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Orthodox Jews like to claim that they adhere to an unchanging tradition of laws and beliefs. Based on this understanding, it becomes possible to decide who "is in" and who "is out;" that is, who is part of the Orthodox camp and who must be placed in a different denomination. The term "Orthodox" itself, which is not part of traditional Jewish vocabulary but actually comes from the Christian lexicon, was adopted in order to distinguish different types of Jews. Yet what exactly defines so-called Orthodoxy is not so easy to pin down.

To illustrate the problem, let me give a few examples. When I was younger everyone knew that according to Orthodoxy, Jews were not permitted to ascend the Temple mount. Yet today many Orthodox Jews do precisely that, encouraged by great rabbis. A generation ago, the notion that women could read the Torah or get aliyot in an Orthodox synagogue would have been laughed at. In fact, it was precisely because of this that some women came up with the idea of a women's prayer group, at which women would be permitted to read the Torah. Yet today we have Orthodox minyanim in which women are, in fact, called to the Torah. When I was younger it was axiomatic that Orthodoxy could not accept women rabbis. Every Orthodox Jew knew that this was an impossibility. Seeing all the changes that have occurred in my lifetime, I don't think that I am going out on too much of a limb to predict that it will not be long before we have Orthodox women rabbis.

The reality is that Orthodoxy is not so much a concept as a social construct. With this understanding, it should not be surprising that what the Torah-true population regard as unacceptable in one era, could very well be regarded differently among at least some of this population at another time. It is vital to bear this in mind when considering the works of R. Joseph Messas (1892-1974).

Messas served as a rabbi in Tlemcen, Algeria and Meknes, Morocco, and at the end of his life as Sephardic chief rabbi of Haifa. Although well known in the North African community, this very original thinker has only recently begun to catch the interest of both the broader Orthodox world as well as the scholarly community. Moshe Bar-Asher, Zvi Zohar, Avinoam Rosenack, David Biton, and Iti Moreyosef are among those who have written on different aspects of Messas' writings and worldview. From the rabbinic world, R. Zekhariah Zermati has recently published a collection of Messas' halakhic rulings, what he terms a *Kitzur Shulhan Arukh*. Even the Orthodox feminists have found what to be attracted to in Messas, as he provides the first testimony to women's prayer groups, complete with Torah reading and the donning of tefillin (*Nahalat Avot*, vol. 5, part 2, p. 268). He also shows great appreciation for women's learning, going so far as to sympathetically recount the stories of two women who declined marriage so that they could devote themselves to Torah study.[1]

In order not to repeat what others have said, let me focus on the area of halakha, which is where I think one finds Messas' greatest significance. While Messas showed originality in every area he dealt with-and I don't think there was another North African rabbi who came close to his intellectual versatility-to apply this originality in matters of practical halakha required both a clear vision as well as an enormous amount of self-confidence. Messas was blessed with both of these qualities.

Some of his rulings are so far removed from the mainstream of halakhic thought that many might be tempted to regard him as outside the realm of Orthodoxy. Yet Messas was a central figure in the Moroccan Torah world and, as noted above, later served as chief rabbi of Haifa. His responsa are found in the writings of a number of his contemporaries, and his works continue to be widely cited by Sephardic halakhists. He is a good example of just how diverse Torah-true Judaism can be, especially when it is not confronted by non-Orthodox movements and thus not required to create artificial boundaries through denominational labels.

Messas grew up in Morocco where he absorbed the best of the Moroccan rabbinic tradition. This meant that he devoted himself not only to Talmud and halakha, but was also at home in philosophy, Jewish history (in particular the history of Moroccan Jewry), parshanut, and anything else that can be regarded as part of the traditional Jewish library. His three volume *Otzar ha-Mikhtavim*, recently reprinted, shows his great breadth of knowledge. In many ways, Messas is the Sephardic counterpart to R. Hayyim Hirschensohn. Both were incredibly original in

their halakhic writings. They were also willing to investigate how much halakha could be adapted in order to take into account the realities of the modern world, when commitment to Jewish law is not absolute, even among those who identify with traditional Jewish values.

