INTRODUCTION

This essay is devoted to a purely conceptual "Brisker" account of the Rav's analysis, in many contexts, of classical *semikhah* and eligibility for the same. If this analysis survives critique, a subsequent essay will place it in the context of a central theme of the Rav's philosophic work. If that analysis as well emerges recognizably from critique, a third and last essay will draw tentative but concrete implications for contemporary practice with regard to eligibility for semikhah, and humbly submit them for critique.

No attempt will be made in this essay to evaluate the Rav's work, only to present it. The practical weight of any implications derived from this analysis will depend on the general weight one assigns to the Rav's opinions in determining individual or communal practice, and/or on evaluation of the argument on its merits as a reading of the tradition.

I have followed the approach of many of the Rav's direct talmidim in writing the Rav's material directly, rather than citing him in the third person. Any content that I believe to be my own is specifically marked {ADK}. There may be places where I have misunderstood the Rav or made an argument that seems necessary for his thesis but which he himself never made. Readers are encouraged to check my analysis against the available evidence of his positions, to which I have tried to provide fairly comprehensive access in the endnotes. Readers who wish to study the Rav's directly relevant positions in advance of my presentation are directed to

"קביעת מועדים על פי הראיה ועל פי החשבון", in קובץ חידושי תורה

"בענין תקנת משה", in שיעורים לזכר אבא מרי ז"ל כרך ב

"קונטרס הסמיכה" in ארץ הצבי

רשימות שיעורים to נדרים ח:, שבועות ל., שבועות לא., בבא קמא טו., בבא קמא פד:

The Rav Thinking Aloud on the Parsha: Sefer Bamidbar

"Semichah of Yehoshua" in The Rav Thinking Aloud on the Parsha: Sefer Bamidbar

"הערות בריש מסכת אבות", in בית יצחק כרך כב עמוד סד

NOTE ON METHODOLOGY

I am not a direct student of the Rav, but rather a student of (many of) his students. My account of his position is therefore of necessity a reconstruction rather than a report. It is a work of intellectual history. As such, I sometime need to choose between conflicting sources, interpretations of sources, and so on.

My basic approach is as follows:

1) The articles in קובץ חידושי תורה are the Rav's ipsissima verba and reflect his positions accurately, at least as of the time of their original publication.
2) Rabbi Herschel Reichman and Rabbi Herschel Schachter's firsthand reports of the Rav's shiurim, the articles in שיעורים לזכר אבא מארי ז"ל, and the direct reports in The Rav Thinking Aloud are presumptively accurate. However, on occasion they conflict; see footnote 7 for one clear such case.
3) I do not extend the same level of credibility to secondary sources, even those written by great talmidei chakhamim, for example when they are writing up someone else's notes on a shiur they did not personally hear.
4) I use my memory of my teacher Rabbi Michael Rosensweig's presentation of the Rav's positions in shiur in 1987 as confirmation of my analysis, but not as primary evidence, especially as in subsequent presentations his own positions seem to differ.
5) The Rav famously changed his mind in shiur at least from year to year. This may explain some of the subtler inconsistencies between various reports.

RAV SOLOVEITCHIK ON SEMIKHAH

In Hilkhot Sanhedrin 2:11, Rambam introduces a distinction between judging (=being דן), and serving as a court of justice (=being a בית דין).

אחד שהיה מומחה לרבים או שנטל רשות מבית דין –
הרי זה מותר לו לדון יחידי, אבל אינו חשוב בית דין
One who was known to the public as expert, or who received authorization from beit din –
he is permitted to judge alone, but is not considered beit din.

Rambam expands on this distinction in Hilkhot Sanhedrin 5:18:

יחיד שהוא מומחה לרבים –
אף על פי שהוא דן דיני ממונות יחידי –
אין ההודאה בפניו הודאה בבית דין, ואפילו היה סמוך;
אבל השלשה –
אף על פי שאינן סמוכין, והרי הן הדיוטות, ואין אני קורא בהם אלהים –
הרי ההודאה בפניהם הודאה בבית דין,
וכן הכופר בפניהם ואחר כך באו עדים –
הוחזק כפרן ואינו יכול לחזור ולטעון, כמו שביארנו.
כללו של דבר:
הרי הן לענין הודאות והלואות וכיוצא בהן כבית דין הסמוך לכל הדברים.
An individual who is known to the public as expert –
even though he may judge monetary cases alone –
an admission in his presence is not considered an admission in beit din, even if he has semikhah*.*
But (a panel of) three –
even though they do not have semikhah*, and they are non-experts, and I do not call them* elohim –
an admission in their presence is considered an admission in beit din.
So too, one who denies something in their presence, and then witnesses come (to contradict him) –
he is fixed-as-a-denier and (therefore) is not permitted to reformulate his claim, as we explained.
The principle of the matter is:
With regard to admissions, denials, et al, they are like a beit din with semikhah *for all matters.*

A court comprised of three laymen has the status of a beit din even though it is not an "elohim". This demonstrates that Rambam holds that the status of "beit din" can exist independently of the status of "elohim".

