

MAIMONIDES ON THE RENEWAL OF *SEMIKHA*: SOME HISTORICAL PERSPECTIVE*

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This article proposes that the Maimonidean suggestion that semikha can be renewed should be seen in historic, as well as jurisprudential, perspective. Maimonides denied the right of any contemporary institution, especially the Babylonian gaonate (which vigorously claimed the privilege) to grant semikha. But since semikha is an essential component of messianic redemption in its rabbinic version, the Maimonidean position could be undermined by the argument that it denied the messianic possibility. By providing a mechanism for the renewal of semikha, Maimonides could negate that claim.

I

I am the last person to deny the basic intellectual coherence of Maimonides' famous proposal concerning the renewal of *semikha*, its jurisprudential basis and motive. Indeed, I shall begin this discussion by trying to demonstrate how rigorously coherent this proposal truly is, a fact which I believe is insufficiently appreciated. For it is usually discussed in terms of its overall goal, or as an example of Maimonidean daring, but its argument is rarely analyzed in its own right.

Maimonides' most extensive presentation of his proposal is his earliest, that found in the Commentary to the Mishnah, Sanhedrin 1, 3:

Jewish Political Studies Review 10:3-4 (Fall 1998)

I am of the opinion that if all the students and scholars agree to the appointment of one “to the academy” (*ba-yeshiva*), that is, as its head, and on condition that this takes place in the Land of Israel, as I said earlier, then that person is so appointed he is ordained (*samukh*) and may ordain others. For if this is not the case, it will never be possible to reconstitute the Great Court, since each of its members must certainly be ordained, and God has already promised that the Great Court will be restored, as is written (Is. 1: 26): “I shall restore thy judges as at the first...” Now, you might argue that the Messiah will appoint them even if they are not ordained — but that is impossible. For we have already explained...that the Messiah will not add anything to the Torah or detract from it, to neither the written or the oral Torah.

I am also of the opinion that the Great Court will be reconstituted before the appearance of the Messiah. This, in fact, will be a sign of his coming, as it is written (Is. *op. cit.*): “...afterward thou shalt be called the city of righteousness, the faithful city.” This will doubtless take place when God will perfect the hearts of humankind, who will excel in doing good, be greatly impelled to God and His Torah, and excel in virtue, before the coming of the Messiah, as Scripture describes.¹

Maimonides here presents a double argument for his suggestion that *semikha* is renewable even after its historical demise, each argument beginning with the phrase “I am of the opinion” (the supportive paragraphing is mine, GJB). The first argument reflects his *halakhic* ideology; the second reflects his messianic theory.

The first argument runs thus: “The *halakhic* system must be capped by a Great Court if it is to function properly. The Great Court, in turn, can be manned only by ordained scholars. Now since we are promised that the Court will in fact be restored, *semikha* must be possible as well. But since no persons who are themselves ordained are presently alive, *semikha* can be bestowed only by its restoration or renewal. You might argue that the Messiah will appoint non-ordained scholars to the Court, thus reconstituting the Court but not renewing *semikha*, but that too is impossible; such appointment would be in violation of the Law, and even the Messiah may not violate the Law.” Here, Maimonides’ fixed commitment to the idea that the Torah is inviolable, such that even the Messiah will not and cannot change it, forces the conclusion that the Sanhedrin must be reconstituted according to the self-same rules by which it always operated. If so, its members must be ordained, and the institution of ordination must be renewed. Maimon-

ides was convinced that consensual ordination by “all the students and the scholars” was rooted in the basic structures of Jewish law and governance. The constitution of a non-ordained Great Sanhedrin was not.

In the second argument, Maimonides implicitly rejects the possibility that *semikha* will be renewed only after the coming of the Messiah, by showing that the reconstitution of the Court must precede the coming of the Messiah himself. Indeed, the Messiah will not produce the Court — the Court will produce the Messiah. For in this eschatological vision, it is human virtue which catalyzes the redemption. Now, human virtue, in Isaiah, is set in motion (in part, at least) by justice and the organs of justice. Hence the indispensability of the Court and, earlier down the line, the indispensability of ordination. So if there are no ordained persons alive, ordination must be restored not only in order to reconstitute the Great Court, but to enable the messianic process itself to materialize. Maimonides’ insistence on this sequence derives, clearly, from his commitment to a number of overarching values: the centrality of virtue, the people Israel’s responsibility for the building of a just society, the impossibility of a messianic coming that is not preceded by the meeting of that responsibility, and the human role in the messianic process.

Clearly, then, the idea that *semikha* can (and indeed ought) be restored is fully coherent in terms of the broader patterns of Jewish history and hope. Maimonides, moreover, clearly believed that the present disabled state of the Jewish judiciary will not be its last word, that the Torah will once again become fully functional in this as in other areas. Hence, his ambition of providing a complete and systematic statement of Jewish law also required that the procedure by which *semikha* could be restored be described, as it indeed is in Mishneh Torah. And though Maimonides indicates in Mishneh Torah that he was no longer completely convinced by his proposal, he did not revise the earlier Commentary (as he frequently did in such circumstances).²

It ought to be obvious, then, that in proposing to view the restoration of *semikha* in “historical perspective,” I do not intend to suggest that Maimonides merely gerrymandered a solution to a pressing contemporary issue. Whatever contemporary value his proposal had, it was undoubtedly, and primarily, generated from within the conceptual matrix of Jewish law as he understood it. At the same time, it may be possible to suggest that Maimonides’ proposal also addressed an aspect of twelfth century reality.

II

Before proceeding to the problem at hand — renewal of *semikha* — we must ponder yet another dilemma. This one, though, has hardly been noticed by students of Maimonides.

Maimonides notes or rules that *semikha* can be bestowed only in the Land of Israel more than ten times in his *halakhic* writings.³ Some of these instances are, of course, quite called for and unexceptional, as when Maimonides presents the basic ruling in *Mishneh Torah*, or when he comments on a Mishnaic text which itself refers to this situation. But there do seem to be instances where the statement that *semikha* is restricted to the Land of Israel could just as easily have been omitted or assumed as common knowledge, common at least among those who read rabbinic literature. It seems to me that Maimonides was making a point he thought was in need of making, and not merely registering a legal fact. He was in fact driving the point home. The comment is polemical, not jurisprudential.

Put this way, it would seem that Maimonides is responding — negatively, of course — to the counter-claim that *semikha* is not restricted to the Land of Israel but could in fact be bestowed elsewhere, anywhere, in the world. But if Maimonides' repetitions are polemical and Maimonides' measured prose is in fact a vehement assertion, then we must assume that such a counter-claim was not only argued as a theoretical possibility, but that it was actually made (or at least that Maimonides thought it was made or thought that others thought so), indeed that it formed the necessary basis for the granting of *semikha* outside the Land of Israel.

