference to the Sanhedrin "where the sages were seated row upon row as in a vineyard" (CantR 8:13).

¹²Is 60:21.

¹³Maimon omits: "The foundation of our system of justice is Israel's great crown, unique in holiness, and we must take all appropriate measures to improve it. I believe that a spirit of holiness rests upon this gathering which was convened under the exalted auspices of High Commissioner Herbert Samuel." Perhaps Maimon's disdain for Samuel and the British in general led him to remove the references to Samuel.

least it should be) in the ingathering of the dispersed through practical means. It has endeavored to put sinews and flesh on our dry bones, to form skin over them. With this important gathering, the next great step has arrived—to call to the spirit.¹⁴ A call to the spirit of judgment for him who sits in judgment,¹⁵ a call to revive the rabbinate.¹⁶ We must organize the rabbinate in the Land as a strategic, political measure.

Maimonides organizes the court system as follows:¹⁷ First, the Supreme Court in the Temple is established; next, two courts of twenty-three—one at the gate to the courtyard and the other at the gate to the Temple Mount. The fact that the courts were established so close to one another points to an organic arrangement, in which each court related to the others in a defined manner. It also sheds light on the continuation of the passage—“we establish small Sanhedrins in each and every district in Israel”—suggesting that the same organicism which was present on the Temple Mount extended to these smaller courts as well. What a wonderful, organic arrangement existed surrounding the Temple! The appointments of the High Priest, the Chief Adjutant, the Supervisors, the Treasurers, the Division Chiefs, and the Subdivisional Chiefs—Everything points to the hierarchical arrangement of the functionaries.¹⁸

According to Maimonides, the court system in Eretz Israel is

¹⁴*ruah*, meaning “spirit” or “breath.” Ezek 37:1-14.

¹⁵Is 28:6

¹⁶Maimon omits: “The great task of preparing for a Jewish National Home was given to High Commissioner Herbert Samuel by the King of England and the League of Nations. He is imbued with the strength to ask us to arrange our internal affairs. And the most internal of Israel’s affairs are her sacred life, her religious life. Therefore...”

¹⁷*MT*, Hil. Sanhedrin 1:3.

¹⁸*MT*, Hil. Kelei ha-Mikdash 4:11, 16-18. The translation of these titles follows the Yale translation of the Mishneh Torah.

different from that found outside of the Land. In Eretz Israel, it is more highly structured, as befits a nation settled on its own territory, living out a national existence. Outside of the Land, the system is less structured, reflecting the happenstance nature of national life in Exile. For this reason, Maimonides states: “Only in Eretz Israel is it required to establish courts in each district and city. Outside of the Land, it is only required to establish them in each city.” This arrangement not only teaches us about the structure of the legal system, but about the structure of the rabbinate as a whole. The Torah’s ordering of the judicial system reflects its understanding of religious authority, which is organized and defined in national terms. It is in this way that the House of Israel is established and stands firm. True, we are few in number, a small *yishuv*—yet let us not “scorn a day of small beginnings.”¹⁹ We are obligated to begin establishing the Rabbinate, in order that our internal life might develop in a proper fashion. It is vitally important as well, that we establish city courts and district courts. All of this is groundwork laid for the *future*, when they will be brought together in an organic unity with the central court which will be established in Jerusalem, our holy capital.

In order to provide oversight in religious matters, as well to maintain the equality of standards among the various courts, it is necessary to establish a central body. Only in this way will our nation rise to its proper stature, both internally and externally.

It is well known that there are two important foundations for the legal system: received laws (*dinim*) and legislative enactments (*takkanot*). It is not possible for us to make any changes within the category of received laws that are firmly established. However, we are free, by using the method of *takkanot*, to make new law and to

¹⁹Zech 4:10.

institute those improvements which the court, acting “for the sake of Heaven,” and with public approval, will find necessary for the general welfare. The halakhic authorities throughout the generations have enacted many important *takkanot*; not only the Tannaim and Amoraim in earlier times, but also the courts of the Geonim and later authorities exercised this power.

In our new national life in Eretz Israel, there will sometimes surely be a great need to enact important *takkanot*, which, as long as they are approved by the majority of the generally recognized halakhic authorities and then accepted by the community, will have the same force as a law of the Torah.²⁰

Each month, every district court must set forth a clear record of its activities as they pertain to our religious life. These accounts shall be sent to the central court in Jerusalem. We must also agree that litigants will have the opportunity to have their cases heard, on appeal, by the central court in Jerusalem.

The General Assembly of the Rabbinate must convene yearly in Jerusalem in order to look after religious and legal matters. *Additionally, a smaller committee of no less than twenty-three members, corresponding to the number of the Small Sanhedrin, must be elected.* They will meet on a quarterly basis.

This is the general picture. The details regarding the centralization scheme are yet to be decided by a majority of the rabbis. But on this we must all agree: there must be a centralization, both of rabbinical authority and our legal authority, in Eretz Israel. May God²¹

²⁰This paragraph and the previous one are translated in Elon, *Jewish Law*, pp. 1597-98; that translation is adapted here.

²¹Again, Maimon edits the speech slightly in order to erase any mention of Herbert Samuel. Rav Kook said, “his glorious majesty, the *netziv elyon...*,” which is actually a clever *double entendre*. The “High Commissioner” whose help Rav Kook hopes for could be Herbert

aid us in this great task, which begins to realize the prophetic vision, “I will restore your judges as of old, your counselors as at the beginning...”

Thus spoke our master, the righteous, Rabbi Abraham Isaac Hacoen Kook, on the occasion of the establishment of the Chief Rabbinate on 14-16 Adar I, 5681.²² At that time, the Yishuv was still quite small, *and was under foreign rule*. Furthermore, only a meager number of rabbis took part in the founding of the Chief Rabbinate (there were thirty-four rabbis present—a very “meager” number²³). And while Our Rabbi revealed but little of his views at that founding meeting, we still see that *he was already speaking about an inner council of twenty-three members, corresponding to the number in a small Sanhedrin*. Indeed, the central council did consist of twenty-three members, including: twelve from Jerusalem, three from Jaffa (back then, Tel-Aviv was not all that important!), three from Hebron, one from Haifa, one from Tiberias, one from Petah-Tikvah, one from Zikhron-Ya’akov, and two from Safed. This was only the *seed*, or to use the Rabbi’s felicitous expression, “the first seedling” for the generations yet to come. This was the “great task” which would begin “to realize the prophetic vision,” namely, “I will restore your judges.” *I am certain that if Rabbi Kook were alive today, and had been privileged to see the renewed State of Israel with Jerusalem as its capital, he would have continued on the path to realizing that vision—by renewing the Sanhedrin.*

For Rabbi Kook was as strong in his opinions as he was in his faith. He did not ask for or worry about the opinions of rabbis in the Diaspora. He was not swayed by strong opposition from within Eretz Israel itself, including from some great sages who went so far as to proclaim a public fast because of the “evil decree” of the establishment of the “chief rabbinate” in Eretz Israel. Samuel, God...or both.

²²Feb 22-24, 1921.

²³In gematria, thirty-four is ט"ד, “meager.”

He held fast, and despite opposition from both left and right, the Chief Rabbinate was established, together with a central council of twenty-three, corresponding to a “small Sanhedrin.” It was a *seed* sown to prepare for the future planting of Israel’s vineyard.

All evidence—his speech, other talks he gave during the founding conference, and especially the private conversations he held with several of his colleagues during that period—points to the fact that his grand vision included a renewed Sanhedrin in Eretz Israel once the proper moment had arrived. More than once was this writer privileged to hear him speak with a holy passion along these very lines.

Rabbi Kook gave me something of his spirit and his soul. So now that we have been privileged to see our dream of the State of Israel realized, I have begun to think about the necessity and the obligation to bring Israel’s *shekhinah* back to Zion as well. I have begun to think about the return of that supreme religious force which influenced the nation’s spiritual life from the days of Moses until just before the close of the Talmud—in the form of a Sanhedrin of seventy-one Jewish sages.

I am certain that such an important matter depends *entirely upon the rabbis of Eretz Israel*. In previous chapters I have discussed this fact, and have mentioned Maimonides’ comment on Mishnah Sanhedrin. It is worth mentioning his comment in the same work, on Mishnah Bekhorot 4:3:

We have already explained, in the beginning of Sanhedrin, that only a *beit din* comprised of ordained judges (whether ordained by another ordained judge or by agreement of the sages of Eretz Israel to appoint him *rosh yeshiva*) is called a “true court.” *This is because only those living in Eretz Israel are called “kahal.” This is true even if there were only ten men (in Eretz Israel); they do not pay attention to the others who are outside the Land.*

Because I am aware that the *Sanhedrin* is the “vertebra” from which “the

Holy One peers out upon the future”²⁴ of traditional Judaism—I decided, *of my own accord*, to convene a conference in Tiberias on Tevet 28. There I called upon all *rabbis in Eretz Israel*, who are living among us now and who desire a State of Israel founded upon the Torah, to come together to discuss the renewal of the Sanhedrin. I chose *Tiberias* because it was the last seat of the Sanhedrin on its ten-station journey from Jerusalem (see Rosh Hashanah 31b), and also because Maimonides—upon whose opinion we base our argument—is buried there. I chose Tevet 28 because tradition has made it holiday, due to the fact that on that day that the Sanhedrin defeated the Sadducees (*Megillat Ta’anit*, 10). That victory of the Sanhedrin over the Sadducees is revealing. It teaches us about the primary task of the Sanhedrin then—and also now.

Currently (Shevat 18-21), the Israeli Rabbinate is holding a conference. I have called upon them to discuss “The Renewal of the Sanhedrin in Our Renewed State.” I have called upon them to direct their spirits, to dedicate themselves, to give assistance, instruction and counsel, to work speedily and mightily, passionately and enthusiastically, unceasingly and unstintingly, with spirit and intellect united in order to realize the prophetic vision: to restore the crown to its former glory by renewing the Sanhedrin as of old.

At the conference, I lectured on the primary tasks of the Sanhedrin, both past and present. Below I present a revised abstract of my lecture.²⁵

²⁴GenR 28:3.

²⁵Chapter Ten.

Chapter Ten

I know how long and tortuous the path to the realization of any new idea can be—and therefore I express my thanks to leadership of the Chief Rabbinate, who gave me both the permission and the opportunity to lecture at the first council of the Israeli Rabbinate in the renewed state, on the topic, “The Renewal of the Sanhedrin in the Present Era.” I am happy to have been extended great honor, and am confident that the issue, which is now on the rabbis’ table, will not “fall off.” I feel obliged to include this abstract of my lecture in order to shed light on some of the details of the Sanhedrin’s *primary* and *basic* tasks.

Divine Providence wanted to give the Sanhedrin merit. Therefore, It assigned it many political, economic, religious, and judicial functions. These it fulfilled faithfully. In the Mishneh Torah, (Hil. Sanhedrin 5, on the basis of the Mishnah and early halakhic midrash) Maimonides enumerates those tasks which can *only* be carried out by the Sanhedrin:

A king can be appointed only with the approval of the court of seventy-one; A Small Sanhedrin for each tribe and each city can be set up only by the court of seventy-one; the idolatrous tribe, false prophet, and High Priest in a capital case can only be tried by the Supreme Court. An elder is not declared rebellious unless he defies a decision of the Supreme Court. A city is not pronounced condemned, nor is a woman who is suspected of infidelity subjected to the ordeal of drinking the bitter waters, except by the decision of the Supreme Court. No additions are made to the city (of Jerusalem) or the Courts of the Temple, nor are the people sent forth to an optional war, nor are the cities in the vicinity of the spot where a slain body is found measured, save with the sanction of the Supreme Court.

It is obvious that, as important as these tasks are, they happened only *occasionally*. Given that the *halakhah* requires the Supreme Court to meet in session every day from the early-morning offering until the sunset offering, and that on Shabbat and holidays they would meet in the *Beit Midrash* on the Temple Mount, the Great Sanhedrin must have had some *regular*

functions which its members carried out on a daily basis. The question, then, is: “What were the principal and basic tasks, as defined in the Torah, of this supreme judicial body which later became known as the ‘Sanhedrin?’”

We find a clear answer to this question in the Written Torah—God’s perfect Torah—in Deuteronomy, in *Parashat Shofetim*. At the beginning of this section (Deut 16:18) we are commanded to appoint judges;

and one of the conditions of this commandment is that these judges be arranged in a hierarchy. Namely, there shall be twenty-three judges in each district, gathered together in the gates of one of the appropriate cities. This gathering shall be known as a “Small Sanhedrin.” We shall appoint a Supreme Court in Jerusalem, composed of seventy judges, with one judge who presides over them. He is called *rosh yeshivah*¹ (*Sefer ha-Hinnukh*, positive commandment #491).