Rav Chaim Brisker reads Rambam as saying that the reverse is true as well, i.e. that an expert

individual[1] judge has the status of “elohim” despite not having the status of “beit din”. This means that a judging entity can have the status of “elohim" even if does not have the status of “beit din”.

What is the difference between judgement by “elohim" and judgment by “beit din”?

Rav Chaim explains that an individual expert judge can determine for the litigants what their Torah obligations are, but cannot enforce those obligations[2]. In other words, an “elohim" can issue a *hora’ah* but not a *psak din*. A three-person lay “beit din”, by contrast, can issue a *psak din* and compel the litigants to abide by it, but is not able to issue a *hora’ah.* Such a panel cannot exercise any independent judgment about what the law is or should be. Its members merely apply the law as they find it ready-made; they are *mar’eh makom*[3] (=point to an authoritative source of law)[4].

R. Chaim thus establishes two equations:

1) *elohim = hora’ah*
2) *beit din = psak din.*

R. Chaim uses this approach to explain Rambam’s puzzling position in Hilkhot Sanhedrin 11:7-8:

דיני ממונות, וכן הטומאות, וכן הטהרות, -
האב ובנו, הרב ותלמידו, מונין אותן בשנים;
ודיני נפשות, ומכות, וקדוש החדש, ועיבור השנה –
אב ובנו או הרב ותלמידו מונין אותן באחד.
זה שאנו מונין האב עם הבן, בין באחד בין בשנים –
כגון שהיה האחד מהן בסנהדרין והשני היה מן התלמידים
שאמר 'יש לי ללמד זכות או חובה' –
שומעין דבריו, ונושאין ונותנין עמו, ונמנין עמו.
Monetary judgments, also tum’ot*, also* taharot –
a father and his son, a rav and his student, count as two;
capital judgments, also lashes, and kiddush hachodesh*, and declaring leap years –*
father and son or rav and student count as one.
That which we count the father with the son, whether as one or as two –

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[1] Kessef Mishnah writes here that this applies to individual highly expert judges even if they don’t have *semikhah*. See on this Rabbi Reichman’s note to רשימות שיעורים Nedarim 8b.

[2] {ADK} A useful analogy may be the status of arbitration panels in American law. Arbitrators produce a judgement which a party can then bring to a civil court, which will generally enforce it, but the arbitrators themselves cannot enforce their decisions. Consider by contrast the US Supreme Court’s refusal to provide advisory opinions, and rather to relate only to actual cases brought by parties with legal standing. But see below for a more Rav-specific account.

[3] Rabbi Schachter ascribes this language to Minchat Chinukh.

[4] {ADK} Their ruling also has no relevance as legal precedent for judges in any other case.

is for example if one of them is on a sanhedrin and the second among the students,
and (the latter) said 'I have a basis for innocence or liability' –
we listen to his words, we engage in debate with him, and we vote with him.

Rambam gives no explicit rationale for why judges related to one another can serve together in monetary cases, and Raavad claims the ruling resulted from a corrupted text. Raavad also asks a fundamental question:

חיי ראשי!
איני רואה לא טעם ולא ריח בדברים אלו, כי למשא ומתן מאי מנין איכא?
ובשעת גמר דין - אז הוא המנין.
By the life of my head!
I see neither taste nor aroma in these words, as for (the context of) debate, what vote is there?!
The vote is at the time of the verdict.

R. Chaim[5] agrees with Raavad that Rambam was describing a vote related to the debate, and not a vote about the verdict, but does not see this as a difficulty. He explains that there are two significant votes in the process of deciding monetary cases.
The first vote determines the law.

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[5]As reported by Rabbi Reichman in the citations below. Rabbi Schachter reports that the Rav cited what seems to be the same explanation from Rabbi Chaim Korb in Netivot Chayyim. Rabbi Korb addresses this Rambam in vol. 1, p.39, but I was not able to find anything parallel to what the Rav cites here. I am therefore following Rabbi Reichman's reports here, but am open to new evidence. (N.B. After this draft was complete, I was made aware of R. Yaacov Sasson's Shiurei HaRav on Sanhedrin, which offers a somewhat different set of attributions in footnote 9.)