This projection is speculative, no doubt, but it can dovetail with some recent thinking on the history of *semikha*. Now, the classical picture is the one described in fact by Maimonides himself: (a) that *semikha* ceased sometime in the late-Talmudic period, a claim associated with the non-continuation of the Patriarchate by Roman authority in the fifth century; and (b) that it could never be legitimately practiced outside the Land of Israel, even in Talmudic times. Both these formulations have been challenged. Borenstein, Ber and, especially, Aminoah have gathered the evidence for a Babylonian *semikha* in Talmudic times.⁴ As far as the Land of Israel is concerned, J. Mann wrote in the 1930s that “the right of *semikha* was claimed and practiced by the school of Palestine all along until its extinction with the First Crusade.” M. Gil has noted, convincingly, that there is no reason to assume that the Jewish community would allow Roman procedure to determine the status of its internal governing organs (“it is completely inconceivable

that the Jewish population in Palestine in fact submitted to these orders”), and that the evidence points to the continuation of a “great Sanhedrin” in the Land of Israel long after the alleged Roman discontinuation of *semikha*.⁵ The most sustained discussion, published by Jacob Katz in 1979, argues for the possibility that the Talmudic *semikha* continued to be practiced until Maimonidean times, if not beyond.⁶

Since this position is certainly not commonplace, I wish to present part of the evidence on which it is based, thus giving the reader a sense of the realities of the time as well as exemplars of the type of materials on which the argument is based. I shall not focus on those materials which indicate that the question of non-Palestinian *semikha* was not closed, in truth, till fairly late into the Talmudic period. These are, at best, background materials to the geonic positions; and, as far as Maimonides was concerned, the Talmudic situation was quite clear: there could be no *semikha* outside the Land of Israel. If I am correct in reading Maimonides’ repetitive insistence on the Talmudic position as polemical, his target could only have been found in the geonic period.

III

Our first text is found in the eleventh-century *Megillat Evyatar*.⁷ Written as a defense of the native, Palestinian, leadership provided by the Aaronide progenitors of Evyatar, it contains a passage of great interest from our perspective. Evyatar describes how, two years before his death, Elijah the Priest assembled “all the Jews in the district of Tyre and the surroundings and ordained us...as *ga'on*, and his son Solomon as *av bet din*, and Zadok son of Rabbi Yoshiyahu, as *av*; for we had been *av*, and were now promoted to *ga'on*.”⁸ Evyatar continues to relate that “In the second year, he [Elijah] went to Haifa to intercalate the year, and he renewed the gaonate and the *semikha* in Haifa, in the *bet va'ad*.”⁹

It is most unlikely that Evyatar’s “renewing” the *semikha* means what it means in our Maimonidean texts. Since the *semikha* had been just given in Tyre by R. Elijah who was himself ordained, its “renewal” in Haifa meant, simply, repeating the act, so that its potency and legitimacy would be beyond cavil, perhaps even “renewing” in the sense of “continuing,” a sense found elsewhere in rabbinic literature. The entire passage itself may well recall Samuel’s second enthronement of Saul (I Samuel 11, 14): “Come let us go to Gilgal and renew the kingdom there,” a ceremony in which an appointment that was originally made in private was made again by

ceremony in which an appointment that was originally made in private was made again by public acclamation (though it must be admitted that, in Saul's case, the kingship was actually being created), much as the ceremony in Haifa repeated what had been done in Tyre, but on sacred ground and before the entire yeshiva.

If "renew" does not mean "restore" in this text, it would then appear that — in the opinion of Evyatar and its school, at least — the line of *semikha* had never been snapped, but continued from Talmudic times to his own. Elijah the Priest was thus maintaining and continuing the ancient institution. Elijah also insists on repeating the acts of ordination and induction into office in Haifa, despite his having performed the same acts a year earlier in Tyre, probably reflecting his desire to perform the *semikha* in the Land of Israel. This, most likely, indicates that he perceived this ordination as equivalent to the *semikha* of ancient times which, the Talmud insisted, could be performed legitimately in the Land of Israel only. Finally, we find what is most probably a Babylonian disapproval of Elijah's act, disapproval expressed in the claim that this Palestinian *semikha* is illegitimate because ordination had lapsed in the Holy Land years before. Evyatar, most likely, was claiming the opposite — that the Palestinian *semikha* was legitimate by virtue of both continuity as well as geography.

We also must note, contrarily, that *semikha* in our text denotes appointment to office, and not the bestowal of a personal status. This is, of course, the dominant usage of the term in geonic writings generally. Could this shift in usage from the Talmudic model itself signal an awareness that the institution too had undergone a change? That the granting of *semikha* (perhaps to be understood more as verbal form than as reified noun) does not imply participation in the continuing chain of tradition? But other possibilities also exist: the shift in terminology may be rooted, to begin with, in new bureaucratic patterns originating in the Islamic reality, signifying little in terms of traditional theory. Furthermore, there may be in fact little "shift," as some historians have claimed the term indicated appointment in Talmudic times as well.¹⁰

An apparent response to the activity of Elijah is found in a document of anonymous authorship that was pieced together by S. Assaf from a number of fragments — some known to Solomon Schechter and Jacob Mann, and another discovered later. According to Mann and Assaf, it was written by a Babylonian Davidide *rosh golah* who flourished in the mid-twelfth century — that is to say, by a contemporary of Maimonides.¹¹ This document, taken as a whole, contains some highly problematic internal contradictions and is, in many ways, most puzzling. Even its provenance is a

mystery. Yet even if many aspects of this document remain mysterious, it has much to teach us.

Our anonymous author announces his own bestowal of *semikha* upon Nethanel, *rosh yeshiva she-lagolah*, granting him authority “in all the districts of Egypt and all lands to teach and to judge and to establish courts,” for “there is no flaw” in his “chain of wisdom and beauty.”¹² This announcement is immediately followed by two further statements which are of relevance to us. First, the author informs us that the chain of *semikha* has long been broken: “For it is well known that the cord of *semikha* has snapped [a metaphor taken from Ecclesiastes 12, 6, where, not insignificantly, it signifies death] years ago, from the time of the death of our master...Daniel, *rosh yeshivat gaon ya'akov*.” This then leads to a critique of those who apparently disregarded this fact: “And the priests who came after him behaved irresponsibly and ‘pressed the hour.’”¹³ This last phrase, which sometimes has eschatological significance, probably means that the priests attempted to restore in their time what could be restored only in the redemptive messianic future. Thus, the entire process described by Evyatar, a process designed to keep *semikha* afloat as a historical reality, is an act of impetuous futility.

Second, our author recapitulates some Talmudic rules governing the granting of *semikha* and the authority it bestows. These insist that *semikha* can be given only in the Land of Israel, in a face-to-face audience of the student receiving *semikha* and the sage bestowing it, and only by a sage who himself holds *semikha*. This latter point militates again, of course, against the behavior of the priests, but Mann argues that the true target of this lengthy synopsis is Samuel b. Ali, Ga'on of Baghdad, who was then the patron of the Damascus (i.e., Palestinian) gaonate.¹⁴ The mention of Daniel as predecessor of the priests has led to the identification of the two parties as Daniel ben Azaryah, the Babylonian who sought to establish his supremacy in the Land of Israel, and Elijah ben Joseph *HaKohen*, pointing to the conflict between the two groups for dominance in the Land of Israel of the eleventh and twelfth centuries. According to Mann and Assaf, the document was written by Daniel b. Hisdai, a Babylonian *rosh golah*, in the mid-twelfth century.¹⁵

The problem is striking. Our author insists that *semikha* can be performed only in the Land of Israel, and that “the chain of *semikha*,” essential for its legitimacy, had reached its demise some generations ago and was no longer intact, thus denying the efficacy of Elijah's impetuous act. Yet despite these strictures, our author — a Babylonian — had himself bestowed *semikha* on Nethanel,

indeed devotes this very document to proclaiming this fact! True, it is clear that the bestowal of *semikha* was in fact performed in a face-to-face audience of Daniel and Nethanel (see the Hebrew text in n. 12), but there is no hint that it was accomplished in the Land of Israel! Furthermore, was our author in possession of *semikha* even after the death of Daniel ben Azaryah, as would be necessary in order for him to grant *semikha*? Perhaps, then, we must conclude that the Babylonians — our author among them — claimed to have preserved the “chain of *semikha*,” which they then controlled, even after its demise in the Land of Israel, which is to be understood as a local event.

