

Dr. Kirschenbaum is Professor and Chairman of the Department of Jewish Law, Faculty of Law, Tel Aviv University.

MARA DE-ATRA: A Brief Sketch

Mara de-atra, "the master of the locality," refers to the local rabbi in his capacity as the sole halakhic authority of the locality in which he serves.

TALMUDIC ROOTS

Traces of such rabbinic authority as possessing normative halakhic validity for the inhabitants of a limited geographic area may be found among the Tannaim. Thus, although his colleagues limited the suspension of Sabbath restrictions to the circumcision itself, "in the place of R. Eliezer they used to cut wood [on the Sabbath] to make charcoal in order to forge an iron instrument."¹ R. Eliezer held that *all* the necessary requisites for the circumcision ceremony superseded the Sabbath prohibitions. Hence, even the charcoal necessary for the forging of the circumcision knife was permitted to be prepared. Although R. Eliezer was overruled by the other Tannaim, his position was accepted as valid "in his place."

Similarly, R. Jose the Galilean's opinion that the cooking of the flesh of fowl in milk was totally permitted was rejected by his colleagues and had no normative validity. Nevertheless, the Talmud states that, "in the place of R. Jose the Galilean they used to eat fowl's flesh cooked in milk."²

This is borne out by the following incident: "Levi once visited the house of Joseph the fowler, and was served with a peacock's head cooked in milk and said nothing to them about it. When he came to Rabbi [Judah Hanassi and related this], Rabbi said to him, 'Why did you not lay them under a ban?' He replied, 'Because it was the place of R. Judah b. Bathyra and I imagine that he must have expounded to them the view of R. Jose the Galilean. . . .'"³ Since R. Judah b. Bathyra was the *mara de-atra*, his ruling in favor of R. Jose the Galilean's opinion rendered it valid for the locality in which Joseph the fowler's house was situated. Thus, Rabbi's suggestion of placing the ban on the inhabitants could not be accepted—in all likelihood even by Rabbi himself.

On the basis of these tannaitic precedents, the Amoraim ruled that the opinion of the *mara de-atra* was binding on the *atra* even where it was in opposition to the normative halakhah. For example, there is a well-known

dispute in the matter of *mukzah*,⁴ wherein R. Simeon rejected the rules of *mukzah* as we know them. Although Rav Hamnuna agreed with R. Simeon, he excommunicated a certain disciple who gave a practical decision in accordance with R. Simeon's position. He did so because the disciple had made that decision in an area that was within the jurisdiction of Rav. Since Rav opposed R. Simeon's position, the disciple should have acted accordingly. Thus, the Talmud defends the excommunication declared by Rav Hamnuna even though the latter agreed with the substance of the disciple's decision. The respect due Rav, the *mara de-atra*, was overriding.⁵

THE MARA DE-ATRA CONCEPT IN HIS IMMEDIATE LOCALITY

To what extent does Jewish law recognize the local rabbi's authority even where he is in conflict with men of equal or superior scholarly stature? The delineation of his authority took two forms: (1) in his immediate locality and (2) in the broader geographic framework.

The Talmud relates that upon seeing Samuel, his colleague, allowing something he, Rav, considered forbidden and thus rendering a decision to which he was opposed, Rav "turned his face away." The Talmud proceeds to discuss Rav's behavior: "[Q.] If Rav held that this was forbidden, why did he not say so to him? [A.] The place was under Samuel's jurisdiction. [Q.] If so, why then did he turn his face away? [A.] In order that it might not be said that he held the same opinion as Samuel."⁶

In commenting on that passage, the Rishonim asked why did Rav not speak up rather than turn his face away? Two of their answers are of special interest to us.

The Meiri explained that the question involved a rabbinic (*de-rabbanan*) law. One may infer, therefore, that had the question been of biblical (*de-orayta*) significance, Rav would not merely have turned his face away; he would have protested the decision explicitly.