רשימות שיעורים (רי"ד סולובייצ'יק) מסכת שבועות דף ל עמוד א
להסברת פסק הרמב"ם התמוה, העלה הגר"ח זצ"ל שלפי הרמב"ם ישנן שתי עמידות למנין בבי"ד:
א) מנין ראשון בשעת משא ומתן שהוא משתייך להוראת ההלכה מבחינת הלכות התורה בלי להטיל את ההוראה כדין על הנידונים. לשם כך אף הפסולים נמנים כשנים כי אינם פסולים להוראת הלכות התורה.
ב) מנין שני בשעת גמר דין שהוא בא להטיל דין תורה על הנידונים. לשם כך נפסלו פסולים.
אמנם רק בדיני ממונות מתחלק הדין לשני שלבים: שלב הוראת הלכות התורה ושלב הטלת הדין על בעלי הדברים. ואילו בדיני נפשות מכות וקדה"ח שני השלבים מצטרפים לאחד ולפיכך נפסלו הפסולים גם למשא ומתן שכן אף המשא ומתן נחשב כחלות דין על הנידון (בדיני נפשות ומכות - ובקדה"ח כחלק ממעשה הבי"ד המקדש) ולא כהוראת הלכות התורה גרידא.

(רשימות שיעורים (רי"ד סולובייצ'יק) מסכת בבא קמא דף טו עמוד א)
להסברת פסק הרמב"ם התמוה, העלה הגר"ח זצ"ל שלפי הרמב"ם ישנן שתי עמידות למנין בבי"ד:
א) מנין ראשון בשעת משא ומתן שהוא לצורך הוראת ההלכה מבחינת הלכות התורה בלי להטיל את ההוראה כדין על הנידונים. לשם כך אף הפסולים נמנים כשנים כי אינם פסולים להוראת הלכות התורה.
ב) מנין שני בשעת גמר דין כדי להטיל דין על הנידונים, לשם כך נפסלו פסולים.
אמנם רק בדיני ממונות מתחלק הדין לשני שלבים: שלב הוראת הלכות התורה ושלב פסק הדין על בעלי הדברים. ואילו בדיני נפשות מכות וקדה"ח שני השלבים מצטרפים לאחד ואף המשא ומתן נחשב כחלות דין על הנידון ולא כהוראת הלכות התורה גרידא. בהתאם לכך נפסלו הפסולים גם למשא ומתן.

The second imposes the law on the litigants.
Judges who are related to each other can debate and vote together when the issue is determining the law, but they cannot serve together for the purpose of imposing the law on people.

These two votes line up exactly with the categories of *hora'ah* and *psak din* that Rav Chaim developed in his analysis of Hilkhot Sanhedrin 2:11 and 5:18. The only difference is that in 2:11 and 5:18, he distinguished between **aspects** or **modalities** of decisions in monetary cases, whereas here he distinguishes between **stages** of deciding such a case (and (or *tum'ot* or *taharot*).

It follows that
the first vote is for the purpose of *hora'ah* (=for determining the law);
the second vote is for the purpose of issuing a *psak din* (=imposing the law on the relevant parties).

However - if *hora'ah* and *psak din* are separable stages of monetary cases (and *tum'ot* and *taharot*), why are they not separable stages of capital or flogging cases, or of *kiddush hachodesh* and declaring leap years, so that relatives can serve together for those cases in the same way they do for monetary cases? Why is there only one vote in such cases?[6]

Answering this question requires us to analyze the nature and functions of batei din in general and the Great Sanhedrin in particular.

Rambam writes in Hilkhot Kiddush HaChodesh 5:1-2:

כל שאמרנו מקביעות ראש החדש על הראייה
ועיבור השנה מפני הזמן או מפני הצורך –
אין עושין אותו אלא סנהדרין שבארץ ישראל או בית דין הסמוכים בארץ ישראל שנתנו להן הסנהדרין רשות,
שכך נאמר למשה ולאהרן: *החדש הזה לכם ראש חדשים*
ומפי השמועה למדו איש מאיש ממשה רבינו
שכך הוא פירוש הדבר:
עדות זו תהיה מסורה לכם ולכל העומד אחריה במקומם . . .
Everything that we have said regarding the fixing of Rosh Chodesh by sight,
or the declaring of a leap year in order to match the seasons or for some other need…
can be done only by a Sanhedrin in the Land of Israel
or by a beit din of semukhim *in the Land of Israel to whom the Sanhedrin has delegated authority*

[6] {ADK} Alternatively: Why must one be eligible for the second vote in order to participate in the first in such cases?

as it was thus said to Mosheh and Aharon: This month shall be for you the head of the months
and they learned via tradition, person from person going back to Mosheh Rabbeinu
that this is the explanation of the matter:
This testimony will be given over to you and to all who stand afterward in their place . . .

This demonstrates that *kiddush hachodesh* is fundamentally a prerogative of the Great Sanhedrin, although it can be effectuated by a smaller beit din acting under the Great Sanhedrin's authority.

However, the opening chapter of Mishnah Sanhedrin lists *kiddush hachodesh* as requiring a beit din of three. Why is it not listed as requiring 71? Similarly, why does Rambam in Hilkhot Sanhedrin 5:1 not list it among the areas of law that require 71?

The answer is that the Great Sanhedrin has many distinct functions, and both the Mishnah and Rambam above relate to some but not all of them[7]. Here we need to distinguish two such functions:

1) To be the decisor of the laws of the Torah (=פוסק ומכריע בכל דיני התורה).