After this passage, we come to the following:

If a case is too baffling for you to decide, be it a controversy over homicide, civil law, or assault—matters of dispute in your courts—you shall promptly repair to the place that the Lord your God will have chosen, and appear before the priests and Levites, or the judge in charge at that time, and present your problem. When they have announced to you the verdict in the case, you shall carry out the verdict that is announced to you from that place that the Lord chose, observing scrupulously all their instructions to you. You shall act in accordance with the instructions given you and the ruling handed down to you; you must not deviate from the verdict that they announce to you either to the right or left (Deut 17:8-11).

When we examine these verses, we find three terms which seem to be synonymous: *Dibbur* (“If a case (*davar*) is too baffling for you to decide), *Amirah* (“...the ruling *handed down* to you”), and *Haggadah* (“When they have *announced* to you the verdict in the case, you shall carry out the verdict that is *announced* to you...”).

But the Vilna Gaon assigns to each of these three terms its own

¹“head of the session.”

definition.²

- He defines *dibbur* as a general commandment, *encompassing* all of its details and minutiae. Compare to this the words of our Sages: “A matter—and not ‘half-matter’” (Baba Kama 70b).
- In contrast, the term *amirah* refers *specifically* to the details and the “branches” of a particular commandment. This is evident in the words of the prophet, “At the top of *amir*”(Is 17:6), which Rashi explains as “at the top of the branch.” The “branches” of a commandment are distinct from one another; we therefore use the word *amirah* to refer specifically to the disparate “branches” of a given commandment. This is also the sense of “You have *committed* yourself to the Lord your God today...and the Lord has *committed* Himself to you today...”³ Rashi comments on this passage: “We cannot be certain of the meaning of *he'emarta* and *he'emircha* based on any scriptural context. It seems to me that the words have the sense of distinction and separation.”⁴ This is also the sense of the mishnah, “if he had performed a *ma'amar* and then died...” (M. Yebamot 2:1);⁵ when the woman is betrothed to a man, she is *separated* and set aside for him alone.

Basing himself on this distinction, the Vilna Gaon observed that the Torah often says, “The Lord spoke to Moses, saying,” or “Speak to the Israelites, saying to them.” However, the phrase “The Lord said to Moses,

²Cite *Tol'dot ha-Gra*, where Maimon discusses this topic in two places.

³Deut 26:17-18. NJPS: “You have affirmed this day...And the Lord has affirmed...,” with the note, “Exact nuance of Heb. uncertain.”

⁴Rashi continues, giving the sense of the verses: “You have separated yourself from alien gods, making yourself God’s possession. And He has separated you from the other peoples of the earth, to make you His treasured people.” He then suggests that there is a connection to Ps 94:4, “All evildoers glory in themselves (*hit'amru*).”

⁵The plain sense of the mishnah is that *ma'amar* refers to an “expression of intent” to betrothe—in contrast to the actual betrothal, effected through intercourse.

speaking,” or “Say to the Israelites, speaking to them” doesn’t occur at all.⁶ The Torah first “speaks” a given commandment’s general nature; only afterwards are the details and “branches” “said” to Moses—either in written or oral form. From this do we learn the bedrock principle of the Oral Torah.

Let us recall one example: It is written in the Torah, “No Ammonite or Moabite shall be admitted into the congregation of the Lord (Deut. 23:4)”. This is the “speech” of the Torah, the *general* principle of the commandment. But the Oral Torah *distinguishes* between males and females, and “says”—*“ammoni velo ammonit; mo’abi velo mo’abit.”*⁷

Only in light of this process can we understand the verse, “Princes have persecuted me freely; my heart trembles because of Your speech. I rejoice at what You say as one who obtains great spoil” (Ps. 119:161-2). The Midrash relates:

Princes. Namely, Doeg and Ahitophel, who were princes in the Torah. They would constantly remind David of his origins, and his ancestor Ruth the Moabite. Concerning this, David said, “Princes have persecuted me freely.” But, “My heart trembles because of Your speech.” Because of the Written Torah, which is called “speech,” I am afraid—for it says there, “No Ammonite or Moabite shall be admitted into the congregation of the Lord.” However, “I rejoice at what You say,” since in the Oral Torah, which is *said*, they say *“ammoni velo ammonit; moabi velo moabit.”*

An idea is etched in my memory, a pearl which I learned in the name of the great scholars of Jerusalem in the previous generation. They would say: “We have two foundational principles whose only source is the Oral Torah and the nation’s tradition: Jerusalem and the Davidic dynasty. Jerusalem is not mentioned in the Written Torah (the word “*shalem*” in Gen 14:18 is explained by the Samaritans, who deny the authority of the Oral Torah, as a reference to Shekhem. They point to Gen 33:18: “Then Jacob

⁶“Speak” renders the Hebrew *dibber*; “Say” renders *amar*.

⁷*supra*, p. 17 n30.

came “shalem,” the city of Shekhem”). Our Written Torah mentions only ‘the place which the Lord your God will choose.’ But the Tradition says that the place is Jerusalem. Similarly, the Davidic dynasty is entirely dependent on the Tradition. According to the Written Torah, David’s family is blemished to the extent that they cannot even enter the congregation.”

Those elder sages of Israel in the previous generation observed that, in Jerusalem our capital sat the thrones of justice and of the Davidic dynasty. These two powers, the judges and the kings, needed to judge the people and conduct affairs of state on the basis of Torah and Tradition. For this reason, they were themselves made entirely dependent on the tradition of our ancestors; they had to consider Israelite tradition carefully and judge in accordance with it.

We have discussed two terms, *dibbur* and *amirah*—that is to say, the Written Torah and the Oral Torah—by which the judges who later constituted the Sanhedrin were called upon to judge the people. But there is a third term, namely *aggadah*. The word *aggadah* signifies something new. It is written in the Torah, “If he is a witness, either because he saw or learned of the matter, but does not give information” (Lev 5:1). This testimony is called *aggadah*, “new information,” because he knows something which others do not know until he apprises them of it. This is also the derivation of the name *Aggadah shel Pesah*—it brings much new information to the story of the Exodus from Egypt as told in the Written Torah.

And now we can understand the entire passage, as well as the fundamental task which fell to the judges who later became known as the Sanhedrin:

“If a *davar mishpat* is too baffling for you...”

That is to say, if from time to time there are those who do not understand the very fact of a commandment in its general sense, which

is covered by the term *davar*...

“Then you shall promptly repair to the place that the Lord your God will have chosen, and appear before the priests and Levites, or the judge in charge at that time, and present your problem. They will say (*higidu*) to you the *davar mishpat*.”

In other words, sometimes they will reveal something entirely new. For example, it says in the Torah, “The fruit of a goodly tree” (Lev 23:40). The Torah seems to be referring to any beautiful and lovely fruit. But the Tradition says, “The fruit of a goodly tree—meaning the tree whose wood tastes as good as its fruit, which can only be the *etrog*” (Sukkah 35a). The Tradition has thus revealed *new* information, and *said*—i.e., distinguished— between the *etrog* and all other fruit, since only the *etrog* is called “the fruit of a goodly tree.” The Torah says to us these sorts of *new* explanations.

“You shall carry out the *davar* that they shall tell (*yagidu*) you...”

And not only those *new* explanations which are included in the term *aggadah*, but

“...you shall also carry out the judgment that they shall say (*yom’ru*) to you.”

In other words, [you shall abide by] all of the details of the commandments, their “branches” which come under the term *amirah*, and are articulated by the judges or the Sanhedrin in accordance with the received Tradition and the Oral Torah.

But there are also completely new pronouncements, which are not explanations of the words of Torah in any sense, such as “the *gezeirot* which the prophets and sages enacted in every generation in order to make a fence around the Torah,” and “the *takkanot* and *minhagim*” (see Maimonides’ Introduction to his *Perush ha-Mishnah*). Concerning

these we find the admonition,

“You must not deviate from the verdict that they say (*yagidu*) to you either to the right or left.”

Concerning this, the sages said in *Sifrei*: “Even if it seems to you that left is right and right is left, obey them.” That is to say, even if their verdict seems to be a complete novelty to you.

It is now clear that the Sanhedrin’s primary mission has three aspects.

- 1) To explain the Torah in a general sense;
- 2) To interpret the “branches” of each particular commandment; and
- 3) To pass injunctions and enact legislation when the moment or the situation requires it.

This main task fell to the Sanhedrin throughout its entire existence. Later, the Sages who followed it continued to spin the thread of Tradition, through the Talmuds and the *Halakhah*. Acting on the authority of the Sanhedrin, they clarified many new laws, enacted legislation for the material and spiritual benefit of the people—in accordance with the words of the Tradition.

And now that we have merited the renewal of the State of Israel, there is no doubt in my mind that we are obligated to renew the Sanhedrin as well, so that it can carry out its primary mission in the three areas about which I have spoken.

Chapter Eleven

When I spoke on “The Renewal of the Sanhedrin in Our Renewed State” at the conference of the Israeli Rabbinate, I tried to clearly delineate the basic tasks of the Sanhedrin, past and present.¹ These tasks, whose source is in *parashat shofetim*, place upon the Sanhedrin the obligation to clarify the words of the written Torah, and its commandments, in accordance with the Oral Torah and with Jewish tradition. By means of these clarifications, the Sanhedrin seeks to solve all questions and problems arising in each generation, which touch the life of the individual, the community, and the State. In these terms, there can be no doubt that from the halakhic perspective, there is a need, and a religious obligation, to establish the Sanhedrin now. We have been privileged to see the renewal of the State of Israel with our own eyes and in our own day. There are many questions pertaining to the establishment and flourishing of the State which demand clear answers which an individual—even the greatest of his generation—cannot provide based on his own knowledge and reasoning.

I feel as though the rabbis were especially attentive during my lecture; but afterwards, they sat in silence, which is an “obstacle to wisdom.”² They did not discuss or deliberate the matter at all. This silence can be explained in one of two ways: Either they were in agreement with my words, and “when the rabbis are quiet, you know that they agree,” or they did not see fit to discuss the matter, having rejected the entire proposal.³ Or, I might

¹Shevat 18-20. In the previous chapter, Maimon reprints an abstract of his ninety minute lecture to the rabbis.

²*shetikah siyyag lehokhmah*, M. Avot 3:13. In the Mishnah, it is a positive statement, better translated as “silence is a defense of wisdom.” The traditional understanding is that, if one says nothing, one will not say anything unwise. Maimon seems to intend the opposite meaning, understanding the rabbis’ silence as evidence of their unwillingness to consider the proposal on its merits.

³[See what I have written in *Azkarah*, part 3 pp. 219-20; there I discuss the difference of opinion between the *rishonim* over whether silence is a sign of assent or of the fact that the listener did not understand what was said.] Maimon edited a five-volume work in memory of Rabbi Kook, entitled *Azkarah lenishmat harav Rabbi Avraham Yitzhak*

suggest yet another explanation for their silence, namely: *fear*. Much to our dismay, there are many rabbis who fear not only Heaven, but also flesh and blood. They are all afraid of what the other ones will say. This is just what the commentators say about the “forebearance” of R. Zechariah ben Avkulas—he worried that “they might say...” See Gittin 56a.⁴

Indeed, in conversations I had with several rabbis of Eretz Israel both before and after the conference, I sensed a note of fear: they were unwilling to openly express their opinions regarding the Sanhedrin because of what their colleagues might say. And yet, they did express *to me* their agreement

Hacohen Kook (z'l).

⁴Gittin 56a contains the following legend about the reason for the destruction of Jerusalem:

The destruction of Jerusalem came about through a Kamtza and a Bar Kamtza in this way. A certain man, who had a friend named Kamtza and an enemy named Bar Kamtza, once arranged a banquet and said to his servant, "Go and bring Kamtza." But the servant [mistakenly] went and brought Bar Kamtza. When the host found his enemy Bar Kamtza seated in his home, he said, "You hate me, so what are you doing here? Pick yourself up and get out!" Bar Kamtza: "Now that I am here, let me stay, and I will pay you for whatever I eat and drink." The host: "No!" Bar Kamtza: "Then let me give you half the cost of your banquet." "No, sir!" "I will pay the full cost for your entire banquet." "Under no circumstances!" Then the host grabbed Bar Kamtza by his arm, pulled him up from his seat, and threw him out.

The ousted Bar Kamtza said to himself: Since the sages sitting there did not stop him, it would seem that what happened met with their approval. So I will go to the king and inform against them. He went and said to Caesar, "The Jews are about to rebel against you." Caesar: "How can one prove such an accusation?" Bar Kamtza: "Send them an offering [for their Temple] and see whether they will be willing to offer it." So Caesar sent a fine calf with Bar Kamtza. While on the way, Bar Kamtza inflicted a blemish on its upper lip, or, some say, injured its eye, in a place where we [Jews] count it a blemish but heathens do not. The sages were inclined to offer it in order to maintain peace with the government. But R. Zechariah ben Avkulas protested, "People will say that blemished animals may be offered on the altar." Then it was proposed to have Bar Kamtza assassinated, so that he would not continue to inform against them. Again R. Zechariah ben Avkulas demurred: "Is one who makes a blemish on consecrated animals to be put to death?" (R. Yohanan was to remark: The scrupulousness of R. Zechariah ben Avkulas, as well as his forbearance, destroyed our [holy] house, burned our Temple Hall, and caused us to be exiled from our Land.)