An example of this is seen in Messas' experience in Tlemcen. He arrived in the city in 1924 and found that although there was proper shehitah, the kosher butcher shops were all open on the Sabbath. At this time, there wasn't yet a system of mashgihim who would testify to the kashrut of an establishment. Instead, all of Morocco followed the old approach of relying on the personal religious observance of the butchers. This practice was based on the assumption that if you could eat in someone's house without questioning if the food was kosher, you could also purchase from his shop. Yet this principle only applies to observant Jews, and in this case the butchers were all public Sabbath violators. According to Jewish law, these people simply did not have the religious credibility that observant Jews need from their butchers.

At first glance, there appears to be no avoiding the conclusion that since the butchers were not religiously reliable, observant Jews were obligated to give up meat. (As Messas explains, it proved impossible to open a shomer Shabbat store to sell the meat.) Yet was this the only possible conclusion? Messas recognized the many problems that would arise if he declared the butchers not kosher, not least of which would be that many people would simply ignore his declaration, thus destroying any communal standards of kashrut observance. He was also concerned for the honor of his community, which was, as he tells us, being portrayed as a place where everyone ate non-kosher. He therefore offered a radical halakhic justification for the status quo. He argued that since, according to one approach in the medieval authorities, the butchers were not violating any biblical commands which in Temple days would be regarded as a capital offense, they could still be regarded as trustworthy with regard to the meat they prepared and sold. He also offered other reasons why the local butchers, despite being Sabbath violators, could be believed in matters of kashrut. Messas surely knew that he was going out on a limb with this ruling, but under the circumstances he believed that it was the only proper halakhic answer, one that dealt with the reality he was confronted with (Mayim Hayyim 1:143).

While in earlier times it was obvious that one must avoid patronizing non-shomer Shabbat butchers, Messas felt that in his era, when so many were not observant, it was important to find a leniency. This is just one of many examples where Messas shows how dynamic halakhic decision-making can be, and how it can lead

to some surprising conclusions. In this particular case it was very hard for those outside of his community to agree with his conclusions. Yet as R. Nathan Neta Leiter wrote to Messas, after expressing his disagreement: "I can find one justification for you, and that is what our Sages said, 'Don't judge your fellow until you are in his place,' and I do not know the nature of your country" (Tziyun le-Nefesh Hayah, no. 29).

This trend of Messas is seen in other responsa as well. His most famous halakhic ruling is that in an era when women generally go about with uncovered hair, it is no longer regarded as nakedness. As such, it is entirely permissible today for married women not to cover their hair (Otzar ha-Mikhtavim, vol. 3, no. 1884, Mayim Hayyim, vol. 2, Orach Hayyim no. 110). He defended this opinion at length, and a well-known Moroccan halakhist from the subsequent generation, R. Moshe Malka, later chief rabbi of Petah Tikvah, expressed complete agreement with Messas' view (Ve-Heshiv Moshe, nos. 33-34).

The approach of *limud zekhut*, that is, of finding justification for the practices of the masses, has a long history in Judaism. It is this approach that Messas adopts in his responsa on women uncovering their hair. Since, as he tells us, the wives of pious people do this, there was a great motivation to find it halakhically permissible.