   This function includes both *hora'ah* and *psak din.*

   It is derived from the law of the Rebellious Elder (Devarim 17:8-13), where the Torah requires us to act judicially על פי התורה אשר יורוך – on the basis of the *hora'ah* of the Great Sanhedrin rather than on the basis of any conflicting *hora'ah*.

   Rambam holds in Hilkhot Mamrim 3:5[8] that only someone *samukh b'sanhedrin* = having *semikhah* and an appointment as a member of the Sanhedrin can become a Rebellious Elder. This is because the status of Rebellious Elder requires issuing a *hora'ah* as the basis for action that conflicts with one issued by the Great

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[7] "קביעת מועדים על פי הראיה ועל פי החשבון", in קובץ חידושי תורה, p. 52

נראה דשתי הלכות נאמרו בב"ד הגדול:

1) בהלכות דיני תורה, ד

"ב"ד הגדול שבירושלים - הם עיקר תורה שבעל פה, והם עמודי ההוראה, ומהם חק ומשפט יוצא לכל ישראל",

והוא הפוסק והמכריע בכל דיני התורה:

והלכה זו נובעת מפרשת זקן ממרא: "וקמת ועלית וכו' על פי התורה אשר יורוך וכו' לא תסור וכו'"

2) כל היכא דבעינן דעת כל ישראל או הסכמתם או חלות מעשה של כלל ישראל – מעשה ב"ד הגדול סגי, ויש בכלל הוראתם או מעשיהם רשות ומעשה כל האומה . . .

הפרשה של זקן ממרא לבדה עדיין אינה אומרת כי יש בכלל מעשה ב"ד הגדול או רשותו הסכמת ומעשה כל ישראל, ולפיכך זקוקים אנו לפרשה אחרת . . . "אספה לי שבעים איש מזקני ישראל אשר ידעת כי הם זקני העם ושוטריו וכו' והתיצבו שם עמך וכו' . . .

[8] אין זקן ממרא חייב מיתה עד שיהא חכם שהגיע להוראה סמוך בסנהדרין ויחלוק על בית דין בדבר שזדונו כרת ושגגתו חטאת או בתפילין ויורה לעשות כהוראתו, או יעשה הוא על פי הוראתו ויחלוק עליהן והן יושבין בלשכת הגזית, אבל אם היה תלמיד שלא הגיע להוראה והורה לעשות פטור, שנאמר כי יפלא ממך דבר למשפט מי שלא יפלא ממנו אלא דבר מופלא.

Sanhedrin, and Rambam holds that *semikhah* is necessary for *hora'ah*
It follows that the status of "*elohim*" does not apply to <u>every</u> individual expert judge, rather only to one who has *semikhah*[9].
It follows that *semikhah* is necessary to participate in the first vote of a beit din in monetary cases, *tum'ot*, and *taharot*.[10]

2) to play a symbolic or representative role whenever the knowledge, consent, or action of the entire Jewish people is needed.
This role is unrelated to *hora'ah*, and cannot be derived from the Rebellious Elder. Instead, it is derived from when the spirit of G-d emanates from Mosheh to the Seventy Elders in Bamidbar 11:11-17, so that *they can bear* (the weight of the Jewish people) *together with you*.

We can now explain that the first chapter of Mishnah Sanhedrin and Rambam Hilkhot Sanhedrin 5:1 discuss only *hora'ah*-related roles of the Great Sanhedrin. K*iddush hachodesh* is symbolically an action of the entire Jewish people, and therefore is not treated there.
The "two votes", with the first being for *hora'ah*, are separable only when beit din is fundamentally serving a *hora'ah*-related function. They are therefore not separable with

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[9] **רשימות שיעורים (רי"ד סולובייצ'יק) מסכת בבא קמא דף פד עמוד ב**
והנה יחיד מומחה יכול להורות דין תורה מדאורייתא אליבא דהרמב"ם שכתב בפ"ב מהל' סנהדרין (הל"י) וז"ל *אף על פי שאין ב"ד פחות משלשה מותר לאחד לדון מן התורה שנא' בצדק תשפוט עמיתך כו'* עכ"ל.
ונראה דר"ל יחיד שהוא סמוך, אך יחיד מומחה בלי סמיכה אינו מורה דין תורה מדאורייתא אלא מדרבנן.
ולפי"ז יוצא שכח ההוראה בדיני התורה נובע מהסמיכה שקבל הסמוך, דסמיכה היא תנאי בחלות שם הוראה, ורק הוראה מפי סמוך נחשבת להוראת דין תורה, ומאידך בלי סמיכה ואפילו ע"י מומחה אין חלות שם הוראה אלא גילוי מילתא בעלמא שכך הוא הדין, והוי כאילו הסתכל בספר הלכה למצוא איזה דין דא"א לומר שיש בזה חלות שם הוראה, דהוי גילוי מילתא בעלמא.
ויש להוכיח כן מפסק הרמב"ם (פ"ג מהל' ממרים הל"ה) וז"ל
אין זקן ממרא חייב מיתה עד שיהא חכם שהגיע להוראה סמוך בסנהדרין כו' עכ"ל.
ולכאורה קשה: למה בעינן דוקא סמוך?
ונראה: דאין זקן ממרא אלא בסמוך שפסק נגד הסנהדרין הגדול, דרק אז תחשב הוראתו כחפצא של הוראה ולא כגילוי מילתא בעלמא, ורק חלות וחפצא של הוראה מפי סמוך מהווה המראה בב"ד הגדול.
Rabbi Schachter also cites the Rav as saying that there is a machloket between Tosafot and Rambam on this issue. Tosafot claim that *semikhah* is necessary for service on a beit din, but not for hora'ah, while Rambam sees it as necessary **only** for hora'ah, but not for beit din, although Rambam agrees that *semikhah* is necessary for those *batei din* whose primary function is *hora'ah* – see below.
The same distinction, albeit using terms differently, appears in <u>The Rav Thinking Aloud on the Parsha: Sefer Bamidbar</u>, pp.213-4.