By comparing the Israeli rabbinate to R. Zechariah, Maimon lays the blame for the failure at their doorstep. Their excessive caution and their failure of nerve have worked together to defeat the proposal.

with my proposal to renew the Sanhedrin at the present time.

There were some who noted the fact that there would be a need to elect a president of the Sanhedrin—which, according to Maimonides, requires the unanimous consent of the rabbis in Eretz Israel. They expressed their doubts as to whether it would be possible to agree on one man. However, the present-day Sanhedrin’s tasks as I have defined them do not at all touch upon cases involving fines or capital cases; therefore, I believe it is abundantly clear that we do not need unanimity among the rabbis, but can rely upon a majority.

Most interestingly, some of the rabbis with whom I have spoken or who have written me have mentioned the controversy over this matter which occurred four hundred years ago between Rabbi Jacob Berab and Rabbi Levi Ibn Habib. But the rabbis of Eretz Israel will forgive me if I say that many of them have not seen Berab’s words or Ibn Habib’s criticism of them. An anecdote: An important rabbi for whom I have great respect submitted an article about the Sanhedrin for publication in “Sinai.” Naturally, he began with praise—praise for my suggestion—and concluded with “*but...*”⁵ I had similar conversations with several rabbis, who begin by speaking about the importance of the Sanhedrin but conclude with a “*but...*” This one says, “This generation is not fit.” That one says, “The rabbis are not fit.” And the third one comes along and says, “while it is certainly a religious obligation to renew the Sanhedrin, the community will not accept its authority.” And so on. In these conversations and letters, as I have mentioned, people occasionally bring up the writings of Berab and Ibn Habib. But when I ask them if they have examined the words of these Jewish sages closely, they admit that they have never even seen Ibn Habib’s *Kuntres Hasemikhot* in the

⁵The unvocalized בּוּ can be read as בּוּ —“but”—or as בּוּ —“mourning.” This second reading resonates with the Passover Haggadah. The telling of the Passover story is supposed to “begin with degradation and conclude with praise”(Pesachim 116a). In the Haggadah itself (introduction to Hallel), God is praised as the one who brings us “from mourning to holiday.”

original. For this reason, I feel myself obligated to print a letter written by the rabbis of Safed, Berab's two writings on the matter, and an abridged version of Ibn Habib's critique of them.⁶ Then I will clarify the *true* causes of the controversy. Afterward, I will try to show just how little this controversy has to do with my proposal to renew the Sanhedrin in our new State.

• • •

Jacob Katz identifies sixteen documents (ten of which are extant) related to the ordination controversy of 1538.⁷ In chapter eleven of *Hiddush ha-Semikhah*, Maimon presents five of these documents, some in an abbreviated form.⁸ They are:

- *Ketav rabbanei tzefat*, A proclamation by the rabbis of Safed announcing that Jacob Berab has received ordination from them.
- Berab's *Iggeret ha-Semikhah* ("Epistle concerning Ordination"), in which he describes the halakhic basis for the renewal of *semikhah*.
- Ibn Habib's *Kuntres sheni le-bittul ha-semikhah* ("Second Tract in Opposition to Ordination"). Ibn Habib wrote this after reading, and in response to, the *Iggeret ha-semikhah*. Maimon publishes an abstract of this lengthy work. Significantly, he prints it in smaller type, and gives the impression that it consists of "footnotes" to Berab's *Iggeret*, which appears at the top of the page.

⁶[I thank Rabbi Judah Gershoni for preparing the abridgement of Ibn Habib's comments.]

⁷*Halakhah ve-Kabbalah*, p. 215.

⁸The first three will be dealt with in this chapter. The most important halakhic and historical issues are raised in them; little new is said by either Berab or Ibn Habib in their second exchange of letters.

- Berab's *Kuntres ha-sheni*, written in response to Ibn Habib's *Kuntres ha-sheni*.
- Ibn Habib's *Kuntres shelishi*, in response to Berab's *Kuntres sheni*. Again, Maimon abstracts this work and prints it in the form of a lengthy footnote to Berab.

What follows is *not* a translation of the remainder of chapter eleven of *Hiddush ha-Sanhedrin* in its entirety. Some sections are fully translated, others are summarized and discussed, and still others are not dealt with at all. A literal translation of the entire chapter would not have been practical or instructive.

Maimon first presents the *Ketav rabbanei tzefat*, in which the rabbis of Safed announce the ordination of Jacob Berab as a *fait accompli*. This proclamation, composed almost entirely of a patchwork of Biblical verses, shows us the concerns of the rabbis of Safed. It is charged with messianism, and gives the impression that the primary reason for the renewal of *semikhah* was the opportunity for penitents to receive lashes on the authority of the Torah. Katz argues convincingly that the issue of lashes was secondary in Berab's mind. It seems that Berab believed that the penitents could receive *malkot de'oraita* even from a lay-court. However, seeing that many of the rabbis of Safed had been oppressed in Spain and forced to behave outwardly as Christians, he made that issue part of his campaign for reestablishing *semikhah*. His calculations were correct; once the issue was framed in these terms, the rabbis of Safed endorsed his proposal and wrote the following letter:

Ketav rabbanei Tzefat

Behold—

Gen 11:6; Ezek 36:20 one people, the people of The Lord
Exod 19:6 A kingdom of priests and a holy nation.
 Fashioned in the distant past,
Prov 8:23 At the beginning, at the origin of earth.
Is 11:10 Nations sought its counsel,
Avodah Zarah 8b Princes came forth from it,
Deut 16:18; 1 Kings 5:30 Judges and officers ruled over the people,
Deut 26:19 In fame and renown and glory.

But now—

Is 24:5 Since they transgressed teachings, violated laws,
Is 5:25 The Lord's anger was roused against His people.
Job 16:14 He breached them, breach after breach.
Hos 3:4 There is no longer a king, no more officials,
Is 3:2 No mighty heroes to fight the Torah's battle.
Ps 73:19; Is 3:3 Wholly swept away are the scholars and secret-keepers.
Ezek 4:17; Ps 25:11 Heartsick over our iniquity, which is great,
Ezek 36:20; Esth 3:8 This people of the Lord became scattered and dispersed.
Is 53:6 We all went astray like sheep, each going his own way.
Ezra 9:6 Our iniquities were overwhelming.
Lam 5:16 With each passing day the crown fell from our head,
Ps 89:40 Our dignity was dragged in the dust.
Ps 74:9 There was no longer any prophet,
 no teacher of righteousness
 None among us to judge cases involving fines,
 none to reprove the wicked.
 So that when a person is ready to return to God
Gen 17:17 He says to himself,

“Why should I waste the effort?
 What do I gain by fasting, by walking in abject awe?
 Even if I receive the forty lashes (and not one more)
 They will not solve the problem of my *karet*⁹.
 My sin is ever before me, my shame is never erased.”

Mal. 3:17
 Dan 10:8
 Ps 51:5; Prov 6:33

This has become a stone to strike against,
 a rock to stumble over,
 It prevents a return to the Lord—
 a grasp of knowledge and the path of return—
 And locks up the gates of repentance.

Is 8:13
 Eccles 2:13

Who is the one, and where is he—
 Who is known by the name “Israel,”
 Who relies upon the God of Israel,
 Who says, “I am for the Lord”—
 Who can control himself when he considers this matter?
 Who can help but shed a tear,
 as the people of the Lord goes down among the gates?

Esth 7:5
 Is 48:1
 Is 48:2
 Is 44:5
 Esth 5:10
 Jer 13:17
 Judg 5:11

But now, for a short while,
 there has been a reprieve from the Lord our God,
 who has granted us a surviving remnant
 to revive us, as is now the case.
 He has lifted us out of the miry pit
 of Exiles and persecutions
 which He had imposed upon our necks in foreign lands.
 He has brought us to this place which he chose,

Deut 6:24
 Ps 40:3
 Lam 1:14
 Deut 6:24

⁹lit. “cutting off;” one of the penalties frequently mentioned in the Torah, it is understood to refer to divine punishment in the form of a premature death.

Ezra 9:8 To the city called after His name,
and has given us a stake in His holy place.

Esth 9:26 In view, then, of all the words in this letter,
Ps 20:9 We have rallied and gathered strength—
We, the shepherd boys on holy soil—
Is 48:11 To act for God’s sake, lest His name be dishonored.
Is 59:4 For no one calls out justly, with all his might,
"Return to God!"
No one pleads honestly,
Saying to his brother:
2 Sam 10:12 "Let us be strong and resolute
for the sake of our people and the city of our God."
Let us raise the banner of Torah
which has been cast to the ground
Is 10:6 and trampled in the streets.

Therefore, we have elected the wisest and most qualified among us—the pure, great rabbi, Our Master Rabbi Berab (may the Merciful One bless and keep him)—and decided that he would be ordained, and would be the head of the academy, and would be called “rabbi.” He would then appoint others from among us, and they would be called “rabbi,” and would be ordained for all eternity.¹⁰ They would forever dispense true justice in accord with the statutes in the Torah, handing down strong punishment. If the guilty one is to be flogged,¹¹ he will be brought before God and will be struck, according to the Torah, as much as he can take. Thus will he be exempted from his *karet*. He will be drawn near to God, and all of these people will rest in peace.¹²

¹⁰Ps 111:8.

¹¹Deut 25:2.

¹²Exod 18:23. NJPS, “and all these people too will go home unwearied.”

This work of righteousness and peace¹³ shall be the beginning of the redemption of our souls,¹⁴ so that we may be a glorious crown in the hand of the Lord, and a royal diadem in the palm of our God.¹⁵ May He, in His mercy, cause the *shekhinah* to rest upon the work of our hands, and may He fulfill the word of His servant: “I will restore your judges as of old, and your counselors as of yore. After that you shall be called City of Righteousness, Faithful City” (Is 1:26).

Amen and Amen.

[signed by approximately twenty-five men; the greatest scholars at the top, the rest of the colleagues and students below them]

Jacob Katz cites the final paragraph of the *Ketav* in support of his view that the controversy between Berab and Ibn Habib was rooted in two differing conceptions of Messianism. Ibn Habib believed that no specific human acts could “hasten the end,” and that it was the Jew’s responsibility to simply live in accordance with the halakhah. In contrast, Berab and the rabbis of Safed believed that certain concrete acts such as the renewal of semikhah were “the first step in the redemptive process.”

Next, Maimon presents Berab’s *Iggeret ha-Semikhah*. Katz discusses the background to this letter, stating that it was Berab’s attempt to convince the scholarly community of the possibility of *semikhah*—after the fact. Berab had already been ordained, and his ordination had been called into question by both Ibn Habib and

¹³Is 32:17.

¹⁴Ps 49:9.

¹⁵Is 62:3.

Moshe de Castro. At approximately the same time as he wrote the *Iggeret*, he also wrote a contentious response to the letter which he had received from Moshe de Castro.

The *Iggeret* appears below; much of it is translated, while some sections are summarized. Ibn Habib's critique is summarized in the sans serif footnotes:

Rabbi Jacob Berab's *Iggeret ha-Semikhah*¹⁶

Berab begins his *Iggeret ha-Semikhah* ("Epistle on Ordination") with a lengthy and involved discussion of certain issues pertaining to the Jewish calendar. He attempts to prove that the renewal of *semikhah* will not necessitate a return to determining the calendar through eyewitness testimony of the new moon. Basing himself on Nahmanides, he maintains that the current practice of determining the calendar based solely on astronomical calculations will be used until Elijah arrives, heralding the Messiah.

Because of our sins, *semikhah* went out of existence with the end of the Sages of the Mishnah, when the foreign powers decreed that "ordainer and ordinee shall be killed." As a result, there was no longer a permanent ordained court functioning in Eretz Israel. All of this happened approximately three hundred years after the destruction of the Temple. At that time, the Sages of Israel, including the last ordained judges, came together and agreed to put an end to the discrepancies that had previously existed concerning the calendar, whereby some people followed a fixed calendar and others relied on the testimony of witnesses.

Using the great wisdom and the secret traditions that they had received from the prophets and the earliest Sages, they established the calendar which we still use today in order to intercalate the year, fix the new

¹⁶This work is often referred to as the *kuntres ha-Semikhah*, "Tract on Ordination." Berab himself calls it an *iggeret*, i.e., an "epistle."

month, and determine the proper days for fasts and festivals. This allowed all of Israel, which was already scattered to the ends of the earth, to keep to the same calendar without the need for witnesses and messengers which existed when the calendar was set by eyewitness testimony before a court of three ordained judges in Eretz Israel.

All of this happened after the Great Sanhedrin was uprooted from the Chamber of Hewn Stone; when the Great Sanhedrin was still in its place (i.e., until forty years before the Destruction), they oversaw the declaration of new months. It was only after it was uprooted that the task was given over to a *beit din* of three ordained judges, ordained in a chain of succession going back to Moses.

