# The Moroccan Rabbinic Conferences

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Dr. Marc B. Shapiro holds the Harry and Jeanette Weinberg Chair in Judaic Studies at the University of Scranton. He has written extensively on Jewish law and thought. This article appears in the third issue of Conversations, the journal of the Institute for Jewish Ideas and Ideals.

It is a truism that with the Emancipation and the rise of Reform and, later, Conservative Judaism, options for halakhic flexibility became much more limited. In the midst of a battle against the non-Orthodox movements, traditional Judaism retreated into a conservative mold both as a means of distinguishing itself from the non-Orthodox and out of a fear that in an era of halakhic crisis, any liberality in halakhic decision-making could encourage non-Orthodox trends. This latter sentiment was always on the minds of halakhists, even those who did not adopt lock, stock, and barrel R. Moses Sofer's famous bon mot, "Anything new is forbidden by the Torah."

The above description is accurate, however, only with regard to the Ashkenazic world. The Sephardic world never had to contend with non-Orthodox religious movements, and thus it was able to develop in a much more natural-one might say organic-fashion. In particular, this was the case in Morocco, a community that had a very old halakhic tradition and whose scholars produced numerous works of responsa.

In Morocco the rabbinic courts had complete control of issues of marriage, divorce, and inheritance. This meant that they were much more involved in the average Jew's life than the rabbis of other countries. Recognizing the great responsibility they had, in 1947 the Moroccan rabbinic leadership convened a conference of rabbis from all the important cities to deal with various problems that they were confronting.

All the leading rabbis agreed to attend the conference and debate the issues, after which a vote would be taken and all would be bound by the decision. If necessary, takanot (ordinances) would be proclaimed that would bind Moroccan Jewry. These conferences were designed to meet every year or so, and this occurred up until Morocco achieved independence in 1956. At that time, the Jewish leadership thought that the new government would not look kindly upon the gatherings, and thus the meetings were suspended. Because of the massive Jewish emigration that took place after Moroccan independence, the conferences would never again be held.

Why were takanot needed? Rabbi Moshe Malka wrote as follows, in words that reflect the mindset that was driving the Moroccan rabbis (Mikveh ha-Mayim, vol. 1 no. 54): "I am convinced that the times require adjustments and a revitalization of the structure of Jewish religious life, but one must approach this with great care and seriousness. We must esteem the modern outlook to the extent that it doesn't conflict with Torah and tradition."

Takanot per se are nothing new, as history is full of them in both the Ashkenazic and Sephardic worlds. However, in more modern times not only did the Ashkenazic world lack the unity necessary for takanot, but there was also an ideological opposition to them. Leading scholars in the Hareidi world argued that we are no longer worthy to make takanot, and takanot, which are seen as compromises with modernity, are ipso facto invalid.

The rabbis of Morocco had a different approach. The reason for the first conference, as stated in the book recording its decisions, was to formulate "takanot and practices according to the societal circumstances for the good of Judaism and of life." Takanot were necessary "to complete the law, which needs adjustment according to the societal circumstances," as put by Moroccan Chief Rabbi Saul Ibn Danan at the first conference.

The Ashkenazic Hareidim of the modern period believed that it was the social conditions that needed adjustment, not the law, but the Moroccan rabbis were doing what had always been done in traditional communities, that is, dealing with the situation before them. To give an example, the talmudic sages could have said that if people won't lend money without interest then it is the people who must improve, but we will not adjust the law. They didn't say this. Instead, they invented a heter iska, which is a legalistic mechanism to enable one to lend on interest. Many similar examples could be given from talmudic days to the early modern era.

Rabbi Marc Angel has put the matter well in discussing the view of those who oppose takanot because to adopt them would imply that we are more sensitive than the sages of previous generations. As he states, this view "is essentially ludicrous. Throughout the centuries, our sages have initiated takanot in their communities to meet the contemporary needs of their people. Did they think it was an insult to their predecessors to be responsive to contemporary needs? Did Rabbeinu Gershom slander all previous generations of rabbis by instituting his takanot?" (Seeking Good, Speaking Peace, p. 85).