[10] {RAK} There appears to be a weakness in this argument. A Rebellious Elder must issue not only a hora'ah, but rather a hora'ah that can be acted on in practice. One might suggest that this conforms to the second vote, and not the first, and therefore to become a zaken mamrei one must have the element of *semikhah* necessary to issue **and** impose a *hora'ah*. We then could not prove from here that *semikhah* is necessary solely to issue a hora'ah, i.e. for the status of *elohim*.

regard to *kiddush hachodesh.*

However, we must still explain why they are not separable in capital and flogging cases.

[11]There is a tension in Rambam as to whether Mosheh **constituted** the great Sanhedrin, or rather **headed it.** [12] The same tension appears in the Talmuds[13]. The solution is that for some purposes Moshe constituted the Sanhedrin, while for others he headed it.

Using the framework above, we might suggest for example that Moshe constituted the Great Sanhedrin with regard to *hora'ah*-related functions, but headed it with regard to representative functions. But this would not be sufficient, as the tension exists even within the categories above. For example, *kiddush hachodesh* is a prime example of an "action of the whole Jewish people", and the appointment of a king clearly falls within the same category. Yet *kiddush hachodesh* was done before the appointment of a Sanhedrin, therefore under the authority of Mosheh alone[14], whereas according to Rambam Hilkhot Melakhim 1:3[15], Yehoshua was appointed king by Mosheh **and his beit din**!?

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[11] שיעורים לשכר אבא מארי ז"ל ב**בענין תקנת משה"",** p. 199

1) כמו לכל ב"ד – של ג', כ"ג, וכיוצא בהם – תכליתו הוא הוראה ופסק, וכפי נוסחת הסמיכה, יורה וידין: הווה אומר, הוא נסמך להוראה, וזהו תפקידו העיקרי . . .
2) . . . קיום דברים . . . מקיים וגומר מעשים ידועים. למשל, ב"ד של חליצה . . . גם בב"ד הגדול נתקלים בבחינה זו. למשל, מינוי מלך או כהן גדול בעי ע"א, כמבואר ברמב"ם, אך אין המינוי הוראה אלא מעשה ב"ד סתמי . . .

[12] See for example

רמב"ם הלכות מלכים פרק א הלכה ג
ין מעמידין מלך בתחילה אלא על פי בית דין של שבעים זקנים ועל פי נביא, כיהושע שמינהו **משה רבינו ובית דינו**, וכשאול ודוד שמינם שמואל הרמתי ובית דינו.

and contrast

רמב"ם הלכות אבל פרק א הלכה א
צות עשה להתאבל על הקרובים, שנאמר ואכלתי חטאת היום הייטב בעיני ה', ואין אבילות מן התורה אלא ביום ראשון בלבד שהוא יום המיתה ויום הקבורה, אבל שאר השבעה ימים אינו דין תורה, אף על פי שנאמר בתורה ויעש לאביו אבל שבעת ימים ניתנה תורה ונתחדשה הלכה **ומשה רבינו תקן** להם לישראל שבעת ימי אבלות ושבעת ימי המשתה.

[13] See for example Sanhedrin 16b

מנא לן כדאשכחן במשה דאוקי סנהדראות ומשה במקום שבעים וחד קאי

and compare

תלמוד ירושלמי (וילנא) מסכת נזיר פרק א
שהתירן **משה ובית דינו**

[14] {ADK} although it was effectuated by Mosheh and Aharon together. The derivation from החדש הזה לכם is not clear to me.

[15] אין מעמידין מלך בתחילה אלא על פי בית דין של שבעים זקנים ועל פי נביא, כיהושע שמינהו משה רבינו ובית דינו, וכשאול ודוד שמינם שמואל הרמתי ובית דינו.