There has always been a tension between the desire to follow the halakha as found in the books, and the competing desire to justify widespread behavior. I am not talking about justifying those who have abandoned Tradition. Rather, I am referring to the practices of the traditional community, which in the Sephardic world encompassed a much wider range of observance in modern times than that of the Ashkenazic world. In much of the Ashkenazic world those who didn't choose to be observant moved over to one of the other denominations. Lacking such denominations in the Sephardic world, the less observant found their place in the traditional community. As such, rabbis like Messas felt a sense of responsibility for these Jews. They would often bend over backwards in attempting to justify their practices, all in order that others not see them, and they not see themselves, as rejecting Jewish tradition. Some would say that Messas bent so much that he even fell backwards. This is what R. Matzliah Mazuz and R. Ovadiah Yosef had in mind when they wrote that one cannot rely on the rulings of Messas (Ish Matzliah, vol. 1, Orach Hayyim, nos. 3, 32; Yabia Omer, vol. 7, Orach Hayyim no. 44:3). Yet R. Moshe Malka states that anyone who speaks this way "will have to render an account." In other words, he has sinned against a learned and righteous man (Ve-Heshiv Moshe, no. 49).

The most radical of Messas' attempts at limud zekhut also relates to Sabbath observance. This time, however, the issue was that people were carrying on the Sabbath. This was not something new, even for otherwise traditional Jews. At that time, most cities in the world did not have an eruv, and plenty of people would carry, especially small items such as keys, as well as push baby carriages. In their minds, this was very different from driving a car or opening their stores.

Rather than regard the carrying as just another sin, Messas attempts an amazing justification, which he tells us was also shared by R. Hayyim Beliah (1832-1919), who had also served as rabbi of Tlemcen. He argued that there is no need for an eruv in order to be able to carry on Shabbat. To say that this is a radical position is an understatement, since the laws of eruv are found in all the standard codes from medieval times until Messas' day, and no one had ever suggested such a thing. In the words of R. Shalom Messas, R. Joseph Messas' younger cousin, this view is nothing less than "bal yeraeh u-val yematze" (Tevuot Shemesh, Orah Hayyim, p. 167).

Yet Messas was not one to be frightened by originality, and was thus willing to offer an incredible justification of the masses' carrying on the Sabbath. He pointed out that our cities do not have the status of a public thoroughfare (reshut ha-rabim), in which carrying is biblically forbidden. Rather, they are to be regarded as a karmelit, whose status is between that of a private dwelling and a public thoroughfare. The rabbis forbid carrying in a karmelit because of fear that one would be led to also carry in a reshut ha-rabim. But today, when we don't have such large areas that qualify as reshut ha-rabim, the decree against carrying in a karmelit is no longer applicable.

While the logic makes good sense, one must agree with R. Shalom Messas that this opinion is without any real basis. After all, beginning in medieval times, many halakhists agreed that there are almost no places that are to be regarded as reshut ha-rabim, yet they all assumed that there is still a prohibition to carry in a karmelit. Yet as a limud zekhut, Messas thought that his approach was compelling. (Prof. Moshe Bar Asher has a copy of Messas' manuscript responsum which he hopes to publish. Messas' arguments can be seen in R. Shalom Messas, Tevuot Shemesh, Orah Hayyim, no. 65).

In another responsum, Messas did not go so far as advocating complete abolishment of the restrictions against carrying on the Sabbath. However, using the same logic we have seen, he declared that there is no longer any need to be concerned with an eruv hatzerot, which allows one to carry in a jointly owned courtyard. The only reason carrying is forbidden in such a courtyard is due to a

rabbinic decree designed to prevent people from mistakenly concluding that just as it is permitted to carry from their home into the joint courtyard, so too they can carry into a reshut ha-rabim. It is the eruv hatzerot that changes the status of a joint courtyard to a single domain, allowing one to carry in it. Messas argued that since we no longer have any real reshut ha-rabim, the reason for the decree of an eruv hatzerot is no longer applicable, and thus one is permitted to carry on Shabbat in a joint courtyard (Mayim Hayyim, vol. 2, Orah Hayyim, no. 110).