The most significant of the Moroccan takanot was the one permitting unmarried daughters to inherit along with sons. This was a response to the times, when unmarried women were living on their own and were not marrying at young ages. The situation was identical to that which is found in contemporary communities where, unlike what prevailed in pre-modern times, there is something unfair about only sons inheriting. What parents would feel comfortable with their daughters not inheriting? As the Moroccan rabbis were aware, we can assume that anyone who dies without a will would also want his or her daughters to inherit.

In fact, it is not only in modern times that this concern was felt. Two years after the expulsion from Spain, the Castilian exiles in Fez had already made a takana that unmarried daughters should inherit together with sons. They also decreed that if a woman dies, not only the husband but the children also inherit. However, there were different practices in Morocco since in the south, which included Marrakesh, the takanot of the Castilian exiles were not accepted. One of the purposes of the rabbinic conferences of the mid-twentieth century was to unify Jewish practice throughout the country.

There is no question that the desire of Jewish parents to have their daughters inherit extends also to married daughters. Yet a takana in this area would have been a very radical step, entirely overturning traditional Jewish law in the matter of inheritance. To be sure, there are ways around this such as through a shetar hatzi zakhar, but the Moroccan rabbis were not focused on this sort of legalistic approach. They were making takanot to fundamentally alter the way Jewish law operated, and they therefore investigated whether such a takana for married daughters was also valid.

The issue was formally raised at the last conference. The Chief Rabbi asked the participants to submit responsa, which would be discussed at a future conference However, due to Moroccan independence and the subsequent emigration, this was to be the last conference. We thus have no way of knowing what would have

been decided. Yet from the responsa of the Moroccan rabbis that have been published, we see that there was great reluctance to take the far-reaching step of allowing married women to inherit along with single women. As R. Moshe Malka explained, to do so would be seen as an acknowledgment that Torah law is unfair to women. There were significant changes in the living situation of unmarried women from ancient times to the present, which made a takana for them understandable. But what could be the justification for changing the halakha with regard to married women? Furthermore, Malka argued, no one-not even the talmudic Sages-have the authority make such a wide-ranging takana, one that would abolish the Torah's rules of inheritance in their entirety (Mikveh ha-Mayim, vol. 1 no. 54). It is fair to say that the Moroccan rabbis were guided by conservative sentiments, yet this was a conservatism that recognized the validity of takanot to update Jewish law, a stance that was not recognized by the Ashkenazic authorities of the time.

In discussing how a certain takana diverged from standard Jewish law, Rabbi Shalom Messas, Chief Rabbi of Morocco and later of Jerusalem, wrote: "Even though this is not in accord with the clear halakha . . . nevertheless, this is the case with all takanot, for they diverge from the halakha in accordance with the conditions of the time, as long as there is a slight support in the earlier or later posekim" (Tevuot Shemesh, Even ha-Ezer, no. 47). This, of course, is the essence of all takanot, that the law as it stands is not adequate at the present time.

At the same time that the Moroccan conferences were taking place, Chief Rabbi Isaac Herzog in Israel was trying to ensure that matters of inheritance were placed under the authority of the Chief Rabbinate. He realized that the non-Orthodox, and even many of the Orthodox, would oppose this step if daughters were not permitted to inherit. The halakha was regarded as discriminatory and simply not relevant to modern times, and if this could not be fixed then there was no way Jewish law in this area would become the law of the land. The Chief Rabbinate floated the idea of takanot to allow women to inherit, yet this was roundly condemned by the Hareidi community and nothing came of it.

There was hardly any such opposition in Morocco. After the vote was taken, all rabbis throughout the country accepted the takana about inheritance, as well as the other takanot, even if they personally were at first opposed. They put them into practice in their Batei Din, so it didn't matter whether one lived in Fez, Agadir, Sefrou, or Marrakesh, as there was now one law. There is no parallel to this type of takana and response to changing circumstances in modern times, both for the substance of the takana and for the unified acceptance of it.

The rabbinic conferences in Morocco are the only example in modern times of a living halakha that responded to contemporary concerns with a united rabbinic front. These rabbis had confidence in their authority and didn't feel the need to look over their shoulders. Who knows what would have been achieved in Morocco had the conferences continued?