We must therefore conclude that Mosheh's role in the Sanhedrin changed over time. At the very outset of specifically Jewish halakhah, namely the mitzvah of *kiddush hachodesh,* Mosheh constituted the Sanhedrin for all purposes, as well as playing the roles of king (and high priest). By the end of his life, Mosheh had transferred each of these roles to the appropriate successor or successors and arranged for continued succession.

Specifically:

1) On the basis of Yitro's advice (Shemot 18:18-26), he surrendered aspects of his judicial capacity to the *sarei alafim* etc.
2) When he complained in Bamidbar 11: "How can I bear by myself your troubles etc.", Hashem caused his spirit to emanate to 70 others who would share with him the burden of the people, i.e. share his representative authority and resposibility.
   Representative authority, as Bamidbar 11 makes clear, derives from genuine concern for the people's wellbeing. It therefore carries with it the authority to legislate for the good of the people as well. Rambam therefore ascribes the takkanah of keriat haTorah to Mosheh alone, since it was made before Bamibar 11. However, he describes Mosheh as acting together with a court when he anointed Yehoshua king, which occurs afterward, in Bamidbar 27.
3) The last element of Great Sanhedrin authority that Mosheh shares is his status as the source of Torah sheb'al peh and therefore as one whose *hora'ah* must be accepted. This happens in Bamidbar 27:15-23, just before the anointing of Yehoshua as king, when he gives Yehoshua *semikhah*.

To sum up:
Until Shemot 18, Mosheh had exclusive **judicial** authority;
Until Bamidbar 11, he had exclusive **representative** authority.
Until Bamidbar 27, he was the exclusive **source of Oral Torah and *hora'ah***.

That Mosheh shared different aspects of his Great Sanhedrin authority at different times demonstrates that **semikhah is divisible**. There is no question that Mosheh appointed the subordinate judges in Yitro to the Sanhedrin, and that appointment to the Sanhedrin is a form of *semikhah*. But one can give Semikhah for one purpose and not another. For example, the *musmakhim* in Yitro were not authorized to **represent** the Jewish people.

On this basis, we can explain why the Torah presents Yehoshua as receiving *semikhah* in Bamidbar: is it really possible that Yehoshua was not among those Mosheh entrusted with the power to judge in Yitro? Furthermore, why does Rambam say in the Introduction to the Mishneh Torah that on the one hand Pinchas learned directly from Mosheh[16], and on the other

[16] אלעזר ופנחס ויהושע שלשתן קבלו ממשה. וליהושע שהוא תלמידו של משה רבינו מסר תורה שבעל פה וצוהו עליה. וכן יהושע כל ימי חייו למד על פה. וזקנים רבים קבלו מיהושע. וקבל עלי מן הזקנים ומפינחס

that Pinchas received the *mesorah* from Yehoshua[17]?

The answer to both questions is that while Yehoshua and Pinchas had each received *semikhah* in Yitro, Yehoshua received an additional aspect of *semikhah* in Bamidbar 27. Mosheh gave this additional form of *semikhah* exclusively to Yehoshua, so Pinchas had to receive it from Yehoshua.

What was this additional aspect of *semikhah*? We know from Mishnah Avot 1:1 that Yehoshua was the first recipient of the *mesorah*, of the Tradition. Rambam in Hilkhot Mamrim 1:1 describes the Great Sanhedrin's primary role as follows:

בית דין הגדול שבירושלים
הם עיקר תורה שבעל פה,
והם עמודי ההוראה
ומהם חק ומשפט יוצא לכל ישראל,
ועליהן הבטיחה תורה
שנאמר על פי התורה אשר יורוך - זו מצות עשה,
וכל המאמין במשה רבינו ובתורתו –
חייב לסמוך מעשה הדת עליהן ולישען עליהן.
The Great Beit Din in Yerushalayim
They are the essence of Oral Torah
and they are the pillars of hora'ah
and from them law and justice go out to all Israel
and the Torah pledges regarding them
as Scripture says: "On the basis of the Torah which they give you as hora'ah" – this is a DO
and anyone who believe in Mosheh Rabbeinu and his Torah
is obligated to lean the actions of religion on them and to rely on them.

We saw above that the verse "On the basis of the Torah etc." is the source of the Great Sanhedrin's *hora'ah*-related role. It follows that what Yehoshua received from Mosheh was that role[18].

However, it seems that this cannot be true. The capacity to rule in monetary cases is obviously a *hora'ah*-related role, and that was the role given to the *musmakhim* in Yitro, and Yehoshua was among those *musmakhim*. So why would Yehoshua need to receive *hora'ah*-related

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[17] נמצא מרב אשי עד משה רבינו עליו השלום ארבעים דורות ואלו הן . . .
לז) ועלי מפנחס. לח) ופנחס מיהושע. לט) ויהושע ממשה רבינו. מ) ומשה רבינו מפי הגבורה

[18]Yehoshua may have received this semikhah in two ways: from Mosheh and from the entirety of klal Yisroel. In other words, it may be that the power to give *hora'ah* can also be vested in the Jewish people as a whole.

semikhah again?