Moses and Aaron were the very first to be commanded concerning the declaration of the new month: “This moon shall be *to you* the new month” (Exod. 12:1). In other words, “Testimony that the moon looks like this shall be given directly to you, or to whoever stands in your place in the future.”

However, since R. Hillel the son of R. Judah ha-Nasi and his *beit din* saw that, because of our sins, *semikhah* would go out of existence, they fixed the calendar as we have it now. They did this by making a *takkanah* which will not be nullified until the Teacher of Righteousness comes. All of this is discussed at greater length in the book *Seder Olam*.

Had Rabbi Hillel and his *beit din* not made this *takkanah* (God forbid), the ability to fix the new months and the times for the Festivals would have been lost, since there are no ordained judges at the present time. For it would not have availed us to say on each *rosh hodesh*, “Today is sanctified,” in accord with our understanding of the verse “Which *you* shall announce”—that is, “according to your announcement.” Without ordained judges such an announcement would have no effect.

However, because Rabbi Hillel and his ordained *beit din* made this

takkanah, using the accepted calendar to decree that in a given year, certain days would be sanctified, it is as if *he* came to us on that very day and made the announcement himself. For it makes no difference if he sanctifies the new month on the day or beforehand. This is what Nahmanides wrote, criticizing Maimonides' statement in his *Sefer ha-Mitzvot*.

I will say more about this, God willing, at the end of this letter, which I call *Iggeret Ha-Semikhah*. There,¹⁷ God willing, I will try to defend Maimonides against the criticisms leveled against him by Nahmanides.¹⁸

¹⁷pp. 152ff.

¹⁸Rabbi Levi Ibn Habib's criticisms of Berab up to this point revolve around Berab's understanding of the reason for Rabbi Hillel's *takkahah*, and the faulty conclusions he draws from that understanding. They may be summarized as follows:

- Because he relied on faulty sources (the author of *Yesod Olam* was an astronomer, but is not to be relied upon in halakhic matters), Berab is under the impression that Rabbi Hillel made his *takkanah* to put an end to the discrepancies which existed between those who relied on eyewitness testimony and those who relied on astronomical calculations. This is false. Rabbi Hillel made his *takkanah* because he saw that *semikhah* would disappear after his generation, making it impossible to sanctify the month or intercalate the year. The *takkanah* is not concerned with resolving discrepancies or controversies.
- Neither Maimonides or Nahmanides referred to historical reasons, such as a controversy between Jews living in Eretz Israel and those in Diaspora, when they wrote about the commandment to sanctify the new moon. It is a Biblically-derived commandment, which both authors base on Exod 12:2 ("This moon shall be for you the first of the months"). Maimonides interpreted the word *lachem*, "for you," to mean "for the Sanhedrin or those who derive their authority from it. Nahmanides interpreted the same word to mean, "for those who are *ordained* like you." If their respective conditions are met (i.e., a return of the Sanhedrin or simply a return of *semikhah*), sanctifying the new month on the basis of eyewitness testimony would not be an option, but an obligation.
- Berab is also in error in applying the principle that "one court's *takkanah* may only be overturned by a *beit din* of greater number or stature." Rabbi Hillel's *takkanah* was not meant to stand for all time, but was made in response to a particular crisis—the end of *semikhah*. If *semikhah* were to return, the obligation to sanctify the months on the basis of eyewitness testimony would return with it. When Nahmanides said that Hillel's *takkanah* would be in effect "until the Teacher of Righteousness arrives," he was only reflecting his own opinion that *semikhah* could not return until the Teacher of Righteousness arrived.

Berab continues by acknowledging a difficulty: the weight of Talmudic and halakhic evidence suggests that *semikhah* cannot be renewed in the event that there are no living ordained judges. He hopes to prove, through a probing of those sources, that there is in fact a remedy for the situation.

A major section of Berab's *Iggeret* deals with the question of determining the Jewish calendar. Berab tries to convince his readers that men ordained by agreement of the sages of Eretz Israel would *not* have the authority to set the date of the new month, or intercalate the year. He has already raised the calendar issue, in his introduction. He mentions it again below, and will take it up at length near the end of the *Iggeret*.

My intention is to clarify whether it is possible to restore *semikhah* at the present time, inasmuch as there are no ordained judges. For if it is possible, there would be many benefits. Even though R. Hillel and his *beit din* have fixed the calendar for us, there are still many things which depend on *semikhah*. We learn them in Mishnah Sanhedrin, chapter one:

Monetary cases are decided by three judges; cases of theft or bodily injury are decided by three; cases regarding claims for full damages or for half-damages, twofold compensation, or fourfold or fivefold compensation are decided by three; and cases concerning claims against the violator, the seducer, and the defamer are decided by three...

Cases concerning crimes punishable by flogging are decided by three...

Semikhat zekeinim and the breaking of the neck of the heifer are decided by three...

The gemara takes up the statement, “*semikhah* and *semikhat zekeinim* are decided by a court of three,” and it asks the question, “what are *semikhah* and *semikhat zekeinim*?” Rabbi Johanan answers, “the ordination of elders.” The simple understanding of the passage seems to rule out *semikhah* at the present time, inasmuch as it seems that one needs to be ordained in order to

ordain others (In line with all that we have said above). But now, because of our sins, there is no one who carries on the chain of ordination. So how could it be possible to ordain at the present time?

Furthermore, the same passage suggests that once *semikhah* goes out of existence it can never be renewed. We find there:

And one cannot ordain? But surely R. Judah said in the name of Rav: Indeed, let that man be remembered favorably, and R. Judah ben Baba was his name! Had it not been for him, the laws of fines would have been forgotten in Israel. (Forgotten? Let them learn them!) Rather, the laws of fines would have gone out of existence in Israel. For once the wicked kingdom persecuted Israel, decreeing death to ordainer, ordinee, and the district in which ordination took place. What did Judah ben Baba do? He went and sat between two high mountains, between two big cities, between two Sabbath boundaries—between Usha and Shefaram—and he ordained the following five elders: Rabbi Meir, Rabbi Judah, Rabbi Simon, Rabbi Yossi, and Rabbi Elazar ben Shamua (R. Avyah adds Rabbi Nehemiah as well). When their enemies discovered them, he said to them, “Run, my sons!” They said to him, “Master, what will come of you?” He answered, “I will lie before them like an immovable rock.” They (the Romans) didn’t leave until they stabbed him with three hundred iron spearheads, making him like a sieve.

Based on that episode, it would seem that if all of the ordained judges of that generation had died out, *semikhah* would have disappeared forever. [There are two aspects of the story that lead us to this conclusion, namely:]

- Were this not the case, how could R. Judah say “were it not for Rabbi Judah ben Baba, the laws of fines would have gone out of existence in Israel?” If he hadn’t ordained them, the sages could have come together and ordained them when the persecution ended. So it seems as if there is no one present who stands in the chain of *semikhah*, no *semikhah* can occur.
- Additionally, we might ask: Had it been permissible to ordain people without the presence of an ordained judge, why would Rabbi Judah ben Baba have put his life in danger the way he did? He

could have waited until the persecution was over. Again, we conclude that, without the presence of a person who stands in the chain of *semikhah*, no *semikhah* can occur. Rabbi Judah ben Baba did what he did because he was afraid that he would die, and *semikhah* would die with him.

We will explore another matter, namely: If we conclude that it is possible to ordain, even without the presence of someone who stands in the chain of *semikhah*, does it follow that three ordained judges will have the authority to determine the new months and intercalate the year? I have in fact seen one scholar who erred regarding this very question, and thought that if we could ordain, we could also intercalate and determine the days of the festivals.

[We will explore another matter, namely: Let us assume that we have the authority to ordain. We have learned that the administering of lashes requires the presence of a *beit din* of three ordained judges. However, must the person being punished have been both *witnessed* and *warned*, or may he be lashed without those two conditions having been met? We are not concerned with punishment here; it is obvious that we will not punish. Rather, we are concerned with the case of someone who comes in order to repent, saying “I have committed a sin which may be punished either by lashes or by *karet*. I would like to receive lashes in order to exempt myself from the punishment of *karet*.” For we have learned:

All who are liable to *karet*, if they receive lashes, are exempt from the penalty of *karet*. Scripture states, “your brother be lashed¹⁹ before your eyes” (Deut 25:3). Once he has received the lashes, he is your brother once again. This is the opinion of R. Hananiah b. Gamaliel (M. Makkot 3:15).]²⁰

These are the issues relating to *semikhah* which I shall explore.

¹⁹*nilkah*, “degraded” (NJPS). In this halakhic *midrash*, it is taken as the passive form of the verb “to lash.” Once he has received lashes, he is considered your brother again, i.e., he is no longer under penalty of *karet*.

²⁰The bracketed section, which deals with the issue of *malkot*, has been moved from its location in printed editions of the *Iggeret*. In them, and in Maimon’s reprinting, it appears after Berab’s outlining of the three textual issues relating to Hil. Sanhedrin 4:11 (below). I believe that this is an error, as the issue of *malkot* is not a textual problem, but a distinct problem unrelated to the Maimonides’ language. The fact that *malkot* is discussed at the conclusion of the *Iggeret*, after the calendar issue, bears out my suggested correction.

Having laid out the general issues, Berab next cites the text which will serve as a foundation for his proposal (and for Judah Leib Maimon's four hundred years later), Maimonides' Mishneh Torah, Hil. Sanhedrin 4:11. After quoting the *halakhah*, he enumerates three potential problems relating to it. They are:

- (1) Maimonides' concluding words, "the matter requires decision," seem to call the entire proposal into question.
- (2) The *halakhah* could be understood as demanding unanimity among the sages of Eretz Israel, which clearly did not exist in his day.
- (3) Maimonides' language, especially in the middle section of the *halakhah*, is ambiguous and open to various interpretations. Berab finds three problematic phrases, which I have labeled a), b), and c).

This is what Maimonides wrote in the Mishneh Torah, Hil. Sanhedrin 4:11:

It seems to me that if all the scholars in Eretz Israel were to agree to appoint judges and to ordain them, the ordination would be valid, empowering the ordained to adjudicate cases involving fines and to ordain others. If what we have said is true, the question arises: Why were the Sages reluctant to renew ordination, so that the laws involving fines shouldn't disappear from Israel? Because Israel is scattered, and it is impossible that will all agree. If, however, there were one ordained by a man who had himself been ordained, no unanimity would be necessary. He would have the right to adjudicate cases involving fines because he would be an ordained judge. But this matter requires decision.

While it seems as though this statement provides us a remedy to renew *semikhah* upon the agreement of all the sages of Eretz Israel, [I must respond to the following issues:]

- 1) He wrote at the very end, "the matter requires decision." It would

seem, based on those words, that he is unsure about this process. That is, *if we say that “the matter” refers to the very beginning of the statement.*

- 2) It would seem, based on his words, that if even one of the sages of Eretz Israel were to disagree, the *semikhah* would not be valid. This is incredible! But, in fact, we learn in Tractate Horayot that “throughout the entire Torah, ‘all’ means ‘a majority.’” Below is the pertinent passage:

R. Jonathan said: Where a hundred [judges] sat down to consider a decision they are not liable [to bring a sacrifice in the event of a judicial error] unless all of them arrived at the same [erroneous] decision, for it is said, “And if the whole congregation of Israel shall err” (Lev 4:13), implying that they must *all* err. R. Huna ben Hoshaiyah said: Logical deduction leads to the same conclusion. For throughout the Torah there is an established rule that a majority is like the whole, yet here it says “the whole congregation.” Because of this (i.e., that “whole” is made explicit) we must conclude that even if there were a hundred, they must all arrive at the same conclusion.²¹

In the back-and-forth in the *gemara*, R. Mesharsheyah objects to R. Jonathan’s contention, and quotes the following *baraita* :

Our Rabbis relied upon the words of R. Simeon ben Gamliel and upon the words of R. Eleazar the son of R. Zadok who said, ‘No law may be imposed upon the public unless a majority of the people can endure it.’ And R. Adda ben Abba said: Where is the Scriptural proof for this? “You are suffering under a curse, yet you go on defrauding me—the entire nation” (Mal. 3:9), and yet a majority is regarded as the whole. Is this not a refutation of R. Jonathan? Indeed it is.

The *gemara* concludes:

Why then did the All-Merciful say, “the whole congregation?” This is what was meant: Where they are all present the decision is valid; but if not, their decision is invalid.

And Rashi comments:

Where they are all present. The Sanhedrin of seventy-one. The decision is valid. Even though not everyone who was present at the deliberations

²¹Horayot 3b.

agreed.

