The Role and Challenges of Minhag in the 21st Century

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Introduction

Throughout the ages, the religious identity and spiritual experiences of a Jewish community were shaped not only by its adherence to halakhic practice, but also by layers of communal and halakhic customs. Individuals, families, communities, and later, entire geographical regions developed all sorts of customs, some ritual, others legal, and yet others extra-legal, which enveloped, enriched and even defined their experience and identity. As we shall see, while some of these practices had no legal status, others became halakhically binding, integrating into the larger halakhic system.

Although over seventy years have passed since the end of World War II, and the decimation of Eastern European Jewry, and almost as many years have passed since the establishment of the State of Israel and the beginning of the ingathering of the Jewish people, halakhic authorities have yet to fully confront the halakhic ramifications of a changing and developing Jewish identity on traditional customs and practices (*minhagim*). Most Jews fled lands which hosted them for hundreds of years, and many, if not most no longer live in distinct, defined communities. Jews of different communal or ethnic backgrounds live together and marry each other, and many have immigrated to the land of Israel where new, often “mixed” communities, are created.

In this article, we present the basic halakhic sources relating to customs (*minhagim*). We will relate to two
different types of custom: extra-halakhic practices, which generally entail refraining from a certain activity (*minhagei issur*), and communal acceptance of certain halakhic positions (*minhagei pesikah*). We will first outline the halakhic basis, and parameters, for individual, family and communal customs. We will then discuss “ethnic customs” and “pesikah adatit” (ethnic legal traditions) which Ashkenazic and Sephardic communities developed over time, and consider whether there is a halakhic basis for these distinctions. Finally, we will address one of the major challenges for post-holocaust and modern Jewish communities: The transition from regional-geographical based customs to community based customs, and their role and application in new communities comprised of a mixture of Ashkenazic and Sephardic Jews. This issue is of great concern within the Religious Zionist world. We will also examine the responses of a handful of recent *posekim* to this challenge and offer some thoughts regarding the future development of this issue. We will conclude with a few brief thoughts about the role of custom in the religious experience, and its central role in the transmission of the Torah from one generation to the next.

Although I will, at times, mention specific halakhic issues, this paper should not serve as a source for halakhic practice, but rather as a summary of the various issues and different approaches and understandings of the role and status of *minhag* in Jewish practice. ³

**Part I: Sources and Concepts**

**Individual Customs**

The Torah teaches that in addition to the obligations and prohibitions imposed by the Torah, an individual has the ability to create personal obligations (*Vayikra* 5:4) or prohibitions (*Bemidbar* 30:3), known as *nedarim* and *shevuot*. One must enunciate the specific obligation or prohibition, in accordance with a specific formula, in order for it to be binding. ⁴

The Talmud ⁵ adds that beyond vows and oaths, even one who violates a self-imposed stringency which was not verbally articulated as a *neder* or *shevuah* violates a rabbinic prohibition:

> With respect to matters that are permitted, but others are accustomed to observe a prohibition regarding them, you may not permit these matters before those people, as it is stated: “He shall not profane his word” (*Bemidbar* 30:3). [If they contravene their custom they are in violation of the prohibition: He shall not profane his word, by rabbinic law, as that is similar to violating a vow]. (Nedarim 15a)

The Ran, ⁶ in his commentary to *Nedarim*, explains that since the person did not verbally accept upon himself this practice, it is not included in the biblical prohibition of “and he shall not profane his world” (*bal yachel*).

The *Shulchan Arukh* ⁷ rules accordingly, and writes, “matters that are permitted, and they know they are permitted, but they observe a prohibition with regard to them, it is as if they accept upon themselves as a vow.” Seemingly, this applies only to customs of a religious nature, and not, for example, to a diet or other self-imposed restrictions. Therefore, one who is accustomed to fast, or to refrain from eating meat at different times as a sign of mourning over the *Beit Ha-Mikdash*, and wishes to change his behavior, must seek annulment from a *beit din* of three (*hatarat nedarim*).