The Ritva explained Rav's silence differently. Rav recognized that Samuel's decision was not an outright mistake (*ta'ah bi-devar mishnah*), and he also acknowledged that Samuel was (at least) his equal in Torah scholarship. An outright error, explained the Ritva, must never be allowed to stand. Even a disciple may set forth arguments against the decision of his master. Moreover, continued the Ritva, where the local rabbi is a recognized halakhist of distinguished caliber, one may not render a decision in opposition to his—even if it is done in order to impose a greater stringency.

Finally, in another context, Rashi seems to indicate that there is no formal prohibition to challenge a local rabbi's authority but it is, rather, a violation of etiquette, and therefore it is considered improper behavior.⁷

Thus, the local rabbinic authority is not immune from criticism even on home grounds. Opposition to his decisions may (must) be voiced if the

decision represents a violation of sacred Torah law (Meiri), an outright error (Ritva), or if the critic or opponent is greater in Torah than the *mara de-atra* (Ritva, Rashi).⁸

In codifying this law in his glosses to the *Shulhan Arukh*, R. Moses Isserles makes the following additional points: 1. Although the *mara de-atra* is the local halakhic authority, another scholar has the right to set up an independent rabbinate if he is sufficiently qualified; 2. A guest rabbi, however, may not perform any rabbinic function that would deprive the *mara de-atra* of his livelihood—even partially; 3. A guest rabbi may undertake to adjudicate a case in the community, for the personality of the *mara de-atra* may be unsuitable for the resolution of the dispute; 4. A guest rabbi may not render decisions in ritual matters, preach or assert rabbinic prerogatives of any kind. The passage in the responsa of the Maharik cited as the source of the Rama's ruling limits the prohibition of the guest rabbi to render decisions in ritual matters only to cases where his decision *contradicts* the decision of the *mara de-atra*. There is no unqualified prohibition merely to render a decision. Moreover, even contradicting the decision of the *mara de-atra* is forbidden only within the city limits; it too is not an absolute prohibition.⁹

On the basis of Rashi's and the Ritva's statements, however, one may infer that these limitations do not apply to a guest rabbi who is greater than the *mara de-atra* in Torah scholarship. But even a greater Torah scholar has his limitations. For example: 1. He may not unseat the *mara de-atra*;¹⁰ 2. He may never abrogate a law that had been instituted by the *mara de-atra* (*takkanah* or *gezerah*) for the purpose of bolstering public morality or strengthening religious observance (*le-migdar milta*);¹¹ 3. He may not do anything that would fan the fires of controversy. In other words, the act on the part of a guest scholar of great learning in and of itself is not forbidden; its negative results render the act forbidden.¹²

THE MARA DE-ATRA IN A BROADER GEOGRAPHIC FRAMEWORK

The brevity of this sketch must not result in overlooking a manifestation of the *mara de-atra* concept which has affected the entire development of halakhic decision-making.

The Geonim had laid down the principle that *hilkheta ke-batra'ei*, "the law follows the opinions of the later halakhic scholars." According to this principle, when it comes to deciding the halakhah, the opinions of later scholars prevail over contrary opinions of earlier ones. The rationale for this principle was enunciated by the Rosh. "The statements of later scholars carry primary authority because they knew the reasoning of the earlier scholars as well as their own, and took it into consideration in making the decision."¹³ This principle did not conflict with the great reverence in which halakhic authorities of earlier generations were held. The latter-day decision

was nothing more than "a pygmy on the shoulders of a giant."¹⁴ The principle of *hilkheta ke-batra'ei* made for the dynamic development of the law, for it encouraged the blending of the decisor's opinion with those of his predecessors without suppressing or downgrading the former.