Since the *gemara's* conclusion is that, throughout the entire Torah, “all” means “a majority” (even when it says “all”), then we do not need the assent of everyone in the matter of *semikhah*. We can follow the majority.²²

²²Ibn Habib comments at length on Berab's discussion of “majority” and “unanimity.” His criticism may be summarized as follows:

- Berab is in error regarding his understanding of the Talmudic passage. In that case, at least, “all” means “everyone.”
- However, that is really beside the point. The fact is that Maimonides used the word “all” intentionally. Maimonides felt that there needed to be unanimity of the sages for four reasons:
 - a) The gravity of the situation: If the sages are wrong about this, they will be committing a grave sin.
 - b) The far-reaching consequences: This action has a global impact on Judaism. Something which touches everyone should be agreed to by everyone.
 - c) The novelty of the situation: Because this is an unprecedented act, not explicitly commanded in the Torah, unanimity was necessary. Once the sages had unanimously agreed that *semikhah* could be renewed, they could follow the majority in deciding who the first ordained judge would be.
 - d) Analogy to the prior method: When *semikhah* existed previously, it could be performed by one ordained judge, together with two laymen. The sages of Eretz Israel would be acting, as it were, in place of that one ordained judge. Just as an individual cannot be divided in his opinion (either he is ordaining or he is not), so too the “corporation” of sages in Eretz Israel must be united in purpose.

Ibn Habib justifies his lengthy criticism of this point as follows:

The heart of the matter: The agreement arrived at by the Rabbis of Safed cannot stand if we (in Jerusalem) do not agree as well, so long as our lack of agreement is not out of any desire to be contrary, but because of proofs we offer for our position. Perhaps if they sent us messengers bearing evidence [before proceeding to ordain Berab], we would have deliberated and eventually come to agree with them. Even now, if they would send us emissaries to discuss the matter, we might change our mind. We have taken no action against them. We believe that such an important matter requires lengthy deliberations. I have discussed the issue of unanimity at such great length because I fear that the Rabbis of Safed may believe that the *semikhah* they have instituted is valid, given

3) It is also necessary to look carefully at Maimonides' *language* in several instances:

a) He wrote:

If what we have said is true, the question arises: Why were the Sages worried about [the continuance of] ordination, so that the laws involving fines shouldn't disappear from Israel? Because Israel is scattered, and it is impossible that will all agree.

If the problem is the multiplicity of opinions (as Maimonides states, "it is impossible that will all agree."), then what difference does it make whether they are scattered about or gathered together?²³

b) A further difficulty arises from his statement:

If, however, there were one ordained by a man who had himself been ordained, no *unanimity* would be necessary.

Based on it, it would seem that he *does* need the support of the *majority*.²⁴ But above, he wrote:

If there should be in all of Eretz Israel but one ordained judge, he could invite to others to sit with him and ordain.

From this, it seems as though the ordained judge can act without *anyone's* agreement.

c) A further problem with the wording of the *halakhah*; Maimonides

that they are a majority. This is what I have heard that they are saying.

Thus he ostensibly leaves the door open to debate, though the bulk of his criticisms suggest that he was certain of his own opinions.

²³Ibn Habib takes issue with this point, calling it "another one of his strange ideas which no sensible person could agree with." In fact, Maimonides was concerned precisely with the issue of "scattering," since he believed that they all needed to be physically present in order to ordain one of their colleagues. He also notes that, even if one were to allow for Berab's position and permit the ordination to be effected through an exchange of letters, there would still be a problem with "scattering:" For how could a rabbi be expected to ordain someone whom he had never even met, solely on the basis of someone else's positive opinion of him?

²⁴I.e., by saying that no unanimity would be necessary, Maimonides *implies* that a

writes:

...No unanimity would be necessary. He would have the right to adjudicate cases involving fines because he would be an ordained judge.”

He only needed to write, “No unanimity would be necessary.” It is self-evident that he can judge cases involving fines, since he is ordained. Additionally, what does he mean by, “he may judge cases involving fines *lakol?*”²⁵ This is obvious, for if he can judge cases involving fines, he can judge them *lakol*.

In his Commentary to the Mishnah, Sanhedrin chapter one, Maimonides wrote:

There is a question as to whether or not the three people conferring the ordination need themselves to be ordained in order to be able to ordain another. This point is clarified in the Talmud in that the senior of the three must be ordained and he takes two others with him and ordains whomever he wishes. It seems to me that, if there would be complete agreement among the Sages and scholars to take a certain man from within the yeshiva and place him at the head—provided that this occurred in Eretz Israel, as we have explained—his appointment would hold good, he would be ordained, and could then ordain whoever he wished. If you hold otherwise, you could never again have a Supreme Court, since all of its members must be fully ordained. The Holy One, blessed be He promised that it (i.e., the Supreme Court) would return, as Scripture states (Is 1:26): “I will restore your judges as of old, and your counselors as of yore. After that you shall be called City of Righteousness, Faithful City.” This will undoubtedly occur when God will prepare the hearts of human beings so that their merit increases and their longing for God and His Torah increase and their righteousness increases. All this will precede the coming of the Messiah, as is explained in many

majority *is* necessary. This would contradict the first case described in the *halakhah*.

²⁵lit. “for all,” or “for everyone.” Maimonides’ meaning is not clear in the context, as Berab notes.

scriptural passages.

Here, Maimonides does not mention the issue of “scattering” as he does in the Mishneh Torah, where he states:

Why were the Sages reluctant to renew ordination, so that the laws involving fines shouldn't disappear from Israel? Because Israel is scattered, and it is impossible that will all agree.

And also in his comment on Bekhorot, chapter 3, mishnah 3:

We have already explained in our commentary to tractate Sanhedrin that only a *beit din* duly ordained in Eretz Israel—whether ordained by another *beit din* or by agreement of the Sages of Eretz Israel—is called “expert.” This is because the Jews of Eretz Israel are regarded a *kahal* (“Community”), and the Holy One calls them “the entire community.”²⁶

Berab now attempts to solve all of the issues he has raised above. To the first problem (i.e., Maimonides' own apparent uncertainty about the procedure he mentions), Berab offers the argument that three sages—Maimonides himself (if we set aside the words “the matter requires decision”), Abraham ben David of Posquieres, and Solomon ibn Adret—all take the efficacy of this procedure for granted.

It is worth noting that, according to some scholars, Maimonides might not even have written the final phrase, “the matter requires decision.” Dov Revel, writing in the journal *Horeb* in 1939, suggests that the words are the addition of a later editor who disagreed with Maimonides. In his preface to *Hiddush ha-*

²⁶Ibn Habib rejects this “difficulty” by referring to the well-known fact that, in several instances, Maimonides offers contradictory interpretations in his *Perush ha-Mishnah* and the *Mishneh Torah*. The general rule is that we follow the codified ruling and disregard the interpretation in the *Mishnah Commentary*, which was written while Maimonides was young. Berab's argument here is based on just such a contradiction and therefore “his ‘difficulty’ is no difficulty at all—and were it indeed a difficulty, his ‘solution’ would be no solution.”

Sanhedrin, Maimon cites this very argument.²⁷ Whether or not it is the case, Berab certainly believed that Maimonides had written those words, and goes to great lengths to harmonize them with his own goals.

And now, I shall respond to each of the above-mentioned difficulties in turn. In the first instance, we know that Maimonides believed that if the sages of Eretz Israel were to agree to ordain any man, that *semikhah* would hold. We can also assume that Rabad, who did not comment on Hil. Sanhedrin 4:11 (as he does whenever he disagrees with Maimonides), believed this as well. And we find further, limited support for our contention from the passage in Baba Kama, chapter one:

...The case of a dog devouring lambs, or a cat devouring hens is an unusual occurrence, and no damages can be imposed in Babylonia—provided that they (i.e., the lambs and the hens) were large. But if they were small, then it would be considered a common occurrence. However, if the plaintiff seizes property belonging to the defendant, it would not be possible for us to take them from him. Additionally, if the plaintiff were to say, “set a date for me to have my case heard in Eretz Israel,” we would fix it for him. And if the defendant refused to go (to Eretz Israel), we would have to excommunicate him (Baba Kama 15b).

The Rashba found a difficulty in this passage. He wrote:

This surprises me, since in their day there was no ordained judge in Eretz Israel. Had there been an ordained judge in Eretz Israel, then the plaintiff could have brought the case forward outside the Land as well! For the matter depends on the presence of ordained judges [and not on the location].

If this is the case, he reasoned, then why should they compel him to go to Eretz Israel? It is irrelevant, since if there are ordained judges in Eretz Israel, then he can bring the case in Babylonia as well. But if there are no ordained judges, then what use is there in traveling to Eretz Israel? It is taught in the first chapter of Tractate Sanhedrin: “Rabbi Joshua ben Levi

²⁷*supra* p. 145 n7

said, “There is no *semikhah* outside of the Land.” The gemara asks:

What is the meaning of “There is no *semikhah* outside of the Land?” Let us say that it means that cases involving fines are never tried outside of Eretz Israel. This solution is unsatisfactory, because we have learned that “a Sanhedrin may function both in Eretz Israel and outside of Eretz Israel,” etc.

Therefore whenever there are ordained judges in Eretz Israel, we may try cases involving fines outside of Eretz Israel.

The Rashba then answered that the above statement provides some support to Maimonides’ words. He wrote:

[In answer to the difficulty I raised above,] I note that Maimonides reasoned that “if all the scholars in Eretz Israel were to agree” to ordain, then they could ordain.

He did, in fact, express some doubt about the matter, and concluded as follows:

Nevertheless, this must be considered more carefully, in light of the passage in the first chapter of Tractate Avodah Zarah and also in Tractate Sanhedrin: “Indeed, let that man be remembered favorably, and R. Judah ben Baba was his name! Had it not been for him, the laws of fines would have gone out of existence in Israel” — which means that, had he not ordained the five elders it would have become impossible to ordain, since there would have been no ordained judges who could have ordained others.

In the final analysis, then, the only solution he could find to the difficulty he raised was Maimonides’ reasoning that “if all the scholars of Eretz Israel were to agree to ordain one man, they are able to ordain him.” And even though the Judah ben Baba episode created a difficulty for him, he did not completely reject Maimonides’ reasoning. He only wrote that it is necessary to carefully examine the episode involving Judah ben Baba.

Maimonides refuted the problem of the Judah ben Baba story as follows: the reason that the rabbis were worried is because they were scattered and would be unable to agree. But if this is so, the problem

returns. Why would we have forced the litigants to travel to Eretz Israel if there was no possibility that the sages would agree to restore *semikhah* and with it the application of the laws involving fines?

I maintain that there is no difficulty raised by the episode involving Judah ben Baba. It doesn't say, "Were it not for Rabbi Judah ben Baba, the laws of fines would have disappeared *forever*;" It says, "the laws of fines would have disappeared." So perhaps the point was that, if the persecution lasted for a long while, there would be no cases involving fines for that entire time.

You might object by saying, "Why did Rabbi Judah ben Baba put himself in danger? He could have waited, and eventually the persecution would have passed, and the Sages of Eretz Israel would have come together and ordained someone!"

Here is the response to that objection:

- In the first place, there are many commandments dependent upon ordained judges; they are discussed in tractate Sanhedrin, as well as in other places in the Talmud.
- Furthermore, it was a period of persecution, during which Rabbi Judah ben Baba would have been required to martyr himself in order to perform even a less important commandment. All the more so was it appropriate for him to martyr himself in order to fulfill the commandment of *semikhah*, which is the basis for whole areas of *halakhah* which might have gone out of practice if the persecution had lasted for a long time. But, even if it only lasted a short time, it was still proper for him to martyr himself during a period of persecution.
- Finally, he may have felt that he wouldn't be detected by the enemies.

It is worthwhile to determine what support, if any, Rashba provides for Maimonides. For Maimonides had interpreted the reason as follows: "it is impossible that they all would agree." If this is so, the problem which Rashba raised still remains. There is no reason to go to Eretz Israel if the sages there cannot agree to restore *semikhah* and judge cases involving fines.

It is also necessary to examine Maimonides' language carefully, for in the Mishneh Torah he wrote that "the matter requires decision," but seems to take it for granted elsewhere (as I have written above).

Berab next discusses his own understanding of the Judah ben Baba episode. In this section of the *kuntres*, Berab's messianism is most apparent. He brings together the Talmudic passage and the two relevant passages in Maimonides. In his reading of them, Maimonides makes a distinction between normal history (as reflected in the Mishneh Torah) and the excitement of pre-Messianic days (expressed in the *Perush ha-Mishnah*). After noting this distinction, Berab identifies his own present as that very moment which the *Perush ha-Mishnah* has in mind.

I maintain that Maimonides' intent was as follows: There is a great difference between the generation of R. Judah ben Baba and the time in which he (Maimonides) wrote. During Judah ben Baba's generation, there were several communities in Eretz Israel, and several great sages scattered about Eretz Israel. Because of this, he maintained that the reason that they worried about *semikhah* at that time was because of their being scattered. But this was not the case when Maimonides lived, nor is it the case now. Now, there is only one Jewish center, and one Rosh Yeshiva. So now, in our time, it is a simple matter to gather together the scholars so that they can ordain their rabbi.