Two solutions have been suggested. Mann asserts that our author uses the term “*semikha*” in two different senses (“Although the author uses the phrase ‘we have ordained him’ this is only stylistic flourish”).¹⁵ But the text itself does not indicate that this term can have two distinct, though related, meanings. Most recently, Jacob Katz has addressed most of these issues, reaching the conclusion that our document testifies to the continuance of *semikha* in the diaspora. Daniel b. Hisdai did in fact, and with no qualms, ordain (or appoint), as he says he did. The “snapping of the chain of *semikha*” at the time of Daniel b. Azaryah refers to the end of the Palestinian gaonate as office, not to *semikha* as status (once again, a theory involving different usages of the term). The statement that *semikha* cannot be granted outside the Land of Israel is merely part of a historical survey, Katz asserts, and was not meant to describe norms currently in effect. The basic target of the polemic is, as Mann intuited, Samuel b. Ali, as representative of geonic (as over against exilarchic) prerogative. Hence the stress on the need that an institutional body ordain (or appoint) — an assertion directed against the gaon, who functioned as an individual. In essence, though, Daniel b. Hisdai and Samuel b. Ali agreed — *semikha* was alive and well, if somewhat decimated, outside the Land of Israel.¹⁶ Katz, in essence, has Daniel b. Hisdai accept the thesis of a truncated diaspora *semikha* articulated at about the same time by Samuel b. Ali.

A Babylonian claim in this matter was stated with great clarity by the twelfth-century Samuel b. Ali, Ga'on of Baghdad, in a well-known epistle.¹⁷ This document is of great significance, as it goes directly to the heart of our issue. Samuel b. Ali was a dominant figure of Babylonian rabbinic culture, a contemporary of Maimonides who was known to the master of Fustat. He had accused Maimonides of heresy (Maimonides' Epistle on Resurrection was apparently writtten to counter this charge) and had attacked his *halakhic* rulings as well. Maimonides disliked Samuel but felt it nec-

essary to engage him in *halakhic* debate on occasion.¹⁸ One can assume that Samuel's views on ordination were known to Maimonides as well.

The epistle was designed to commend Samuel b. Ali's son-in-law, Zekhariah b. Berahel — of whom Maimonides had no high opinion — to the Jewish communities of Upper Mesopotamia and Syria, which he was touring on behalf of his father-in-law's yeshiva. Zekhariah had been ordained *av bet din* of the yeshiva by Samuel, an appointment which he was apparently called upon to defend (according to Mann, by Samuel of Mosul, then the reigning Babylonian exilarch):

The chiefs of the generations, each and every one of them elects, whoever is worthy of being seated in the yeshiva, chooses him, and ordains him [*somho*]. Now, if someone says that [the people] Israel have been lacking ordination for many years, seeing the [Talmudic] statement that there is no *semikha* outside the Land, we are able to answer him and reassure him: that statement refers to ruling on cases of fines, but so far as loans and admissions are concerned, *semikha* exists. There are many proofs for this principle, more than we can include in this epistle....The custom of yeshiva-heads in Babylon, each and every one, from the time of our master Rav until the present day, testifies to this, as is written in their memoirs and epistles. For none was made rosh-yeshiva who did not receive his appointment from the head who preceded him. And so have written Rav Hai and others of the geonim in their own hand.¹⁹

Samuel ben Ali makes a number of arguments for the legitimacy of his ordination. He appeals to the principle of continuity — here as elsewhere; but the point is not merely to appeal to custom but to stress the presence of an essential element in legitimate ordination — perhaps even to imply that it represented a continuous chain back to Sinai. He also appeals to the practice of his authoritative predecessors, Rav Hai among them. But we do not have any of Rav Hai's statements on the matter (though he too did use the term *semikha*, we are not informed as to his understanding of the term);²⁰ and the geonic chain of office — even its use of the terminology of *semikha* — could in fact be interpreted in two very different ways.

One — likely — way is to take the Talmudic ruling that *semikha* cannot be bestowed outside the Land of Israel, at full and face value (whatever dissenting Talmudic hints may exist). The further regulation that laws of fines cannot be decided outside the

Land of Israel simply reflects this basic rule, inasmuch as only an ordained judge can decide these cases. The fact that Talmudic law also allows cases of loans and the like to be decided in Babylon and elsewhere, is simply a concession to social reality, and is accommodated by a number of ancillary provisions, none of which compromise the basic rule disallowing *semikha* outside the Land. Such, in fact, seems to be the Talmudic approach to this complicated topic, and this is how Maimonides codifies the matter as well. If the Babylonians (and others) chose to use the term *semikha* within their institutional life, this was merely an anachronistic and nostalgic use of the term; it had no substantive meaning. Samuel b. Ali opted, however, for another approach.

Samuel b. Ali argued that the Babylonian ability to judge cases of loans and other matters of civil law is probative and crucial. This ability proves that the Babylonians' authority is rooted in ordination, and that their use of the term *semikha* is genuine; he refuses to accept the notion that this usage is purely rhetorical. Furthermore, by raising the question of jurisdiction in cases of fines, Samuel demonstrates that he is not using "*semikha*" in the sense of *appointment to office* alone (see n. 24, *infra*) but in the sense of *ordination, as bestowal of status*, as well. This ordination is, of course, flawed because it is not given in the Land of Israel, which is what is meant by the rule that ordination must be given there, a flaw symbolized by the limitation in cases of fines. But that is all. It is authentic *semikha*, and it does maintain the authentic chain of tradition (back to Sinai?) — a chain that no longer exists, in fact, in the Land of Israel itself. I would guess that Samuel would even assert that were he — or any ordinant of his — to bestow *semikha* in the Land of Israel, such *semikha* would carry the right to decide cases of fines and bestow all other authority normally associated with *semikha*. And, as Mann has reminded us, Samuel's *semikha* was given to the ga'on of Damascus.

Given everything else we know about Samuel b. Ali — his elevation of Babylon and its institutions within the structure of Jewish governance, and especially his championing of the authority of the yeshiva and its leadership as over against that of the ganonate²¹ — it is likely that his opinion on the Babylonian *semikha* is an element of his broader ideological perspective:

For the place of the yeshiva is the seat of the Torah, the place of Moses, in all times...it is the place designated for the teaching of Torah...and the passing down of the *halakhah* generation after generation, until it reaches back to Moses....For this is how the laws of Israel are preserved

and they retain their faith so that they do not err and stumble....And thus the Mishnah says "Moses received the Torah from Sinai and passed it on to Joshua, and Joshua to the Sages, and the Sages to the Prophets, and the Prophets to the Men of the Great Assembly." And so it wended its way down to us. So the yeshiva is the place of Moses our Master and there the Law of Israel is perfected. Whoever challenges her [the yeshiva] challenges the Lord of the Torah [Assaf: God]...and Moses.²²

This passage and others like it doubtless reflect an anti-Karaite polemic. At the same time it may be safely said that the stress on the status of the yeshiva (as over against the centrality of the Oral Law *per se*) is multi-valent: it gives the Oral Law a concrete institutional setting, but also empowers that setting itself.