We must therefore return to the distinction made by Rav Chaim between the determination of the law and its imposition, between *hora'ah* and *psak din*. In Yitro, Yehoshua and the other *sarim* received the authority to **impose** law, but he and they had no authority to **determine** law. They could merely apply unquestioningly the law as Mosheh conveyed it to them.[19] Like a lay court of three, they could issue *piskei din* but not *horaot*; they could function as *beit din* but not as *elohim*[20].

We can accordingly recognize three different and separable aspects of *semikhah*

1) the capacity to represent and legislate for klal yisroel[21],
2) the capacity to determine law (=issue *hora'ah*), and
3) the capacity to impose law (=issue *piskei din*).

We can further distinguish between areas of law where the **primary** function of the beit din is *hora'ah*, and areas where the **primary** function of the beit din is *psak din*. Where the primary function of beit din is hora'ah, the ideal and sufficient outcome is for the relevant parties to acknowledge and act on their obligations. Where the primary function is to impose , however, beit din must in practice impose its judgement. For instance, as regards punishments, acknowledgement of guilt is insufficient, and defendants who flog themselves are still subject to flogging by the court. {ADK} In such areas, the element of *hora'ah* is not relevant to the specific case. Therefore, while the law under which someone is sentenced is of course determined by a vote of the Sanhedrin, that vote is not considered part of the specific case, but rather as prior to it.[22] Therefore, since the case does not involve a separable element of hora'ah, relatives cannot participate together in any aspect of the specific case.

We can now fully explain Rav Chaim's account of the two votes. The votes are separable only in areas of law where beit din's primary function is *hora'ah.* They are not separable when beit din is functioning primarily in it representative capacity, such as *kiddush hachodesh,* or its enforcement capacity, such as *dinei nefashot*.

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[19]}ADK} It seems to me that according to this logic the parshah of the Rebellious Elder did not apply to the judges appointed before Yehoshua's semikhah.

[20] {ADK} This fits very well with the language of Shemot 18:19 and 18:23.

[21] There are categories of law that require a beit din but nonetheless do not involve *hora'ah*. These include, for instance, the act of *chalitzah*. In such cases the beit din is a *beit din shel kiyyum*, a performative rather than a judicial body. {ADK} Many such cases overlap with representative functions – chalitzah, for example, requires that something be נקרא בישראל – but it is not necessarily the case that all of them do. There may accordingly be a fourth function of *beit din*, and concomitantly a fourth aspect of *semikhah*, which may also be separable – *semikhah* for *kiyyum*.

[22] There is room here for extensive discusson of the implications of this position for our understanding of the *dinei nefashot* process.

We have demonstrated that the elements of *semikhah* correspond to the functions of beit din, and that they are likewise separable. In the case of relatives, we allow joint membership on a beit din for the first vote of people who cannot serve together for the second vote. This leads to the question: Can people be given one element of *semikhah* if they are not eligible for all elements?

On the surface, this possibility is explicitly rejected by Rambam in Hilkhot Sanhedrin 4:10:

חכם מופלא שהוא סומא בעינו אחת
אף על פי שהוא ראוי לדיני ממונות - אין סומכין אותו לדיני ממונות
מפני שאינו ראוי לכל הדברים
וכן כל כיוצא בזה.
An especially expert sage who is blind in one of his eyes,
even though he is fit to judge financial cases - we do not give him semikhah for financial cases,
because he is not fit for all matters.
The same is true in all analogous cases.

However, two cases force us to reconsider whether we have understood that halakhah correctly.

Rambam writes in Hilkhot Sanhedrin 2:9:

בית דין של שלשה שהיה אחד מהן גר - הרי זה פסול
A bet din of three of whom one was a convert – is invalid[23]

:Nonetheless, he writes in the introduction to the Mishneh Torah

שמעיה ואבטליון גרי הצדק ובית דינם
קבלו מיהודה (בן טבאי) ושמעון (בו שטח) ובית דינם
Shmayah and Avtalyon the converts and their beit din
received (the Tradition) from Yehudah (ben Tabai) and Shimon (ben Shetach) and their beit din…[24]

How could Shmayah and Avtalyon be *nasi* and *av beit din* of a beit din that they were not eligible to serve on?

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[23] See also רמב"ם הלכות סנהדרין פרק ב
ואין מעמידין בסנהדרין אלא כהנים לויים וישראלים המיוחסים הראויים להשיא לכהונה, שנאמר והתיצבו שם עמך. בדומין לך בחכמה וביראה וביחס

[24] Rambam makes absolutely clear in the Commentary to the Mishnah that they were converts, and not merely descendants of converts.