This is why, in his commentary to the Mishnah, which speaks about a

time close to the days of the Messiah—which is in fact the present—he wrote:

It seems to me that, if there would be complete agreement among the Sages and scholars to take a certain man from within the yeshiva and place him at the head...his appointment would hold good.

He doesn't mention any difficulty in getting agreement, because they are all gathered in one place. Presently, Safed is the center of scholarship, while in Maimonides' day there were only ten or twenty Jewish households in Jerusalem. It would have been an easy matter to ordain any sage who lived among them—had there been one—if they had agreed to do so.

What is apparent in the gemara—namely, that the ordainer must himself be ordained—applies only to ordination before a *beit din* of three. But ordination done by agreement of the sages of Eretz Israel—whether there is unanimity or majority—does not require the presence of an ordained judge.

Maimonides supports this contention in his Commentary to Mishnah Sanhedrin 1:1, though the passage in question appears only in the Arabic version:

It seems to me that, if there would be complete agreement among the Sages and scholars to take a certain man from within the yeshiva and place him at the head—provided that this occurred in Eretz Israel, as we have explained—his appointment would hold good, he would be ordained, and could then ordain whoever he wished. If you hold otherwise, you could never again have a Supreme Court, since all of its members must be fully ordained. The Holy One, blessed be He promised that it (i.e., the Supreme Court) would return, as Scripture states:²⁸ “I will restore your judges as of old, and your counselors as of yore. After that you shall be called City of Righteousness, Faithful City.”²⁹ If you should say that the Messiah will appoint them, even though they are not ordained, *this is falsehood*. For we have already explained in the introduction to our book that the Messiah will not add or subtract anything from either the Written or Oral Torah. I hold that the Sanhedrin will be restored before the coming of the Messiah, and that it will

²⁸Is 1:26.

²⁹Sanhedrin, cp. 1.

be a sign of his arrival, as Scripture states: “I will restore your judges as of old, and your counselors as of yore. After that you shall be called City of Righteousness, Faithful City.” This will undoubtedly occur when God will prepare the hearts of human beings so that their merit increases and their longing for God and His Torah increase and their righteousness increases. All this will precede the coming of the Messiah, as is explained in many scriptural passages.

The heart of the matter: If it were true that only someone who was ordained could ordain, in a chain of succession going back to Moses, then *semikhah* would be gone forever. Even the arrival of the Messiah would not change this, since the Messiah will not add to or subtract from either the Written or Oral Torahs. But the Holy One *does* testify that, when Israel returns to its Land, that its judges will be restored as at the beginning, its counselors as of old. Therefore, you must admit that this will be accomplished by agreement of the sages in Eretz Israel, even though they are themselves not ordained.³⁰

The next section of Berab's *Iggeret* (pp. 73-74 of *Hiddush ha-Sanhedrin*) has been left untranslated. It is Berab's attempt to prove that the phrase “the matter requires decision” refers to something other than Maimonides' proposal for renewing *semikhah*. His argument, and Ibn Habib's objection to it, are briefly summarized here. First, the *halakhah*:

³⁰Ibn Habib rejects Berab's reasoning. As he has stated above, halakhic discussions are not to be based on apparent contradictions between the *Perush ha-Mishnah* and the Mishneh Torah. The fact that Maimonides provides a strong justification for his reasoning, and seems to anticipate Ibn Habib's very problem, does not change this fact.

To Berab's contention that *semikhah* must return before the Messiah does, since the Messiah is not free to introduce any halakhic innovations, Ibn Habib responds that it would *not* be an innovation if the Messiah were to ordain judges upon his arrival. Since he is of even greater stature than Moses, it follows that he has the same “ordination” as Moses, namely ordination by God. It is also possible that Elijah, who will herald the Messiah's arrival, will ordain judges. He was himself ordained; since he did not die, but was taken to heaven in a fiery chariot, he could ordain judges simply by bringing to laymen to stand with him and forming a *beit din* of three.

It seems to me that if all the scholars in Eretz Israel were to agree to appoint judges and to ordain them, the ordination would be valid, empowering the ordained to adjudicate cases involving fines and to ordain others. If what we have said is true, the question arises: Why were the Sages reluctant to renew ordination, so that the laws involving fines shouldn't disappear from Israel? Because Israel is scattered, and it is impossible that will all agree. If, however, there were one ordained by a man who had himself been ordained, no unanimity would be necessary. He would have the right to adjudicate cases involving fines because he would be an ordained judge. But the matter requires decision.

Berab recognizes that the concluding three words—*vehadavar tzarikh hakhrea*—pose a great problem for him. His entire argument is based on the premise that the procedure described by Maimonides in the *halakhah* above is valid. If Maimonides himself was unsure of it, everything he has written is called into question. His goal, then, is to prove that those words refer not to the proposal to renew *semikhah* (i.e., the section which begins “It seems to me...” and concludes “...they will all agree”), but rather to the final case described in this *halakhah* (i.e., “If, however...” through “...an ordained judge”). He takes three different approaches to this problem: the first is based in the text, the second in his previous arguments from the *Perush ha-Mishnah*, and the third on his understanding of human thought and speech.

- In the first, textually based argument, Berab speculates on what happens after the first judge is ordained by agreement of the sages. Does he then have the authority to ordain others, and to judge cases involving fines? Or, do the sages have to ordain three judges by general agreement before they may begin judging cases and ordaining others? The argument is very difficult to follow, and does not seem to be grounded in a fair reading of Maimonides. In his rebuttal to

it, Ibn Habib cites five places in Hil. Sanhedrin cp. 4 in which Maimonides rules definitively on the matter which Berab wants to call into question. He concludes: "This is a completely erroneous interpretation and it is forbidden to pay any heed to it." Concerning this aspect of the halakhic argument, the Chazon Ish wrote: "The words in opposition to *semikhah* are clear and lucid, while the words in favor of it are incomprehensible."³¹

- Next, Berab returns to the *Perush ha-Mishnah*. There, Maimonides has explored the matter of reestablishing *semikhah* quite thoroughly. He could not possibly have had it in mind when he said that "the matter requires decision."
- Finally, he suggests a different way of understanding the word "seem." At first glance, we are likely to say that the "matter which requires decision" is the one which only "seems" to be the case. Berab would give the word "seem" a different shade of meaning. If it *seems* to Maimonides that this is the case, then he *believes* it and does not feel the need to explore it further.

• • •

At this point, Berab has solved, to his own satisfaction, the problems related to Maimonides' proposed remedy for renewing *semikhah*. By "reassigning" the "matter which requires decision," he is able to claim that the proposed method is tantamount to a *halakhah pesukah*, a non-controversial legal principle. He has also shown that no unanimity, but only a simple majority of the sages is required.

Above (p. 138), Berab mentioned two other issues that he must explore in his *Iggeret*: the question of the calendar and that of

³¹op. cit., p. 230 n. 125.

malkot (“lashes”). These issues are of secondary importance for our purposes. We will note them here before presenting the conclusion of Berab’s *Iggeret*:

- **Regarding the calendar:** According to Berab, judges ordained according to the procedure described by Maimonides would *not* have the power to intercalate the year or accept testimony as to the appearance of the new moon. Ibn Habib disagrees, holding that if in fact the *semikhah* is valid (of course he does not believe that it is), then the ordained judges are *obligated* to accept testimony regarding the moon, and to intercalate the year. Such a situation could be disastrous for the Jewish people, which might end up eating *hametz* during Passover or eating on Yom Kippur.

We note a parallel between this discussion and Maimon’s effort to prove that a renewed Sanhedrin would not have the power to impose the death penalty. In both cases, those who support the renewal of the institution must hold up its *limitations* and “weaknesses,” while those who oppose the renewal point to its prerogatives and power.

- **Regarding *malkot*:** Here, Berab argues based more on his own logic than on any halakhic sources. According to the *halakhah*, a person may not be punished (e.g., lashed) based on his own admission of guilt. This would seem to suggest that the *convertos* who have returned to Judaism and arrived in Israel have no opportunity to receive lashes and thus be exempted from the penalty of *karet*, inasmuch as there are no witnesses to their crimes and they did not receive a halakhically valid warning. Berab believes it to be an injustice that a person who sins in the presence of witnesses after receiving a warning can have his penalty of *karet* erased, while a person who comes of his own accord to confess a sin committed in private may not.

Berab actually seemed to believe that the renewal of ordination was *not* a precondition for administering lashes to these people. However, he calculated correctly that, by making the issue of *malkot* a centerpiece of the discussion, he would gain the support of many of the rabbis of Safed who were themselves penitents. Indeed, the *Ketav rabbanei Tzefat*³² ascribes a great deal of importance to this issue which was clearly secondary in Berab's mind.

• • •

Berab concludes the *Iggeret* with a reference to political dimensions of the proposal. He believed that the rabbis of Jerusalem were responsible for his having to leave Safed one step ahead of the Turkish authorities. Ibn Habib denies that anyone in Jerusalem informed the government of the controversy.

This, then, is my assessment of the issue of *semikhah* at the present time. And so, in the year 5298, God bestowed spirit upon the sages of Eretz Israel—with the exception of one or two,³³ whose opinions are nullified by virtue of their smallness in number and wisdom, and who erred in two important ways, namely:

1. They misunderstood Maimonides' statement, "the matter requires decision," thinking that it referred to the possibility of renewing *semikhah*. Therefore, they were unsure whether it was even possible to renew *semikhah* at the present time.
2. They thought that we would assume that *semikhah* gave us the permission to sanctify the new moon and intercalate the calendar, so that we would end up eating *hametz* during Passover or eating on Yom Kippur.

³²*supra*, p. 129.

³³i.e., Ibn Habib and Moses di Castro.

But you should know that we have already answered all of these doubts:

1. We have explained the correct interpretation of “the matter requires decision,” and to what it refers.
2. We have written above that, even were there to be several ordained judges, we would not have the authority to set the time of the new month. This can only be done once the Teacher of Righteousness comes, and once a court greater in number and stature than that of Rabbi Hillel is established.

So God bestowed spirit upon the sages of Eretz Israel, and they agreed to ordain me, the unworthy Jacob Berab.

But after two or three months, I almost came to the same fate as Rabbi Judah ben Baba (z'l). Two informers rose against me, for no injustice on my part—may God requite their wicked deeds!—and I was forced to flee outside the Land. I thought, “God forbid that the moment should pass, with me outside the Land where I have no power to ordain anyone (as is perfectly clear from tractate Sanhedrin). God forbid that all that we have worked for will be for naught, seeing how difficult it is to form a consensus over anything! Therefore, I ordained four of the finest scholars to be found there (in Safed) at the time.

God knows that my efforts were for the sake of Heaven—not to rule over or dominate anyone. I was moved by Maimonides' words in his *Perush ha-Mishnah*, which I have cited above, stating that when the Holy One prepares the hearts of the people, and their intention and desire is for the sake of Heaven, they will agree to appoint a *rosh yeshiva*. He proves this from the verse, “I will restore your judges as of old, your counsellors as of old.” Then He will fulfill the following prophecy through us: “And the ransomed of the Lord shall return, and come with shouting to Zion, crowned with joy everlasting. They shall attain joy and gladness, while sorrow and

sighing flee” (Is. 35:10).

Amen. May this be God’s will.

Jacob Berab

The *Iggeret ha-Semikhah* represents Berab’s best effort at justifying his actions halakhically. After its publication, the entire controversy turned intensely personal and rather ugly. Accusations of slander were hurled in both directions, and the exchange of letters between Berab and Ibn Habib (Maimon, pp. 82-102, not translated here) are as much personal invective as halakhic discussion.

Maimon’s own analysis of the Safed ordination controversy is the subject of chapter twelve of *Hiddush ha-Sanhedrin*. He is essentially in agreement with Katz in seeing the main cause of disagreement in two differing conceptions of messianism. However, where Katz is willing to state that a dispassionate review of the *halakhah* supports Ibn Habib on almost every point, Maimon insists that Berab’s arguments were halakhically sound—especially given the discovery of new evidence such as he has brought above.³⁴

³⁴*supra*, p. 82.

Chapter Twelve

In the previous chapter I reprinted Rabbi Jacob Berab's responsa concerning the renewal of *semikhah*, together with an abstract of the criticisms of Rabbi Levi Ibn Habib. The scholars of Israel who had never before seen these works may now engage in *pilpul* over them. However, there are some aspects of these responsa which only appear between the lines. We must understand these aspects if we are to draw the proper conclusions about Rabbi Berab's aspirations in renewing *semikhah*.