How seriously did Maimonides take Samuel b. Ali's claims for the Babylonian *semikha*? I would imagine that he did not take them very seriously at all. Despite the assertion that his was a claim made by many other Babylonian geonim, Samuel's understanding of the "Babylonian *semikha*" is hardly attested to in the writings of his great predecessors. His reading of the major Talmudic sources — Babylonian at that — is quite forced, too. The Talmud does engineer judicial authority for individuals or bodies lacking *semikha*, but makes it crystal clear that it is merely presenting a partial and ad hoc solution to pressing social problems. Furthermore, as M. Ben-Sasson has astutely noted, even the most vociferous and occasionally hyperbolic standard-bearer of Babylonian authority, Pirkoi ben Baboi, stresses geonic authenticity, but is careful never to claim that the gaonate possess equivalent legal status with the Great Sanhedrin of old.²³

Geonic rhetoric, the terminology employed, is another matter, however. An apt symbol of this rhetoric is Samuel b. Ali's genealogical claim to Mosaic descent. More significantly, the Babylonians frequently asserted the continuity of their institutions, tracing them back to Moses himself (as we have just seen), and pretty much associated their yeshivot with the Great Sanhedrin. The term *semikha* was in the air, too; indeed the Babylonians used it to designate appointment to office, communal as well as rabbinic, as we have seen. This terminological conflation doubtless lent an aura of legitimacy to all uses of the term *semikha*. Nor was the use of the term — in whichever sense — restricted to Babylonia (and the Land of Israel, of course). R. Judah ben Barzilai (eleventh-century Spain) reproduces a *ktav masmikh* (=writ of *semikhah*; see in n. 15). Getting closer to Maimonides himself (both chronologically and substantively), Abraham b. David uses the term in his *Sefer*

HaKabbalah to describe ordination/appointment in Spain; among other instances, he tells us that R. Isaac al-Fasi “ordained” (*u-semakho*) R. Joseph ibn Megas. Given these phenomena, we can better appreciate Maimonides’ terminological carefulness. He uses “*semikha*” to designate ordination, not appointment to office (in *Mishneh Torah* at least.) And this *semikha* is not a contemporary reality. When he bestows the right to teach on his student, Joseph ibn Aknin, Maimonides avoids the term “*semikha*” completely and uses a different normative model altogether.²⁴

But deny the normative validity of Samuel b. Ali’s *semikha* as he might, armed by the straightforward message of the Talmudic texts as he is, Maimonides would be hard put to deny the remaining double message of the Babylonian *semikha*: that it maintained the continuity of the one last authentic institution of Jewish governance, and that it would accompany the people, emblematic of its ability to sustain itself in the normative realm if not in the political, unto the messianic age. For there is a frequent juxtaposition — literary, at least — of these two themes in geonic polemic, as we saw (in n. 21). Samuel’s assertion of the Babylonian yeshiva’s function in assuring Mosaic continuity is primarily, of course, an argument designed to encourage loyalty and donations to that institution. But this assertion does appear in an epistle devoted to the status of Zekhariah b. Berakhel, ordained-appointed Av Bet Din by Samuel.

IV

The issue of continuity has been present in all assertions about *semikha* in geonic Babylon and the Land of Israel. The claim of continuity has been made, in one form or another, whenever the power to ordain has been asserted; and the assertion of discontinuity has accompanied all denials of that power. Legitimate *semikha*, we have been told over and over, must forge another link in the chain anchored, ultimately, in Sinai. Perhaps, then, the legitimacy of *semikha* is significant because it guarantees that very continuity. Were *semikha* to cease, the chain would be snapped. In arguing for the legitimacy of “their” *semikha*, then, the different centers we have surveyed are also claiming that they are maintaining the historical and normative integrity of Jewish existence, perhaps, even, preserving it into the messianic future, however remote that might be.

Does all this relate to Maimonides’ proposal on the renewal of *semikha*? Perhaps. We have already seen how insistent Maimonides

was on restricting *semikha* to the Land of Israel, thus denying the legitimacy of any *semikha* given outside the Land, say in Babylon. This dovetails well with his general attitudes towards the authority of the contemporary Babylonian gaonate. But we also know that he saw the chain of *semikha* as having in fact ended in the Land of Israel. This dovetails with his occasional contempt for the level of scholarship there, but it doubtless derives from his reading of the historical realities.²⁵

Thus, Maimonides denies that *semikha* actually exists anywhere in his time; he has asserted its discontinuity, along, say, with the discontinuity of prophecy. He claims that *semikha* cannot be given outside the Land of Israel, so that whatever is done in Babylon — however it is construed — is irrelevant. Nor has it been preserved in the Land of Israel itself. The significance of continuity for Maimonides is itself a vexing issue, and there is much that indicates that he did not always conceive of continuity in the same terms as did his contemporaries.²⁶ As for the institution of *semikha*, he was willing to endure its absence, more or less, much as he endured the absence of prophecy and political autonomy — from his point of view, he had no choice.

We have seen, however, that this perspective may well have been unacceptable in both Babylon and the Land of Israel. It is likely that Maimonides was aware of these claims, or at least of the rhetoric with which their proponents surrounded themselves — especially of their Babylonian version. This is the message of his repeated restriction of *semikha* to the Land of Israel.

Now, Maimonides chooses to defend his thesis that *semikha* can — indeed, will — be restored by urging its significance for the messianic redemption. But by raising this argument, he has unsheathed a double-edged sword. If, indeed, *semikha* is so essential to Jewish belief and hope, then perhaps we must admit that it has never ceased existing, for any break in the chain brings it all to nought. (Maimonides, we know, raised a similar issue in his discussion of the authenticity of the Jewish calendar in contemporary Sanhedrin-less existence; but that challenge was made not to the Jewish future, but to its present.)²⁷ Perhaps, then, the legitimacy of contemporary *semikha* is implied by messianic inevitability itself? Thus, Maimonides' assertion of a future renewal of *semikha* is also a reply to the counterassertion of its contemporary legitimacy in Babylon and the Land of Israel. His reply was that the normative integrity of Jewish existence was not lost for good, even if *semikha* had been discontinued; that the need for continuity could not be pressed into service to justify the Babylonian *semikha* (or an ongoing Palestinian one, for that matter). *Semikha* could be restored.

But Maimonides — who does have the habit of acknowledging the strongest arguments against his own positions, only to turn them on their head²⁸ — seems to construct a stronger argument for his opponents' position than they themselves advance. At the same time we do find, in geonic literature and polemic, juxtapositions of rabbinic continuity with the idea of eventual redemption which are certainly suggestive (see in n. 21).

Thus, Maimonides expends his efforts at demonstrating that *semikha*, having become moribund, must be renewable; not that the renewability of *semikha* allows one to believe in its having become moribund. Maimonides does not dispute the claim that *semikha* still exists (and need not be restored, therefore), but the claim that *semikha* — ostensibly admitted by all to be presently moribund²⁹ — would be restored by a miraculous procedure, or that it could be dispensed with in toto, making his own innovative solution unnecessary. (I do not know if anyone had actually made these arguments, or whether Maimonides was simply anticipating them.) Both these arguments assumed that the process of redemption would override *halakhic* procedures, a bone which stuck in Maimonides' throat, but one which he apparently assumed would be palatable, even tasty, to others.³⁰ His own solution is innovative, to be sure, but he felt that it was within the *halakhic* tradition, not beyond it.

By mobilizing Isaiah 1:26 ("I shall restore thy judges as at first...") as proof-text, Maimonides utilized the Bible on two scores. Most explicitly, the Biblical text was promising that the Great Sanhedrin would exist in messianic times. More subtly, *Isaiah also foretells that there would be a break in judicial continuity*, since it would be necessary for *semikha* to be restored — Maimonides' point exactly. Thus, restoration was not merely possible, it was necessary — both to accompany the fullness of redemption, and to exorcise the prophesied demise of *semikha* in the course of history.