Similarly, Rambam writes in Hilkhot Sanhedrin 2:4

ואין מושיבין מלך ישראל בסנהדרין
שאסור לחלוק עליו ולמרות את דברו
And we do not seat a king of Israel in a Sanhedrin
because it is forbidden to disagree with or to act against his word

But he then also writes in the Introduction to the Mishneh Torah:

ודוד קיבל משמואל ובית דינו
ואחיה השילוני מיוצאי מצרים היה
ולוי היה
ושמע ממשה והיה קטן בימי משה
והוא קיבל מדוד ובית דינו.
David received from Shmuel and his beit din.
Achiyah HaShiloni was among those who left Egypt.
He was a Levite,
and he heard (Torah) from Mosheh, in whose day he was a child.
He received (the Tradition) from ***David and his beit din***

How could David head a Beit Din that he was not eligible to serve on?

The solution is that Shmayah, Avtalyon, and King David had *semikhah* for hora'a, to determine the law, and were eligible to participate in the first vote but not the second. Rambam Hilkhot Sanhedrin 4:10 means that one cannot be eligible for any form of *semikhah* in any area of law unless one is eligible for **that form** of semikhah in every area of law. However, eligibility for one form of *semikhah* does not, or at least does not necessarily, affect eligibility for other forms.

On this basis, we can also explain a puzzling position of Tosafot Gittin 88b s.v. ולא לפני. Tosafot ask how, if women are invalid as *dayanot*, Deborah can be described in Shoftim 4:4-5 as *shofetet*, and as "all Israel came up to her for *mishpat*"? Tosafot and other rishonim have a variety of solutions to this problem. One is simply that women are valid *dayanot*. Several others explain how to evade their invalidity, for example through voluntary communal acceptance. But the answer that interests us is

לא היתה דנה
אלא היתה מלמדת להם הדינים
she did not judge,
rather she would teach them the laws

How can this be described as *mishpat*?

The answer is that Devorah had *semikhah* for the first vote, but not the second. She could function in the capacity of *elohim* in monetary cases, and participate on the Sanhedrin for *hora'ah* purposes.[25]

The positon that converts and women can receive an element of *semikhah* and serve on the Sanhedrin also seems to contradict Rambam Hilkhot Melakhim 1:4-5, which denies *mesimot* and *serarah* to both converts and women[26].

אין מעמידין מלך מקהל גרים אפילו אחר כמה דורות
עד שתהיה אמו מישראל,
שנאמר *לא תוכל לתת עליך איש נכרי אשר לא אחיך הוא*.
ולא למלכות בלבד, אלא לכל שררות שבישראל,
לא שר צבא לא שר חמשים או שר עשרה
אפילו ממונה על אמת המים שמחלק ממנה לשדות
ואין צריך לומר דיין או נשיא **שלא יהא אלא מישראל**
שנאמר *מקרב אחיך תשים עליך מלך* –
כל משימות שאתה משים לא יהו אלא מקרב אחיך.
אין מעמידין אשה במלכות
שנאמר *עליך מלך* ולא מלכה,
וכן כל משימות שבישראל אין ממנים בהם אלא איש.

One may not stand up a king from the community of converts, even after several generations
until he is born from a Jewish mother who is not descended from converts
as Scripture says: You are not able to place over yourself an alien man who is not your brother
This is not true only of kingship
rather of all positions of serarah *in Israel*
neither army-sar*, nor* sar-*of-50 nor* sar-*of-10*
even one appointed over a canal to control its distribution to the fields
There is no need to say that a dayan *or* nasi *must be born-Jewish*
as Scripture says from amidst your brothers you *meisim* over yourself a king
all mesimot *that you are* meisim *must be only from amidst your brothers.*
One may not stand a woman up in kingship
as Scripture says over you a king – *not a queen*
so too all mesimot *in Israel must be male.*

But there really is no contradiction. *Serarah* is properly defined as authority over other human

[25] {ADK} It is possible that all positions in Tosafot agree with Rambam that women (and converts) may receive this form of *semikhah*. The dispute among them may be limited to whether this is the **only** form of *semikhah* they can receive, or whether they can receive *semikhah* for *psak din* as well.

[26]{ADK} The language of Rambam seems laaniyut da'ati to show that there is no prohibition of *serarah* with regard to women, only of *mesimah*. However, I can find no evidence that the Rav took cognizance of this. I intend to discuss his position regarding women slaughterers in one of the sequels to this essay.

beings or their property, and *mesimot* refers to appointments which give such authority. *Semikhah*, in the sense of the first vote, is authority over the Law. There is no *serarah* or *mesimah* issue in giving women or converts first-vote *semikhah*.

According to Rambam, one-eyed scholars can receive this form of *semikhah* as well.

{ADK} The question then is: According to Rambam, is there any Jew in good standing who is not eligible for this form of *semikhah*? If not, does this indicate that access to this form of *semikhah* reflects a fundamental Jewish human capacity or right? I will iyH address this question in the next installment.