When does a voluntary behavior become a vow? The *Acharonim* explain that if one had in mind to accept upon himself this behavior, even one time is considered to be a vow. Alternatively, some assert that if one
accustoms himself to this behavior,⁸ possibly by repeating the behavior three times,⁹ that may also be considered to be a vow unless the person specified that he did not intend to accept this behavior upon himself as a vow. Clearly, if one did not have in mind to continue this practice, it is not considered to be a vow. Furthermore, the Maharshdam¹⁰ explains that a practice can only become binding if one’s intention is to continue acting in this manner. If, however, a person acted in a certain manner for other reasons, this is not considered to be a neder. Therefore, for example, women who are not accustomed to say Tefillat Arvit, but join a nightly minyan in camp, or school, do not necessarily have in mind to continue this practice and therefore even if they did not explicitly say “beli neder”, attending (or praying) Tefillat Arvit does not become a binding neder. If one acted in a certain manner because he had mistakenly thought that a certain action was prohibited, most posekim permit one to abandon this behavior even without a hatarat nedarim.¹¹

Although most understand that this is only a rabbinic prohibition, as implied by the Gemara, R. Moshe Sofer¹² treats this is a biblical prohibition, and therefore, for example, he rules that we should relate to the rabbinic prohibition of chalev akum, which may indeed be permitted according to some Acharonim if there are no non-kosher animals present,¹³) as a biblical prohibition which the Jewish people accepted upon themselves. The Acharonim discuss his view, which seems to contradict an explicit gemara (Nedarim 15a), at length.¹⁴

The Talmud teaches that a beit din may cancel a vow. Can a beit din annul this type of vow? And if so, in which cases may a person seek annulment of his custom?

The Rishonim disagree as to whether one may annul this type of vow as well. The Rosh¹⁵ writes that even if a person “treats a permitted matter as prohibited in order to be a fence and a separation … a chakham (scholar) may permit [this behavior if he expresses] regret, like other [vows].” The Rashba¹⁶ disagrees and insists that a beit din should not annul a vow which a person accepted upon himself for this reason. The Shulchan Arukh (214:1) cites both views, and the Rema writes that it is customary to be lenient.

Furthermore, the Acharonim debate whether one who acted in accordance with one halakhic opinion over another, not because he viewed one as more correct than the other, but simply out of practice, may switch his practice. R. Moshe Schick (1807 –1879), a student of R. Moshe Sofer, recalls that while studying in the Chatam Sofer’s yeshiva, a student asked the other students to “permit” (i.e. hatarat nedarim) him to act in accordance with those who permit smoking on Yom Tov, as until now, he had adopted the more stringent view. He ruled, and the Chatam Sofer later agreed, that one may not nullify a vow to accept one halakhic opinion over another. A number of other Acharonim rule this way as well, and explain that in this case, the person did not accept a voluntary stringency but rather has chosen a position on a Torah matter, in which case there is no one who has the authority to permit this.¹⁷ In contrast to their view, R. Moshe Feinstein¹⁸ rules that while a community may not change their ruling, an individual may, and therefore one who had been stringent and did not carry on Shabbat within an eiruv, in deference to the position of the Rambam,¹⁹ may change his practice after nullifying his vow. It seems that it is customary to rule in accordance with this view.

What if one is temporarily unable to observe a personal stringency? The Shakh²⁰ rules that in this case, he should seek annulment of his vow. Therefore, one who must attend a berit on a day upon which he is accustomed to fast must do a hatarat nedarim. R. Yechezkel Landau, in his Dagul Me-revavah,²¹ disagrees and writes that in extenuating circumstances, one may suspend his custom, without annuling his vow, as he does not intend to permanently abandon his custom.²²
Due to the fear that one’s private practice may become halakhically binding, as discussed above, the *Shulchan Arukh*\(^{23}\) writes that one who wishes to begin observing a certain practice should specify that he does not wish to accept this practice upon himself as a binding vow. This is the source of the common practice of saying “*beli neder*” before committing to a meritorious action.