This principle was superseded by an extended concept of *mara de-atra*. This extension took place at two levels: temporal and geographic. At the temporal level, it was extended to the local rabbi even after his death. At the geographic level, a great Torah luminary who had been an accepted decisor (*posek*) in his lifetime and whose authority had been accepted far beyond his own locality was viewed as the "*mara de-atra*," his rulings were given the status of binding precedent, and the principle of *hilkheta ke-batra'ei* was thereby significantly vitiated. I refer to the acceptance of R. Joseph Caro as the *mara de-atra* of Sephardic Jewry, the establishment of R. Moses Isserles as the *mara de-atra* of Ashkenazic Jewry, and the persistence (after some opposition) of R. Moses Maimonides as the *mara de-atra* of Yemenite Jewry.¹⁵

THE MARA DE-ATRA TODAY

This broader geographic framework of rabbinic decision-making (*pesak*) in modified form carries great weight with local rabbis to this very day. Although the contemporary *mara de-atra* is familiar to us, it is nevertheless worthwhile to summarize the various features of the modern rabbinate which have considerably reduced the significance of this concept.

First and foremost, the alienation of the masses of our people from the halakhah has diminished the "locality" over which the local rabbi is "master" from the autonomous judicial community (*kahal*) of the Middle Ages to the particular (Orthodox) synagogue from which he draws his salary. But even for the halakhic observant Jew, the telephone and automobile have rendered "city" a meaningless term; and "locality," which is now limited to the individual synagogue, may paradoxically also refer to a huge geographic expanse. In the British Empire and in the State of Israel, the maintenance of a Chief Rabbinate has decreased significantly the role of the traditional *mara de-atra*. Indeed, the Chief Rabbis themselves are often viewed as the *mara de-atra* of the entire country. Also, specialization has overtaken the modern rabbinate so that rabbi (*rav*), rabbinical judge (*dayyan*), teacher (*moreh*), and communal leader (*manhig zibburi*) are seldom incorporated in one man. Finally, the emergence of *rashei yeshiva* as halakhic decisors whose authority transcends geographic boundaries and, even more so, the walls of the individual yeshiva, has contributed much to the near demise of the traditional *mara de-atra*. Not only do their disciples (*talmidim*) turn to them; not only do the laity turn to them; but the communal rabbi, the local *mara de-atra* himself, as a former *talmid*, also turns to

them for *pesak* and guidance. Indeed, the telephone has done much to undo the role and stature of the old-time *mara de-atra*. It would therefore appear that the *mara de-atra* in the traditional sense survives today chiefly in small communities or in communities far removed from the main centers of contemporary Judaism, i.e. in Israel or in urban America.

It is hazardous to predict the future of the *mara de-atra*. Nevertheless, it would appear that there are no significant factors on the horizon in contemporary Jewish life that could stop the historical, sociological and technological processes that are bringing this concept to the vanishing point.

The impact of modern society has revolutionized much in Jewish life, including the role of the *mara de-atra*. For example, the traditional obligation of honoring of one's parents is more often a challenge to the parents (i.e. can they command that respect?) than a commandment to the children. Also, the institution of marriage is more and more a challenge to the husband (i.e. can he maintain connubial stability with one who is no longer economically or culturally subservient to him?) than a rigid framework ordained by law.

The local rabbi, especially in American Centrist Orthodoxy, has been transformed into a modern clergyman, the spiritual leader of his congregation. He, too, faces a challenge as a result of the revolution in modern society. Indeed, it is a greater challenge than even before. Does he possess the religious integrity, the Torah learning, the social grace, and the personal charisma to create the respect due his authority? Although no longer the *mara de-atra* in the traditional, historical meaning of the concept, can he, in his relatively new role, serve the needs of his community as his predecessors did in the past?