By and large, the question of *semikha* and its restoration did not seem to interest those engaged in eschatological speculation; it was only Maimonides who, combining an acute normative sensibility with an acute concern for the national future, saw the need to confront the issue, and turned the relationship of *semikha* and redemption from a problem into an asset. Much as he denied that traditional eschatology need imply contemporary apocalypticism, so did he deny that it implied the legitimacy of illusory normative-political institutions. But he did assert, simultaneously, that eschatology and redemption are themselves dependent on virtue and justice.

There is little talmudic basis for Maimonides' reconstruction of the relationship of *semikha* and messianic redemption, perhaps none at all. Let us recall, though, that the Talmud does assert, in at least one place, that the prophet Elijah will appear before the Great Sanhedrin on the day before the Messiah's own appearance. The Sanhedrin exists, then, before the Messiah's coming; and this statement is made in a period when no Great Sanhedrin exists.³¹

Notes

1. The printed editions omit all the material between the first citation from Isaiah and the second, an obvious case of homoteleuton. This material was known to R. Bezalel Ashkenazi. See J. Kapah's edition and translation of the *Commentary*, n. 22 to this Mishnah; Y.L. Maimon, *Hiddush HaSanhedrin* (Jerusalem: Mossad HaRav Kook, 1951), p. 42. Maimonides briefly refers to his thesis once again in the *Commentary* to Bekhorot 4, 4.
2. H. Sanhedrin 4, 11:

If there should be in all the Land of Israel but one man competent to confer ordination, he could invite two others to sit with him and proceed to ordain seventy men....

It seems to me that if all the wise men in the Land of 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.... But this matter requires careful reflection.

Both paragraphing and translation (here given in M. Hershmann's rendering for the Yale Judaica series) indicate I am not convinced by the recent proposal of E. Shochetman, *Shenaton HaMishpat HaIvri* 14-15(1988-1989):217-244, as to the phrase *והדבר צריך הכרע*. It appears, then, that the later Maimonides developed some doubts as to whether *semikha* could be renewed in the way he suggested in his earlier *Commentary*; but he nonetheless thought the proposal significant enough to be recorded in the Code, nor did he revise the *Commentary* in any way. (Indeed, congruent with the argument of the *Commentary*, renewal of *semikha* is not found among the restorative activities of the King Messiah in *Laws of Kings*, 11, 1. The renewal of the Great Court is noted independently in *Laws of Sanhedrin*, 14, 12.) Maimonides also omits the *Commentary*'s messianic context in the Code, which emphasizes the relevance of *semikha* for the imposition of fines and the renewal of the judiciary. This may be attributable to the Code's more muted messianic stance, as Funkenstein, "Maimonides: Political Theory and Realistic Messianism," *Miscellanea Mediae-*

valia 11(1977):101-102 suggests, but it may also be a purely literary phenomenon, deriving from the Code's primarily jurisprudential concerns (though the messianic mention in the Commentary does not provide argumentation alone, which is usually omitted in the Code, but — in its second phase — a motive for the renewal of *semikha* as well). Note, too, Y. Baer's stress of this phase in *Galut* (New York: Schocken, 1947), p. 38 ("Moshe ben Maimon shared completely the real messianic hopes...awakened in his people.... [W]hen he demonstrates that the revival of ordination in Palestine is a necessary precondition to the redemption...he displays...the prime concern of the religious-national statesman, whose eschatological hopes are bound up with the Jewish center in Palestine"), as well; H. Tchernowitz, *Toledot HaPoskim*, I (New York: Committee for the Publication of the Works of Rav Tzair, 1946), p. 250. Compare J. Katz, *Halakhah VeKabbalah* (Jerusalem: Magnes Press, 1984; materials originally published in 1951), p. 227. There are also other subtle — but significant — differences between the proposal as formulated in the Code and in the Commentary (and between the versions in the two mentions in the Commentary itself), but discussion would take us too far afield; so too as concerns the grounding of Maimonides' theory of consensual *semikha*. For brief discussion, see my *Ekronot Mediniyyim* (Ramat-Gan: Bar-Ilan University Press, 1984), pp. 140-141. In my synopsis and analysis of the argument of the Commentary here, I have corrected the presentation in *Ekronot*, p. 246.

Be all this as it may, it should be noted that Maimonides does not explicitly condition his proposal in the Code on the supposed break in the chain of *semikha*. Rather, immediately after describing a situation where there is but one ordained scholar in the Land of Israel, he describes a situation where there are apparently none — but that can be imagined if they are all out of the country, too. Maimonides' question, "If what we have said is true...why were the rabbis disturbed over the matter of ordination, apprehending the abolition of the laws involving fines," does of course raise the spectre of culmination; but taken literally, it merely points to the objection that if this thesis is accepted, the end of *semikha* need not necessarily mean the absolute demise of the judicial system (for it lies in rabbinic power to renew it) while historic rabbinic behavior suggests the opposite — no more. I would not make too much out of this reading, which is in truth somewhat perverse and unlikely, to be sure, but the fact remains that the presumed demise of the historical *semikha* is not mentioned here, the proposal being presented as an item of pure law.

See, as well, Laws of Shofar 2, 9 (most likely referring to the normative possibility of *semikha* after the Temple's destruction — all that *zeman hazeh* means — which was in fact the historical situation, than to the renewal of *semikha*); Laws of the New Moon 5, 1 (which speaks of the non-existence of a Sanhedrin, as does

Book of the Commandments, Aseh 153, but — not explicitly, at least — of the end of *semikha*; though note 5, 3, too); and see n. 29 *infra*. Daniel b. Hisdai's reference to the usurpation of ordained status as a license for sounding the Shofar on Shabbat of Rosh HaShanah (S. Assaf, *Tarbiz* I/3: 70, bottom line 3-6; see *infra*) shows the issue was alive in Maimonides' lifetime, and see n. 14 *infra*. A recently published *piyyut* ("no earlier than the tenth century") describes the blowing of a shofar on the Sabbath of Rosh HaShanah in a Palestinian context (E. Fleisher, *Tarbiz*, 54[1985]:61-66). So far as I can tell, the earliest testimony to similar behavior on the part of R. Isaac al-Fasi — in North Africa — is found in the thirteenth century Nahmanides, who refers to "responsa of his [Alfasi's] students" as evidence.