Levi Ibn Habib is known in the halakhic literature through his great work, *Teshuvot ha-Ralbah*, which has been printed on several occasions and has engendered much *pilpul* on the part of the sages. On the other hand, all that many rabbis know of Rabbi Berab is that he attempted to restore the crown of *semikhah*. Historians pay scant attention to his *great stature*, and completely ignore his *method of study*, his approach to the Talmud and the Torah. Yet the fact remains that Berab was of singular importance among the Sephardic scholars of his day. Without minimizing Ibn Habib's status, we must acknowledge that Berab was, as Solomon Algazi wrote in his approbation to *Teshuvot Rabbi Jacob Berab*,

One of a kind in his generation, glorious beyond all others, A righteous man,
the foundation of the world—Great and exalted in form and stature, and pure
as the very heavens.

We also have the testimony of his student, Rabbi Moses ben Joseph Trani¹ (The Mabit), who said that his teacher “drank the milk of Torah from his mother's breast, and was raised amidst the great sages to learn and to teach to the children of Israel...” (*Teshuvot ha-Mabit*, vol. 1, #41).

To our dismay, we are only able to benefit from a small portion of his

¹Moses di Trani (1500–1580). Di Trani was born in Salonika, studied in Adrianople, and eventually came to Safed where he was a student (and ordinee) of Berab. His responsa were published in two volumes, in Venice (1629-30) and Lvov (1861).

teachings. The author of *Korei ha-Dorot*² has written that Jacob Berab “gave many legal decisions in response to questions from all over the world; additionally, he wrote discourses on the Talmud, and also composed a commentary on Maimonides’ [Mishneh Torah]” (*Kore ha-Dorot*, ed. D. Kassel, 32b).³ But of all these “many legal decisions” we only possess fifty-eight responsa, published in Venice in 1663. Berab mentioned his commentary on Maimonides in one of his responsa:

“Even though I am busy with the students, and with this book which I am writing on Maimonides...” (Responsa, #49).

His student Moses di Trani cited this book, mentioning “the words of our master, Rabbi Jacob Berab, in his commentary on *Hilkhot Nezirut*” (*Teshuvot ha-Mabit*, vol. 1, #174). Furthermore, a scholar of our own day, Rabbi Aryeh Leib Frumkin, testified that he had seen a catalog of manuscripts in Jerusalem, and that among them was a commentary by Jacob Berab on *all four sections of Maimonides’ Mishneh Torah* (Frumkin, *Toldot Hakhamei Yerushalayim*, vol. 1, cp. 4).

To our dismay, this book has been lost. But Berab’s student, Rabbi Joseph Caro,⁴ cited from it *two wonderful explanations of Maimonides’ Mishneh Torah*. One is found in his *Kesef Mishneh, Hilkhot Shabbat* (9:4), and is found, verbatim, in Berab’s *Responsa*, #51. From this one shining example we get some sense of Berab’s brilliance, and also the extent to which he investigated each and every one of Maimonides’ words—as though he were counting pearls.

From his book of “discourses on the Talmud” (mentioned in *Korei Ha-dorot*), only the section dealing with Tractate Kiddushin remains. Yet from this one section, we are able to perceive his unique and profound

²David Conforte (1617 or 1618–c. 1690). *Kore ha-Dorot* is a Jewish literary history, spanning the period from the close of the Talmud until the seventeenth century.

³Berlin, 1846.

⁴Joseph ben Ephraim Caro (1488-1575).

method of study. A historian of the previous century mentioned Berab in the same sentence as the brilliant Talmudist Jacob Pollack, who created the method of study known as “*hillukim*”⁵ (see Graetz, *History of the Jews*). And like the latter, *Ashkenazic* scholar, so too the *Sephardic* genius. Berab had excellent and exacting powers of perception; indeed, there are places where he came to the same conclusions as were reached by Pollack in his own academy.

It is this *profound genius*—a man privileged to raise up many disciples who later became great lights in the heavens of Judaism, such as Joseph Caro, Moses di Trani, and others—who decided to renew *semikhah*.

But before we begin discussing his efforts, we need to understand something of the times in which he lived, wrote, and thought.

It was a time of deep depression in Israel. The Spanish Exile had, in an instant, turned Sephardic Jewry—the elite⁶ of the Hebrew nation—into persecuted wanderers, seeking safe harbor. No wonder then, that a feeling of tremendous despair entered their hearts and weakened their hands, causing them to say, “Our bones are dried up, our hope is lost, our fate is sealed” (Isaac Abrabanel, Introduction to *Ma’yenei Ha-yeshua*). Yet out of this deep depression there arose men of distinction, full of spirit and vision, concerned for the fate and future of Israel, “to strengthen weakened hands and wobbly knees,” and to place “a belief in the Redemption in the hearts of the exiled.” First and foremost was Rabbi Don Isaac Abrabanel.⁷ This man saw the tragedy of the exile in all of its harshness and terror. He was greatly affected by the words of the despondent exiles, who “set their tongues against

⁵“fine distinctions.” While not actually the creator of this method of study, Pollack was responsible for introducing it to Polish Jewry. He was known as *avi ha-hillukim*, “father of the distinctions.”

⁶lit. “the choice flour and oil.” Lev 2:2.

⁷1437-1508.

heaven⁸ and spoke against God and His Messiah,” concluding that no Redeemer was coming— “the Messiah of the God of Jacob is dead, defeated, or has been taken captive” (introduction to *Yeshu’ot Meshiho*). He wrote three works—*Yeshuot Meshiho*,⁹ *Mashmi’a Yeshu’ah*,¹⁰ and *Ma’yenei ha-Yeshu’ah*¹¹—for those people, and others like them. In them, he discussed “the end of these awful things,”¹² and promised the Jews that “their salvation will soon come, their deliverance be revealed.”¹³ He believed with all his heart that the Redemption was drawing near, and he wrote about “the ingathering of the exiles and the return of Israel to its land,” as well as “the material improvement of Eretz Israel at the time of the Redemption.” His words bespeak a man on fire with passion and vision. Yet we also marvel at his excellent grasp of politics and his writings about international crises, including the wars between the Muslims and the Christians which would bring about Israel’s salvation and the rebirth of Eretz Israel.

Some of the most important of the Spanish exiles assisted Abrabanel; they too saw in Israel’s travails “the birthpangs of the Messiah,” and in *aliyah* to Eretz Israel “the beginning of the Redemption.” The good news which came out of Eretz Israel about the growth and development of the Yishuv caused many people’s hearts to be turned *Eastward*. Solomon Molcho’s torch was introduced to this atmosphere of longing for the Redemption—and the coals burst into flame. All of the yearnings of the best of the Jews of Sepharad were brought together and realized in the wondrous person of the *converso* Diogo Pires, who was known in Israel as Solomon

⁸Ps 73:9.

⁹“The Salvation of His Anointed;” it interprets the Rabbinic statements on the coming of the Messiah.

¹⁰“Announcing Salvation;” in this book, Abrabanel comments on the messianic prophecies found in the Prophets.

¹¹“Fountains of Salvation;” a commentary on Daniel.

¹²Dan 12:6.

¹³After Is 56:1.

Molcho.¹⁴ He had a hatred of exile and servitude, a burning desire for the rebirth of the Israelite nation in its historical land, and a perfect faith in the Redemption of Israel—a faith which influenced not only his own people but also Pope Clement VIII. And in the end, he was martyred...

Convinced of the truth of his message, Solomon Molcho left Portugal for the large Jewish community of Turkey.¹⁵ There, he enchanted the masses with his sermons about the Redemption. His pronouncements were shrouded in mystery and secrecy, as is the kabbalistic way; however, based on the Biblical verses which he placed on his coat-of-arms, as well as a few lines of his only surviving poem, we can assume that he hoped to see the actual conquest of Eretz Israel. Further evidence for this assumption may be found in the writings of Rabbi Joseph of Rosheim (see his work in Latin, p. 92).¹⁶

The spirit of the day was one of vision and realization, of romanticism in a realistic mode. As sure as the wind brings the rain, Molcho's words brought concrete results.

At that moment, a group of sages made *aliyah* in order to advance the "footsteps of the Messiah." In these men, brilliance of soul was combined with the light of Torah and wisdom.

Rabbi Jacob Berab made *aliyah*. In addition to all that was said above, he was also known as "the pillar of the exile of Israel" (Algazi, approbation to Berab's *Teshuvot*). He left Castile while still a youth, and migrated to Africa. He was well-received by the Jewish communities of Morocco, and was appointed Rabbi of Fez at age *eighteen*. From Fez, he went down to Egypt and became a member of Rabbi Isaac Sholel's *beit din* (see Berab's responsum, in the *Kuntres ha-Semikhah*). From there he made *aliyah* to Jerusalem and

¹⁴c. 1500-1532.

¹⁵Molcho was forced to leave Portugal after converting to Judaism in 1525. He had been dissuaded from converting by David Reuveni, but he circumcised himself anyway.

¹⁶Joseph ben Gershom of Rosheim (c. 1478–1554), a leader of the Jewish community in Germany.

afterwards settled in Safed, where he became the chief rabbi. The presence of this notable man in Safed was like a lodestone for the sages, and before much time had passed the city had become an important center of Torah, great in number as well as in wisdom.

One *aliyah* leads to another, and soon Rabbi Solomon Alkabetz came to Eretz Israel.¹⁷ He was a halakhist with broad and deep understanding of the Talmudic literature (as is clear from his work, *Manot ha-Levi*, written while he was still a youth); he was also a man of the heart, who gained eternal fame with *one poem*—“*Lekhah Dodi*”—which has become the hymn of the entire nation on each and every Sabbath. Supreme inspiration hovers above this poem, though its roots are in pain and longing, love and cleaving. It unites “joy and light” with the nation’s groaning in “the valley of weeping.”¹⁸ The present darkness is coupled with the brilliant hope for the future, for “a world that is entirely good,” for the coming of the Redemption. But first—the poet calls to his people— “Rise up, get out of the upheaval.”¹⁹ Only then, “will He have mercy upon you.”

In his books, Rabbi Solomon Alkabetz speaks about the unity of Israel and their superiority “over all other nations. For they follow the counsel of our God, while the rest of the nations follow the wicked desire of their hearts” (*Manot ha-Levi*, Introduction). And just as Israel is separate from all other nations, so too her Torah and her faith are different from other sources of knowledge and other faiths. “Other sciences are learned through the senses and through reason,” unlike Torah which is “completely divine” (*Ayelet Ahavim*, 63). And Eretz Israel is similarly exalted above the rest of the world. As he puts it, Eretz Israel is called “the Land;” the rest of the world is “outside” (*Shoresh Yishai*, 5). He agreed with Rabbi Abrabanel that Eretz

¹⁷Solomon ben Moses ha-Levi Alkabetz (c. 1505-1584), kabbalist and poet.

¹⁸Ps 84:7.

¹⁹*ha-hafeikhah*, after Gen 19:29.

Israel's significance and holiness are "in her very essence." Eretz Israel is called "'City of Righteousness,' because righteousness flourishes in her" (*Berit ha-Levi*, responsum to Joseph Caro).

Alkabetz's close friend, the great Rabbi Joseph Caro made *aliyah* along with him. While still in the Diaspora, he had apprehended a vision in the form of "the *maggid*" or "the Mishnah" on several occasions, and this vision had compelled him "to go to Eretz Israel to learn and to teach" (*Maggid Meisharim*, Caro's mystical journal). Inspired by these appearances, he set out on his way. He met Solomon Alkabetz, "and the two of them went on together," joined by a large band of young kabbalists. Full of youthful enthusiasm, united in a mystical covenant through their apprehension of an impressive vision on the eve of Shavuot, 1526 in Salonika (see *Shenei Luhot ha-Berit*, part one, tractate "Shavuot"). All of this "honor" was directed toward Safed.

According to the kabbalists, "anyone who dwells in Safed has an advantage over the rest of the cities in Eretz Israel, due to its elevation and its clean and pure air." Therefore, "[Safed] is an appropriate place to search after the deepest secrets of the Torah." What is more, "Safed is situated directly beneath the Throne of Glory" (see R. A. Azoulai, *Hesed le-Avraham*, Spring 3, Streams 22 and 13). Solomon Molcho's arrival at Safed's gates heightened the messianic fervor, both within the city and throughout the Diaspora. The Jewish community in Safed, now quantitatively and qualitatively greater than any other community in Eretz Israel, suddenly became aware of its strength. Its rabbi, Jacob Berab—about whose great wisdom and Torah-knowledge we have already spoken, and who was considered equal to the rest of Israel's sages combined (Questioner in Berab, *Teshuvot*, #2)—considered the question of *semikhah*. He concluded that *halakhah* allowed for, the situation called for, and the *zeitgeist* (namely, "a time close to the Messiah") demanded a *renewal of Semikhah*. It was

necessary to restore Eretz Israel, the cradle of the nation, to its former glory. He found solid support for his contention in Maimonides' words:

If all the scholars in Eretz Israel were to agree to appoint judges and to ordain them, the ordination would be valid, empowering the ordained to adjudicate cases involving fines and to ordain others (*MTHil. Sanhedrin* 4:11).