This topic is of great, practical importance, but not the direct focus of this paper; we will now discuss the status of family, and communal customs.

**Family Customs**

As we shall see below, the Talmud teaches that one is also obligated to observe the customs of one’s locality (*minhag ha-makom*), even if one leaves the place, until permanently relocating in another place. In addition to observing the custom of one’s “place,” is there a halakhically binding category of *minhag avot*, according to which one would be obligated to follow the customs of one’s family?

This may depend on variant readings of a Talmudic passage. The *Gemara*\(^{24}\) teaches:

> Benei Beishan were accustomed not to go from Tyre to Sidon on the eve of the Sabbath. Their children went to R. Yochanan and said to him, ‘For our fathers this was possible; for us it is impossible.’ He said to them, “Your fathers have already taken it upon themselves, as it is said, ‘Hear my son, the instruction of thy father, and forsake not the teaching of thy mother’ (*Mishlei* 1:8).”

This passage, as we shall see, is the source for the obligation to observe the *minhag ha-makom*. Most *Rishonim* understand that the Talmud refers the residents of a place named “*Beishan*”. Some, however, explain that *Beishan* is a person, and therefore the passage refers to children, who inquired whether they must adhere to the customs of their father.\(^{25}\)

It appears that most authorities did not believe that one is bound to one’s father’s, or family’s custom. For example, R. Yosef Ibn Ezra, in his *Masa Melekh* (published in 1600), writes explicitly that while a community may enact a legislation which is binding upon its descendants, a child is not obligated to follow the practices of his father. He cites a famous Talmudic passage\(^{26}\) according to which Mar Ukva relates that while his father would wait an entire day after eating meat before eating dairy, he would only wait until the next meal. This passage, he claims, proves that a son is not obligated to accept the practices of his father. This ruling is cited by the *Peri Chadash*.\(^{27}\) Similarly, the *Chavot Yair*\(^{28}\) was asked whether a son must follow his father’s personal stringencies and pious behaviors, such as fasting every Monday and Thursday. He responds with disbelief: is it possible that every person who accepts upon himself a custom, such as immersing in a *mikveh* on Fridays, obligates his children as well, until the thousandth generation?

R. Chaim ibn Attar (1696 – 1743), in his *Peri To’ar*,\(^{29}\) disagrees and explains that when a father wishes to impose his practices upon his children, his descendants are obligated to continue his practices. He explains that *Beishan* is a person, and not a place, and he therefore derives from that passage that children must observe the stringencies of their parents. It appears that this is not the accepted view.\(^{30}\)

R. Moshe Feinstein\(^{31}\) discusses an interesting, and relevant question. R. Feinstein was asked whether one may annul his custom not to eat *gebrochts* (i.e., *matzah* which came in contact with water) on Pesach. He
writes that if this person comes from a community in which people do not eat *gebrochts*, and moves permanently to a community where they do, he does not need to do *hatarat nedarim* and may eat *gebrochts*. If, however, he lives in a community in which people eat *gebrochts*, but his family observes their ancestral custom not to eat *gebrochts*, he is not obligated to accept his family’s custom. If he already began observing the custom on his own, he may seek a *hatarat nedarim*, like any other personal vow.\(^\text{32}\)

**Local or Communal Customs**

As mentioned above, the Talmud (*Pesachim* 50a) teaches that one is obligated to observe the “*minhag ha-makom*”, local custom. This obligation, as we shall see, is incumbent upon the residents of that place.

*Where it is the custom to do work on the eve of Passover until midday one may do [work]; where it is the custom not to do [work], one may not do [work].*

In addition, those who visit must also observe the local custom, in deference to the local population, in order not to cause “*machloket*” (local quarrels).

The Talmud further teaches that the descendants of those who instituted the custom are bound by their forefathers’ local practices.