3. *Commentary to Mishnah*: Baba Kamma 8, 1; Sanhedrin 1, 3; Makot 1, 11; Bekhorot 4, 3-4. *Book of Commandments*: Aseh 153, 177. *Code*: Laws of Shofar 2, 9; Laws of the New-Moon 5, 1; Laws of Sanhedrin 4, 4-6; 5, 2; 5, 8; 5, 12; 14, 14. Maimonides is fond of the phrase, "ordained in the Land of Israel" (סִמּוּךְ, סִמּוּכִין), (בְּאֶרֶץ יִשְׂרָאֵל), which functions as a virtual term. H. Sanhedrin 4, 4 is especially powerful; Maimonides repeats the norm twice, despite the fact that it could easily be inferred from 4, 6.
4. H.Y. Borenstein, *HaTekufah* 4(1923):400ff; M. Ber, *Rashut HaGolah BeBavel* (Tel-Aviv: Dvir, 1970): 106ff; N. Aminoah, *Dinei Yisra'el*, 8 (1977), 146ff. See, too, D. Rosenthal, *Tarbiz*, 49(1980): 53-4, n. 16. The argument has now been summed up and amplified by Y. Breuer, *Tarbiz*, 66(1997):41-60, which appeared after this article had been completed. Breuer also notes (p. 58, n. 81) that additional as yet unpublished materials further support this position.
5. Borenstein, *op. cit.*; J. Mann, *Texts and Studies in Jewish History and Literature*, I (Cincinnati: Hebrew Union College Press, 1931), p. 229; M. Gil, *A History of Palestine: 634-1099* (Cambridge: Cambridge University Press, 1992), p. 495, n. 2. The cessation of the Patriarchate (and note A. Linder, *The Jews in Roman Imperial Legislation* [Detroit: Wayne State University Press, 1988], p. 320) says nothing, in any case, about the discontinuation of *semikha*, which is not inherently connected to that institution, despite rabbinic legislation which gave the Patriarch a veto over ordinations. See, as well, the materials gathered by A. Aptowitz, *Mehkarim BeSifrut HaGeonim* (Jerusalem: Mossad HaRav Kook, 1941), p. 104ff; B. Dinur, *Yisrael BaGolah*, II/3 (Jerusalem: Mossad Bialik, 1968), p. 333, n. 84.
6. Y. Katz, *op. cit.* (originally published, 1979), pp. 201-212. For additional bibliography, see H. Mantel, *Studies in the History of the Sanhedrin* (Cambridge, Mass.: Harvard University Press, 1965), pp. 218-220.
7. I cite the text as published by M. Gil in B.Z. Kedar, ed., *Perakim BeToledot Yerushalayyim BiYemei HaBenayyim* (Jerusalem: Yad

Ben-Zvi, 1979), pp. 81-106. Both Borenstein (p. 415, n. 1) and Gil (pp. 73, 90) urge a connection between Maimonides and Evyatar, but the materials they cite are thoroughly Talmudic. A more relevant parallel occurs in connection with the authority to regulate the calendar, as was pointed out by my student, Ohr Margalit. Evyatar argues at length (pp. 91-103!) for the dual claim that such authority is vested in the academies of the Land of Israel exclusively, and that the mode of this regulation is by calculation, not physical sighting of the New Moon. Gil (pp. 70-71) identifies the object of Evyatar's attack with rabbinic sympathizers of the Karaite position, who disputed both these points. Now Maimonides also urges, in Aseh 153 of his *Sefer Mizvot*, the same positions espoused by Evyatar (though his view of the relationship of sighting to calculation is quite different), and concludes, "On this point, the heretics...called Karaites have gone astray, and even some Rabbanites have failed to grasp this point..." (C.D. Chavell, trans., *The Commandments I* [London, 1967], p. 160). This strikes me as a more accurate reading of the rabbinic position disputed by Maimonides than Y. Kapah's suggestion (in his *Sefer HaMizvot LaRambam* [Jerusalem: Mossad HaRav Kook, 1971], p. 136, n. 40) that R. Sa'adiah is the target, though echoes of the Sa'adiah-Ben Me'ir controversy can of course be heard in this entire discussion. See, as well, S. Assaf, *Tarbiz*, I/iii (1931):70, lines 1-3 (bottom). For another possible Maimonidean parallel to Evyatar, see my article in *Shenaton HaMishpat Halvri*, XX(1995-1997):31, n. 20. A general overview of the issues, institutions, and persons discussed in the next sections is found in S. Baron, *SRHJ*, V (Philadelphia: Jewish Publication Society, 1957):3-54.

8. *Op. cit.*, p. 85:
 ויִסְמוֹךְ אוֹתָנוּ בְרִשׁוֹת כָּל יִשְׂרָאֵל גְּאוֹן יַעֲקֹב וְאֵת בְּנֵי שְׁלֹמֹה הַכֹּהֵן
 אֲבֵי בֵית דִּין וְאֵת צְדוֹק בֶּן רִבִּי צִאֲשִׁיָּהוּ אֲבִי ז' לְשִׁישִׁי כִּי אֲנַחְנוּ
 הֵיינו אֲבֵי וְעֵלֵינוּ לְגֵאוֹנוֹת הַשְּׁלִישִׁי עָלֵה לְהִיּוֹתוֹ אֲבִי וְהַרְבִּיעִי עָלֵה
 לְהִיּוֹתוֹ שְׁלִישִׁי....
9. *Ibid*:
 וּבִשְׁנֵה הַשְּׁנִי[ה] הַלֵּךְ לְחִיפָה לְקֹדֵשׁ אֶת הַשְּׁנָה וּיְחַדֵּשׁ אֶת הַגְּאוֹנוֹת
 וְאֵת הַסְּמִיכָה בְּחִיפָה בְּבֵית הַוְּעָד.
10. Though located in Tyre, the yeshiva and its leadership maintained their historical identity as authentic Palestinian institutions; but this could not satisfy more rigorous *halakhic* standards — hence *semikha* in Haifa. Perhaps, too, given the internal conflicts at the time, the Palestinian leadership did not want to provide grist for its opponents' mill. Since the *semikha* was first given in Tyre, it seems that Elijah was not always overly particular as to Tyre's inferior status. The term already functions in Talmudic literature to designate extra-judicial public office, despite the contrary impression left by the definition of R. Ashi in Sanhedrin 13b and the Maimonidean Laws of Sanhedrin 4, 1-3. See G. Alon, *Mehkarim BeToledot Yisra'el II* (Tel-Aviv: HaKibbutz Ha-Me'uhad, 1958), p.

- 42; S. Albeck, *Batei Din* (Ramat-Gan: Bar-Ilan University Press, 1980), pp. 94-96. See nn. 12, 24, *infra*.
11. S. Assaf, *Tarbiz*, I/3(1930):66-77; Mann, *op. cit.*, pp. 228-243; Dinur, *op. cit.*, n. 83.
12. Assaf, pp. 68-69:
 שמנו המצנפת...על ראש אחינו ראש ישיבה שלגולה ורקאנוהו בשם קדוש במעמד שרינו וגבירינו וכל הקהל עונים אמן. כי בארשת שפתינו סמכנוהו...והוא בית דין הגדול בכל ארץ מצרים ובכל הארצות יורה וידין ויקבע בתי דינים בכל פלך ופלך....
 It should be noted that this bestowal of judicial authority and teaching license through *semikha* is by an exilarch, as Mann, pp. 230-231, shows (though Assaf [*Tarbiz*, I/1(1929):117] assumes that the author must have held, or also held, the office of rosh yeshiva). Indeed, Benjamin of Tudela claims that the Exilarch Daniel b. Hisdai bestowed *semikha* on the Gaon of Bagdhad himself (*Itinerary*, ed. Asher [London, 1907], p. 41 [Heb.], which dovetails with the Maimonidean political ethos. Note, too, the statement of the exilarch Daniel in Assaf, *Tarbiz*, I/1:127, though he seems to refer to appointment to office, not ordination. See Maimonides' Laws of Sanhedrin 3, 8; 4, 14-15; Book of Commandments, Negative Command 284. See my *Ekronot Mediniyyim*, *op. cit.*, pp. 46-49, 141-142; *Tarbiz* 51(1982):580.
13. *Op. cit.*, p. 69:
 והלא ידוע וגלוי כי חבל הסמיכה נרתק מכמה שנים מעת אסיפת אדונינו נשיאנו...והכהנים נקראים אחריו נהגו קלות ודחקו את השעה...ואין להרהר אחרי מעשיהם
14. Mann, p. 231ff. If so, this would explain the relatively muted disapproval of the behavior of the Palestinian priests, noted by Assaf, p. 66 — they were not the real target of the polemic. The Damascus connection is further strengthened by our author's attack on those who sound the shofar of Rosh HaShannah even on the Sabbath ("he profanes the Sabbath and deserves great punishment"; see n. 2, *supra*), which was reported — by a figure contemporary with the Ra'abad — of the Damascus academy (see *Sefer HaMenuhah* to H. Shofar 2:9), a reading suggested by T. Preschel (*Sinai* 58 [1966]: 102-103), who suggested that the Damascus yeshiva may have also been intercalating the years. (My colleague Dr. Ted Fram has suggested that the comment of R. Hai cited in ibn Giat's *Sha'arei Simhah*, I, p. 38, may indicate such shofar-blowing even for Babylonia.)
15. *Op. cit.*: 231, n. 64. See n. 10, *supra*, and n. 22 *infra*. The notion that the term "*semikha*" can be used in two distinct senses is not found, to my knowledge, in these documents, but is present in S. J. Halberstam, ed., R. Judah al-Barceloni, *Sefer HaShetarot* (Berlin: H. Itzkowski, 1888), pp. 132-133, who treats of the Babylonian *semikha* as "*zekher le-semikha*." Al-Barceloni — late eleventh century — apparently thinks that the classic *semikha* is still functional in the Land of Israel of his days, incidentally. This docu-