NOTES

1. *Hullin* 116a. R. Eliezer b. Hyrcanus was a Tanna who lived at the end of the first century and the beginning of the second century C.E.
2. *Ibid.* R. Jose the Galilean was a Tanna at the beginning of the second century C.E.
3. *Ibid.* Levi was a Palestinian Amora who lived toward the end of the third century C.E. R. Judah Hanassi, the editor of the Mishnah, was an older contemporary of Levi. R. Judah b. Bathyra was a Tanna of the second century C.E.
4. Objects which are rabbinically forbidden to be handled on the Sabbath.
5. *Shabbat* 19b. Cf. *ibid.*, 46a: "out of respect for R. Johanan." R. Simeon b. Yohai was a Tanna of the second century C.E. Rav, whose name was Abba Arikha, was a leading Babylonian Amora of the third century C.E., and Rav Hamnuna was his disciple.
6. *Eruvin* 94a.
7. *Berakhot* 63a; Rashi s.v. "*be-she-shnehem shavim*."
8. One might add that this applies also where the decision of the *mara de-atra* would cause heavy financial loss (*hefsed merubbah*); see *Hullin* 53b.
9. Rema, *Yoreh De'ah* #245, end; *She'elot u-Teshuvot Maharik* #169, end (not #170 as cited in our printed text of the Rema).
10. Rema, *ibid.*, citing the Rivash.

11. Cf. *Hullin* 110a, "Rav bik'ah maza" and Maimonides, *Hil. Mamrim* 2:3.
12. See Maharik, *ibid*.
13. *She'elot u-Teshuvot ha-Rosh* LV:9.
14. R. Joseph di Trani, *She'elot u-Teshuvot ha-Rid* (Jerusalem, 1967), 62.
15. See, for example, Hida (R. Hayyim Joseph David Azulai), *Shem ha-Gedolim*, Sect. *Tet*, s.v. "Tur Bet Yosef;" R. Hayyim Palaggi, *She'elot u-Teshuvot Hayyim ba-Yad* #108; R. Isaiah Horowitz, *Shenei Luhot ha-Berit, Sha'ar ha-Otiot*, Sect. *Kof*, s.v. "Kedushah;" R. Yehiyya Salah, *Pe'ulat Zaddik*, II, #251; R. Ovadia Yosef, *She'elot u-Teshuvot Yabi'a Omer*, V, introduction.

For further sources on the *mara de-atra* concept, see: R. Arussi, *Hitnagshut ha-Dinim bi-Fesikat ha-Halakhah ha-Ben Adatit be-Yisrael* (Ph.D. Dissertation, Tel Aviv University, 1987), 40-48; S. Assaf, *Batei Din ve-Sidreihem Aharei Hatimat ha-Talmud* (Jerusalem, 1924), Ch. VI: "ha-Rav be-Tor Shofet ve-Dayyan Yahid;" M. Elon, *ha-Mishpat ha-Ivri* (Jerusalem, 1973), 220-38; R. M. Hakohen, *Yad Malakhi*, Kelalei ha-Alef: 17, 38, 39, 65-67; Kelalei ha-Hei, 167-69; *Enziklopedia Talmudit*, s.v. "Av Bet Din," "En Bet Din Yakhol . . .," "Hora'ah," "Halakhah ke-Batra'ei," "Hever Ir," "Hakham;" I. Ta-Shema, "Halakhah ke-Batra'ei," *Shenaton Hamishpat ha-Ivri* 6-7 (1979): 405-23; *Encyclopaedia Judaica*, s.v. "Authority, Rabbinical," "Rabbi, Rabbinat;" D. Halivni-Weiss, "The Role of the Mara D'atra in Jewish Law," *Proceedings of the Rabbinical Assembly of America* 38 (1976): 124-29; *Jewish Encyclopedia*, s.v. "Authority, Rabbinical;" L. Landman, "Some Legal Prerogatives of the Official Communal Rabbi," *Rabbi Joseph H. Lookstein Memorial Volume*, ed. L. Landman (New York, 1980), 231-42; D. M. Shoet, *The Jewish Court in the Middle Ages* (New York, 1931); reprinted as *Studies in Jewish Jurisprudence III* (New York, 1974), 166-69.