Elsewhere, Maimonides had written:

If there would be complete agreement among the Sages and scholars to take a certain man from within the *yeshiva* and place him at the head—provided that this occurred in Eretz Israel, as we have explained—his appointment would hold good, he would be ordained, and could then ordain whomever he wished. If you hold otherwise, you could never again have a Supreme Court, since all of its members must, in any event, be ordained. The Holy One, blessed be He promised that it (i.e., the Supreme Court) would return, as Scripture states:²⁰ “I will restore your judges as of old, and your counselors as of yore. After that you shall be called City of Righteousness, Faithful City” (*PhM*, 1:3).

Relying on these very statements, *twenty-five of Safed's sages came together in the year 5298 since the creation of the world, and “elected the wisest and most qualified among [them]—the pure, great rabbi, Our Master Rabbi Berab (may the Merciful One bless and keep him)—and decided that he would be ordained, and would be the head of the academy, and would be called “rabbi.” He would thus be the leader of the Sanhedrin and the first one ordained during the reestablishment of semikhah (see the Kuntres ha-Semikhah).*²¹

This revolutionary deed, which was bound to cause political repercussions, aroused strong opposition on the part of Jerusalem's sages—chief among them Rabbi Levi Ibn Habib. At the root of this opposition was undoubtedly their indignation at the affront to the dignity of the eternal

²⁰Is 1:26.

²¹*supra*, p. 131.

capital, though other, halakhic and legalistic reasons were given voice.²² A lengthy debate began; letters flew back and forth. Rabbi Berab succeeded, through his scrupulous reading of both Maimonides and other authorities, in rebutting all of the criticisms which Ibn Habib leveled at him. Within that *pilpul*, hidden between the lines, *the discerning eye will see Jacob Berab's true and supreme intention*, which, though not made explicit, is nevertheless present. His critics maintained that the ordination of rabbis was unnecessary, there being no tasks for them to perform. The intercalation of years and the fixing of months had already been set by Hillel the Nasi and his *beit din*, and could not be changed; likewise, cases involving fines could not be adjudicated in the Diaspora. Therefore, Berab responded that his goal was to aid the persecuted exiles who were coming in great numbers to Eretz Israel, and who desired to repent through *teshuvat hamishkal*—that is to say, to be given forty lashes and thereby to make atonement.²³ In order to accomplish this type of repentance, they required an ordained judge.

A careful analysis of the tracts suggests that aiding the persecuted Spanish exiles was not his primary concern. Especially noteworthy is his undue emphasis on the verse, “I will restore your judges,” and on the notion that *semikhah* is “preparation for the Redemption,” preparing the ground for the establishment of the “City of Righteousness,” on its ruins. The matter’s end confirms our suspicions: Aside from the “disagreement for the sake of heaven” which brought about the end of the renewed *semikhah*, there were informers who “went and ate the bread of destruction in the king’s house,” informing against Berab to the authorities. It seems that this act of

²²Katz disagrees, maintaining that while the Jerusalem–Safed rivalry “made the controversy more ascerbic as it went on,” nevertheless “the controversy itself did not break out on that basis” (*Mahloket ha-Semikhah*, p. 38).

²³*teshuvat hamishkal*, lit., “repentance of the scale.” “How does one perform *teshuvat hamishkal*? He causes himself to suffer to the same degree that he benefited from his sin. This suffering includes sadness and pain, the diminution of food and drink, and the denial of his sexual and other appetites” (*Orhot Tzaddikim*, Gate 26).

informing was *political* in nature. Berab himself wrote:

But after two or three months, I almost came to the same fate as Rabbi Judah ben Baba (z'l). Two informers rose against me, for no injustice on my part...and I was forced to flee outside the Land. I thought, "God forbid that the moment should pass, with me outside the Land where I have no power to ordain anyone (as is perfectly clear from tractate Sanhedrin, where it is written, "There is no *semikhah* outside of Eretz Israel"). God forbid that all that we have worked for will be for naught..." Therefore, I ordained four of the finest scholars to be found there (in Safed) at the time. God knows that my efforts were for the sake of Heaven—not to rule over or dominate anyone (*Kuntres ha-Semikhah*).

Among the four ordinees was Rabbi Joseph Caro, who, according to his *maggid*, "gave his soul on behalf of the restoration of *semikhah*" (see Caro, *Maggid Mesharim, Parashat Vayikra, 5 Nisan 5303*).²⁴

It takes an insightful person to recognize that the renewal of *semikhah*, by Berab's and Caro's accounts a dangerous endeavor, was not done in the main on behalf of the persecuted exiles. Clearly, this aspect of the act would not have placed them in any danger. But there was also a political aspect of the first order. On the one hand, there was a massive *aliyah* to Eretz Israel, and on the other hand, there was Solomon Molcho's arrival. Additionally, we must recall Don Joseph ha-Nasi's dream to reestablish the State of Israel in the Lower Galilee, and the fact that he

²⁴"I shall elevate you to become a prince and leader of all the Exile of Israel in the kingdom of Arabistan. And because you have devoted yourself to the restoration of the crown of *semikhah* as of old, you will merit to be the ordained of all the sages of Eretz Israel and elsewhere; and I shall restore the *semikhah* as of old at thy hand" (*Maggid Mesharim*, Vilna, 1875, p. 57). It is clear from this passage that Caro did *not* consider himself duly ordained. This passage was written five years after his ordination by Berab, yet he still awaits the return of *semikhah*. Perhaps his willingness to take part in the experiment in 1538 is the reason that he will be chosen leader in the future. Further evidence supports the view that Caro did not consider himself a *samukh*: his *Kessef Mishneh* commentary on the *Mishneh Torah* is silent on Hilkhos Sanhedrin 4:11; additionally, in both the *Beit Yosef* and the *Shulhan Arukh*, he states that "nowadays we have no ordained *dayyanim*." (*BY, Orah Hayyim* 607; *SA, Even ha-Ezer* 177:2). A discussion of Caro's attitude toward the episode is found in R. J. Zwi Werblowsky, *Joseph Karo: Lawyer and Mystic*, pp. 122-127.

called upon the Jews of the Diaspora to make *aliyah* to Eretz Israel. All of these aspects taken together—along with the renewal of *semikhah*—were certain to cause the government to suspect that the Jews were preparing to conquer Eretz Israel and reestablish their State. Rabbi Joseph Caro understood this as well. The great visionary whose *Beit Yosef* became a “set table” for the entire nation did not dedicate his soul to “a day of small beginnings.”²⁵

It is worth mentioning one important point in this regard: In that practical guidebook, which is concerned solely with *halakhot* pertaining to the present era and not at all with laws which pertain to the messianic age, the following *halakhah* appears: “Schoolchildren are not exempt from Torah study, *even to go build the Temple*” (Y.D. Hil. Melamdim 245:13). At first glance, this is shocking. Most Jews believe that the Temple will be rebuilt by the Messianic King—and in any event, what does such a *halakhah* have to do with the present era? But we must understand the obvious intent. Together with the renewal of *semikhah* and the establishment of the Sanhedrin, they also thought about the rebuilding of the Temple—which, according to the Jerusalem Talmud, would be rebuilt before the arrival of the Messiah (J. Ma’aser Sheni 5). The renewal of *semikhah* and the establishment of the Sanhedrin were only two links (important ones, to be sure) in the mind of this generation—a generation which believed itself fit to bring near the end, and thought that its accomplishments were “the beginning of the Redemption.”

The sages of Safed only made one error. They attempted to turn their city into the center of the Jewish world, forgetting that we only have one holy center—*Jerusalem*. Only Jerusalem, and none other!

To our dismay, the time was not yet ripe. Don Joseph ha-Nasi’s dream was not realized. Solomon Molcho was burned a martyr, and Rabbi Jacob

²⁵Zech 4:10, “Does anyone scorn a day of small beginnings? When they see the stone of distinction in the hand of Zerubbabel, they shall rejoice.”

Berab was forced to flee Safed. The plan to reestablish *semikhah* was abandoned, not because *halakhah* opposed it, but because the situation did not allow it. But now, how fortunate we are to see the renewal of our State and the establishment of Jerusalem as our eternal capital. It is obvious to me that, were those great luminaries alive today, *they would renew the Sanhedrin immediately, without any hesitation*. Even Rabbi Levi Ibn Habib wrote in his critique of the *Kuntres ha-Semikhah* that he wasn't *a priori* opposed to the idea, but only to fact that the sages in Safed acted on their own.

“It is time to act on the Lord’s behalf.”²⁶ The great hour is at hand, and the great ones, our rabbis, are obligated to rouse themselves and to feel the beating of *shekhinah’s* wings. They must hear the commanding voice which calls upon them to work diligently in preparation for the renewal of the Sanhedrin. If they are able to seize the moment, and not fall prey to doubts and weakness of will, we will succeed in expanding the influence of Torah-Judaism in our State and setting it in its proper place.

²⁶Ps. 119:126.

Bibliography

On Rabbi Judah Leib Hacoheh Maimon

Bat Yehudah, Geulah. *Eleh Toldot Rabbi Yehudah Leib Maimon*. Jerusalem: Mossad Harav Kook, 1964.

---*Harav Maimon Bedorotav*. Jerusalem: Mossad Harav Kook, 1979.

Maimon, J. L. *Lesha'ah velador: Masot uma'amarim*. Jerusalem: Mossad Harav Kook, 1965.

On Zionism and Mizrahi Zionism

Hertzberg, Arthur. *The Zionist Idea*. Philadelphia: The Jewish Publication Society, 1960.

Laqueur, Walter. *A History of Zionism*. New York: Schocken, 1989.

Luz, Ehud. *Parallels Meet*. Trans. Lenn J. Schramm. Philadelphia: The Jewish Publication Society, 1988.

Maimon, Judah Leib. *Toldot Hamizrahi*. Jerusalem: Ha-Tor, 1927.

---*Ha-Tzionut Ha-Datit vehitpathutah*. Jerusalem: Histadrut, 1937. Reprinted as *Yisrael, Torah, Tzion*. Jerusalem: Rav Kook, 1989.

Ravitzky, Aviezer. *Messianism, Zionism, and Jewish Religious Radicalism*. Trans. Michael Swirsky and Jonathan Chipman. Chicago: University of Chicago, 1996

Shimoni, Gideon. *The Zionist Ideology*. The Tauber Institute for the Study of European Jewry Ser. 21. Hanover: Brandeis, 1995.

Tirosh, Yosef. *Religious Zionism: An Anthology*. Jerusalem: WZO Torah Education Department, 1975.

Unna, Moshe. *Separate Ways*. Trans. Barry Mindel. Jerusalem: WZO Torah Education Department, 1987.

On Sanhedrin, *semikhah*, and *halakhah*

Elazar, Daniel J., ed. *Kinship and Consent: The Jewish Political Tradition and its Contemporary Uses*. New Brunswick: Transaction Publishers, 1997.

Elon, Menachem, *Jewish Law: History, Sources, Principles*. trans. Bernard Auerbach and Melvin Sykes. Philadelphia: Jewish Publication Society, 1994.

Fasman, Oscar Z. "Goals for a Sanhedrin." *The Jewish Horizon*. Feb. 1950: 3-4.

- Friedman, Arieh Leib. *Lema'an Tzion*. New York: Moshe Phillip, 1911.
- Frumkin, Arieh Leib. *Toldot Hakhamei Yerushalayim.* Jerusalem: Solomon, 1929.
- Hoffman, Lawrence A., "The Origins of Ordination." In *Rabbinic Authority: Papers Presented Before the Ninety-first Annual Convention of the Central Conference of American Rabbis.* Ed. Elliot Stevens. New York: CCAR, 1982.
- Katz, Jacob. "*Mahloket ha-Semikhah bein Ya'akov Berab ve-Haralbah.*" In *Halakhah ve-Kabbalah.* Jerusalem: Magnes, 1984.
- Mirsky, Samuel. *Jerusalem as a Religious Center.* Mizrahi Library. 1. New York: Mizrahi Organization of America, 1950.
- Neuman, Abraham A. "The Keys of the Sanctuary: Integrity of Jewish Religion Demands Establishing of Sanhedrin in Palestine." Commencement Exercises. Jewish Theological Seminary, New York. 9 Jun. 1929.
- Revel, Dov. "*Hiddush ha-Semikhah milifnei arba me'ot shanah.*" *Horeb.* Nisan, 1939: 1-26.
- Schachter, Melech. "Can Judaism Be Changed." *The Jewish Horizon.* Apr. 1950: 12-14.
- Schweid, Eliezer. *Democracy and Halakhah.* Lanham: University Press of America, 1994.
- Shagrai, S. Z. "Fundamentals of a Torah State." *The Jewish Horizon.* May 1950: 8-10.
- Tabak, Israel. Letter. *The Jewish Horizon.* Apr. -May 1951: 10-11.
- Werblowsky, R. J. Zwi, *Joseph Karo: Scholar and Mystic.* Scripta Judaica Series, No. 4. London: Oxford, 1962.
- Yisraeli, Samuel. *Ha-Torah voha-Medinah.* vol. 3, (Nisan 1951): 9-44.