- ment warrants fuller analysis in its own right. D. Revel, *Horeb*, 5(1939): 12, takes Daniel b. Hisdai's statement on the demise of *semikha* to be accurate, and does not contend (as did Mann) with Daniel's own granting of *semikha*; since *semikha* existed until 1061, Revel argues that Maimonides was merely urging the restitution of an institution that had barely just expired (p. 13).
16. Katz, *op. cit.*: 206-208. A number of difficulties remain in this reconstruction, however. The Talmudic citation that "there is no *semikha* outside the Land" is dismissed rather summarily. Katz must argue that the first phrase of our author's Talmudic synopsis is relevant to his polemic, but that the lengthy continuation is largely academic and is cited despite the fact that it goes against the grain of the author's own actions. It is possible that Al-Barceloni (*op. cit.*) also reads this statement historically, but his point seems to be that the rule *is* in effect from Talmudic times *on*, perhaps viewing the Destruction of the Temple as a crucial point. The *ga'on*, furthermore, had an institutional framework — his *yeshiva* itself! — at his disposal no less than did the exilarch, so he could not be accused of ordaining as an individual. On the other hand, the description of the ordained party as "the sage of his generation" does suggest that Daniel is dealing with appointment to high office. Daniel's accusation (p. 70, bottom, lines 8-10) that "this is the Lord's work, and he who does it dishonestly is cursed" underscores the polemical underpinnings of the document.
17. Assaf, *Tarbiz*, I/2(1930):72-83.
18. Assaf, *Tarbiz*, I/1:106-108, 128; Mann, pp. 240-242; S. Baron, *op. cit.*, V, pp. 10, 52; VI, *op. cit.*, pp. 9-10, 119-120, 224. Many sources are conveniently assembled in Dinur, *op. cit.*, pp. 115-126; II/4, chap. 14.
19. Assaf, *Tarbiz*, I/2:82:
- ועל כן נעתקה מדור לדור... כל אחד מהם בוחר מי שהוא ראוי לשיבה... וסומכו. ואם יאמר האומר, כי ימים רבים לישראל בלא סמיכה, בראותו האומר כי אין סמיכה בחוץ לארץ יש... להשיבו ולהרגיעו כי האומר אין סמיכה בחוץ לארץ הני מילי לדון דיני קנסות אבל להודאות והלואות יש סמיכה, יש על עיקר זה ראיות לא תכילם אגרת זו... והמעיד על היסוד הזה אשר יסדנוהו מנהג ראשי הישיבות בבבל מימות רבנו רב ועד היום הזה כל אחד ואחד ככתוב בזכרוני ואגרותיו... והנה דברי רב האי וזולתו מן הגאונים בחרט ידם בענין הזה כדברים האלה.
- Baron (*SRHJ* VI:10) asserts that Samuel b. Ali's insistence on the authenticity of Babylonian *semikha* was "largely academic"; this may be true on the purely normative level, but the matter was clearly of great importance to him and apparently was of ideological-political significance.
20. See Mann: 240, n. 87, citing the usage of the famous Epistle of R. Sherira. Note also the responsum of R. Hai as given in *Arukh*, s.v. *Abayye*: "...the sages of the Land of Israel are ordained in [=appointed to? appointed by?] their Sanhedrin...the sages of

Babylon are ordained in [=appointed to? appointed by?] their academies (see n. 22 *infra*)

(מחכמי ארץ ישראל הסמוכין שם בסנהדרין שלהם...מחכמי... (בבל הסמוכין בישיבות שלהן); R. Hai makes it clear, though, that the statement of R. Ashi, as well as the phrase *סמיכת זקנים* (Sanhedrin 13b) refers only to the ordained of the Land of Israel, who can decide cases of fines and are called Rabbi (רבי), not Rav (רב). [For the linguistic problem surrounding *ב סמך* see, as well, S. Goitein, *Sidre Hinnukh* (Jerusalem: Makhon Ben-Zvi, 1962), pp. 190-191, where the translation is also problematic.] Sherira is also careful to describe the Palestinian institution as “Sanhedrin” and the Babylonian as “yeshiva”; others used “Great Sanhedrin” to describe their own, Babylonian, academies (see R. Amram as cited by Rosenthal, *op. cit.*, p. 52). Finally, it should be emphasized that Sherira’s entire description relates to Talmudic times, not necessarily to his own period. This terminology does, in any case, strengthen the idea that *semikha* is the prerogative of the ga’on and his yeshiva, not of the exilarch. See now Breuer (n. 4 above), p. 52. Interestingly, the new materials to which Breuer refers are from the hand of R. Hai.

21. See *Ekronot*, pp. 47-48. But Samuel b. Ali was not unique — see S. Assaf, *Tekufat HaGeonim VeSifruta* (Jerusalem: Mossad HaRav Kook, 1955), pp. 60-61; S. Baron, *op. cit.*, V, pp. 19-20, 25. Note, too, R. Sherira’s identification of the head of the Babylonian yeshiva with Moses (cited by Assaf, *Tarbiz*, I/1:127). The basic claim was made most explicitly by Pirkoi b. Baboi; see the passage given from ms. by B.M. Levin, *Tarbiz*, II/4(1931):396, 400, and in even more powerful form in the alternate reconstruction of J. Mann, *Tarbiz*, VI/1 (1935):79: “the Oral Law found in the hands of the sages of Babylon...was not invented by them...; they received it from Moses from Sinai.” Similarly, the famous geonic addition to Tanhuma, Noah, 3, stresses, *inter alia*, the continuity of the “two yeshivot,” which suffered “neither captivity nor persecution, nor were they ruled by Greece or Rome [all of which were the fate, of course, of the Land of Israel],” and concludes with the assurance that the redemption will begin in Babylon, which is identified as “Zion,” no less. Babylon’s identification with Zion is adumbrated in the Talmud (see Berakhot 8a and Ketubot 111a) and the claim that redemption begins in Babylon is also found in Pirkoi, indeed “at the yeshiva in Babylon” (Levin: 396). (For a schematic overview of Levin’s fragment, see M. Ben-Sasson, *Shalem*, 5[1987]:34-35.) See, on all this, S. Spiegel, “*LeParshat HaPolemos shel Pirkoi ben Baboi*,” *Sefer Yovel LeKhvod Zvi Wolfson* (Jerusalem: American Academy for Jewish Research, 1965), pp. 260-273; for additional perspective on this last claim, see A. Grossman, *Cathedra*, 8(1968):142. See, too, M. Ben-Sasson, *Tarbiz*, 56(1987):180-181. For materials on the geonic ideology of continuity, see my paper in Robinson, n. 26, *infra*. What ought to be added here is