Another example of a rabbinic decree that he thought was no longer relevant today, and which could therefore be ignored, was that of bishul akum (food cooked by non-Jews). This was a decree in order to prevent assimilation, but (reflecting his time and place) Messas argued that there is very little assimilation, and what there is does not come about because of eating non-Jewish cooking. Based upon the reason given for this decree by the early authorities, he infers that there is no reason for the rabbis to continue to insist upon it. Along the same lines, he defends drinking alcohol which contains wine that had been handled by Muslims. He quotes a responsum by an earlier Moroccan rabbi who even permitted drinking the wine itself-Messas didn't go this far-and who had justified this decision as follows: "There is no unity [of God] like the unity found in Islam, therefore one who forbids them to handle [wine] turns holy into profane by regarding worshippers of God as worshippers of idols, God forbid" (Otzar ha-Mikhtavim, vol. 1, nos. 454, 462, Mayim Hayyim, vol. 2, Yoreh Deah, no. 66).

Normally the rule is that even if the reason for a rabbinic decree is no longer applicable, the decree still stands. This would seem to undermine Messas' approach with regard to non-Jews' cooking and wine. Yet Messas' view was that this principle only applies where there is a fear that the original reason could be relevant in the future. Yet since there is no reason to think that idolatry will once again return to the civilized world, therefore this issue is no different from the talmudic prohibition against drinking from uncovered water. Since there is no longer a fear of poisonous snakes leaving their venom in this water, there is no prohibition to drink from it. Messas cites this example and applies its logic to the cases he deals with (Otzar ha-Mikhtavim, vol. 1, no. 454).

Often Messas' halakhic decisions can find support in earlier sources, but will be incomprehensible to many because of the meta-halakhic concerns that have affected the halakhic process. For example, he permits having a cemetery for all religions if the Jewish graves are kept separate by 4 cubits (Mayim Hayyim, vol. 2, Yoreh Deah, no. 106:1). He was asked if it is permitted to view the dead and to put flowers on the coffin. A posek in Europe would not even consider such

questions, because it is obvious that viewing the dead and placing flowers on a coffin are non-Jewish practices. Yet was this always the case? Messas notes that in ancient days the dead were viewed, and the reasons why this was banned are no longer applicable. Therefore, he holds that there is no problem with having an open casket. Similarly, the custom of putting flowers on the coffin is also an ancient Jewish practice, and Messas adds that the flowers help in instilling belief in the resurrection of the dead (Mayim Hayyim, vol. 2, Yoreh Deah, no. 106:3-4).

Based upon what I have written, some readers might conclude that Messas was not a serious halakhist. Yet nothing could be further from the truth. His commitment to the halakhic process in all of its parameters was no different from any of his more "conventional" colleagues, and he was a venerated member of the Moroccan rabbinic elite. It is just that he saw halakha as able to respond to the contemporary reality in a way that others did not. It is true that he came to many lenient, even radical conclusions. Not for naught was he known as Yosef ha-Matir (Joseph the lenient), a play on the expression Yosef ha-Mashbir.[2] Yet the majority of his responsa show nothing out of the ordinary, and are exactly what one would expect from a posek. In fact, in a number of responsa Messas even rules le-humra in cases where other poskim were able to find grounds for leniency. For example, when asked about a mehitsah, he states that it should be constructed so that the men cannot see the women at all (Mayim Hayyim, vol. 2 Orah Hayyim, no. 140).

From our standpoint, the halakhic rulings of Messas are not of much practical significance. As has been the fate of many other poskim, the rabbinic community did not accord him the sort of significance that allows his rulings to exercise much influence after his passing. Yet the life and works of R. Joseph Messas remain of great importance for another reason. He showed that traditional Judaism can encompass a great diversity of thought, and that even in matters of halakha, often thought to be the most "closed" of all Jewish disciplines, there is a myriad of interpretive possibilities to which we can avail ourselves.

[1] See Zvi Zohar, "Kol haOseket beTorah liShmah Zokhah liDvarim Harbeh," Peamim 82 (2000), pp. 150-162.

[2] See Harvey E. Goldberg, "Sephardi Rabbinic Openness in 19th Century Tripoli", in Jack Wertheimer, ed., "Jewish Religious Leadership: Image and Reality" (New York, 2004), p. 699.