- that these materials juxtapose the continuity of Toraitic authority with the locale and possibility of redemption, the same point we have seen Maimonides make in a different way. Perhaps, too, Maimonides' citation of the aggadah which places the renewal of *semikha* in Tiberias (H. Sanhedrin, 14, 12), is directed against these claims, over and above the normative assumption that *semikha* can be given only in the Land of Israel.
22. Assaf, *Tarbiz*, I/2:64-65.
 23. M. Ben-Sasson, *Zemihat HaKehillah HaYehudit BeArazot HaIslam* (Jerusalem: Magnes Press, 1996), p. 411; see p. 345 as well. This omission is all the more pointed when taken in conjunction with the geonic assertion of universal authority: see H.H. Ben-Sasson, in H.H. Ben-Sasson, ed., *A History of the Jewish People* (London, 1976), pp. 421-430.
 24. Examples are legion; some are found in the materials cited above. Note even the use by Evyatar, n. 8 *supra*, where the term reflects appointment to a higher office (contra Katz, *op. cit.*, p. 206); see Gil: 51; notes 10, 12, 20, *supra*; the anonymous responsum in Rosenthal, *op. cit.*, p. 55. A particularly piquant instance is found in Samuel b. Ali's use of the term to designate Samuel's anointing of Saul as king (Assaf, *Tarbiz*, I/2: 66, l. 12)! This reflects contemporary usage as much as the gaon's political ideology. (No less piquant is the use of the term by — the Ashkenazic! — Benjamin of Tudela (*op. cit.*) to designate the Calif's appointment of the Rosh Golah!) But since Daniel b. Hisdai and Samuel b. Ali, for example, discuss the legitimacy of appointment within the context of the Talmudic rules for *semikha*, we must assume that ordination and appointment were seen (by them and others, even by Evyatar) as parts of one continuum, as they may indeed have been in Talmudic times; let us recall that the one certain use of the term in the Mishnah most likely denotes appointment to a Sanhedrin (M. Sanhedrin 4, 4). Note that even Maimonides, in his proposal in the Commentary (but not in Mishneh Torah), has the first ordinant appointed as head of the Sanhedrin yet to be, as Prof. S. Albeck pointed out to me; see, too, his formulation in Sefer HaMizvot, Aseh 177: "...all these appointments...can be made in the Land of Israel only [for] there is no *semikha* outside the Land." The formulations in H. Sanhedrin 4, 1, 3-4, which ostensibly speak of both *semikha* (ordination) and *minui* (appointment) require further study. A nice instance of the ordination-appointment continuum is given by Samuel b. Ali's appointment of Zekharyyah as *ab bet din*, which uses the term *semikha* and bestows, among other privileges, the right "*ladin u-le-horot u-le-hatir bekhhorot*," reproducing the Talmudic formula for *semikha* ((Assaf, *Tarbiz*, I/2:61-62). Mosaic descent of Samuel: Benjamin of Tudela, *op. cit.* Abraham ben David: G.D. Cohen, ed., *The Book of Tradition* (Philadelphia: Jewish Publication Society, 1967), Hebrew section: 63 (re: ibn Megas; perhaps here too appointment, as we are also told [p. 64]

- that he succeeded al-Fasi upon the latter's death as head of the *yeshiva*), 56, 61. License of ibn Akin: D.Z. Banah, ed., *Iggerot HaRambam* (Jerusalem: Magnes Press, 1946), p. 68; see my discussion in *Tarbiz*, 51(1982). Interestingly, whatever the terminology used by the author of *Sefer HaKabbalah*, ibn Megas himself gives *minui* (and not *semikha!*) in 1148: see S.D. Goitein, *op. cit.*, p. 191; so too in the Arabic original, see Hirshberg in *Sefer Yovel...Baer* (Jerusalem: Magnes Press, 1962), p. 143, line 20.
25. See Commentary to the Mishna, Bekhorot 4, 4; M. Ben-Sasson, "Maimonides in Egypt: The First Stage," *Maimonidean Studies*, 2 (1991):3-31.
 26. See G. Blidstein, "Oral Law as Institution in Maimonides," I. Robinson, ed., *The Thought of Moses Maimonides* (Toronto: Edwin Mellen Press, 1990), pp. 167-182; and note the final paragraph of my article in *Da'at* 16(1986):27.
 27. Book of Commandments, Aseh 153. See E. Schweid, *Moledet VeEretz Ye'udah* (Tel-Aviv: Am Oved, 1979), p. 77; Blidstein, *Ekronot*, p. 251; Y. Levinger, *HaRambam KeFilosof u-Posek* (Jerusalem: Mossad Bialik, 1989), p. 94; D. Henshke, *Shenaton HaMishpat Halvri*, 18-19(1992-4):177ff.
 28. See *Ekronot*, pp. 26-27; Blidstein, *HaTefillah BeMishnat HaRambam* (Jerusalem-Beersheba: Mossad Bialik/Ben-Gurion University Press, 1994), pp. 36-37.
 29. Borenstein, *op. cit.*, claims that according to Maimonides, *semikha* remained operative even in his own time; but while it can be urged that Maimonides speaks in some sources of the discontinuity of the Great Court and not of *semikah per se* (see n. 2 *supra*), this reading can in no way be squared with the Commentary to the Mishnah, as Borenstein is forced to admit, and may also do violence to the Book of Commandments. Note, too, the comment of Maimonides' son, R. Abraham, in A. Freimann, ed., *Responsa* (Jerusalem: Mekize Nirdamim, 1938), p. 21: "...in the period of *semikha*, which has ceased for some years." The text which most strongly supports Borenstein's thesis is H. Sanhedrin 5, 17, but that too suffers alternate interpretation; see, e.g., R. Moses of Trani (Mabit), *Responsa*, 1:93. Nonetheless, the Maimonidean position — at least in the years after the composition of the Commentary to the Mishnah — is not entirely clear. To take one significant example: the popular theory that the phrase "the inhabitants of the Land of Israel" (בני ארץ ישראל) functions in H. Kiddush haHodesh 5:13 and in *Sefer HaMizvot* to indicate that the Jewish community of the Land is authorized, even lacking ordained scholars, to regulate the calendar (see Henshke, *op. cit.*, p. 185), does not account for the use of the phrase in 5:6, where regulation by observation of the moon by an ordained court is discussed. This topic still warrants further discussion.
 30. I do not know what Maimonides' contemporaries thought on the subject, but later generations did not find Maimonides' solution to

be inescapable. See, e.g., the responsum of R. David ibn Abi Zimrah cited by Kessef Mishneh to H. Sanhedrin 4, 11, not to speak of the writings of R. Levi b. Habib on the topic.

31. Eruvin 43b. The basic point is made by R. Zvi Hirsch Hayyot, *Haggahot*, but he overstates his case, I believe. See Katz, *op. cit.*, p. 226, n. 107, who points out that R. Levi b. Habib had considered this Talmudic passage and rejected its probative value. Note, too, the order of the benedictions in the *Shemoneh Esreh* prayer: the petition for restoration of judges — phrased in terms of Isaiah 1, 26, the same verse cited by Maimonides! — precedes all the messianic petitions.