*The citizens of Beishan were accustomed not to go from Tyre to Sidon on the eve of the Sabbath. Their children went to R. Yochanan and said to him, “For our fathers this was possible; for us it is impossible.” He said to them, “Your fathers have already taken it upon themselves, as it is said, ‘Hear my son, the instruction of thy father, and forsake not the teaching of thy mother (*Mishlei* 1:8).’”*

R. Yochanan explained that they are bound to the local custom due to the verse, “‘and forsake not the teaching of thy mother (*Mishlei* 1:8).’”\(^\text{33}\)

Why are the descendants, and not just those who established the custom, bound by these *minhagim*? Some Acharonim suggest different ways to view this obligation. On the one hand, some understand that the custom is linked directly to the *place* in which a certain community lives. All inhabitants of this town or city, including their descendants who live in this place, become obligated to observe its customs.\(^\text{34}\) Therefore, seemingly, when one no longer lives in this place the custom is no longer binding. Alternatively, some imply that *minhag ha-makom* is actually a *communal custom*; when members of a community accept upon themselves certain practices, even their descendents, who continue to identify with this community, are bound to continue these customs. In other words, the custom becomes a personal obligation, as a member of a certain community, and not just a geographical practice.

For example, R. Yitzchak ben Sheshet (1326 – 1408), known as the Rivash,\(^\text{35}\) explains:

The inhabitants of a city have the ability to make an enactment binding upon them, and their descendents… and we find that the Ramban in [his] *Mishpat Ha-Cherem* wrote regarding any communal acceptance, *that it is binding upon themselves, and their descendants, as we find at the acceptance of the Torah, and in the Megillah and the fast days*, and even if they did not explicitly accept upon themselves, but rather they merely...
acted in a certain way, making a ‘fence to the Torah’, their children are also obligated to act accordingly, as we see regarding the benei Beishan.

The Rivash understands that a minhag ha-makom is really a custom of a “community”, not of a “place”, who accepted upon themselves, even generations later, to act in a certain manner. This debate\textsuperscript{36} may have numerous ramifications, including whether a community which leaves its place must still observe its original customs. We will return to this question shortly.

The Rishonim debate whether descendants may annul the custom of their ancestors. Some assert that the descendants may not annul the vow of their ancestors.\textsuperscript{37} Others insist that theoretically, the descendants could abandon their practice, and that R. Yochanan only meant to say that the custom was binding, and must be observed unless they request a hatarat neder.\textsuperscript{38}

\textbf{Minhag and Pesak Halakhah}

In addition to being bound by local extra-halakhic customs, the Talmud teaches that if it is customary in a certain place to follow a specific halakhic view, that halakhic opinion becomes binding. For example, the Gemara\textsuperscript{39} relates:

\begin{quote}
When Rabbah b. Bar Chanah came [from Eretz Yisrael to Bavel] he ate of the stomach fat. Now, R. Avira the Elder and Rabbah son of R. Huna visited him; as soon as he saw them, he hid it [the fat] from them. When they told Abaye he said to them, ‘… But does not Rabbah b. Bar Chanah agree with what we learned: we lay upon him the restrictions of the place whence he departed and the restrictions of the place whither he has gone? —Abaye said: That is only [when he goes] from [one town in] Babylonia to [another in] Babylonia, or from [a town in] Eretz Yisrael to [another in] Eretz Yisrael, or from [a town in] Babylonia to [another in] Eretz Yisrael; but not [when he goes] from [a place in] Eretz Yisrael to [another in] Babylonia, [for] since we submit to them, we do as they. R. Ashi said: You may even say [that this holds good when a man goes] from Eretz Yisrael to Babylonia; this is, however, where it is not his intention to return; but Rabbah b. Bar Chanah had the intention of returning.
\end{quote}

The communities of Eretz Yisrael and Babylonia followed different halakhic views regarding whether a certain fatty area outside the stomach is prohibited. R. Ashi implies that which halakhic view one adopts may also be a function of the minhag ha-makom.\textsuperscript{40}

Similarly, the Mishnah (Yevamot 14a) teaches:

\begin{quote}
Come and hear: In the place of R. Eliezer, wood was cut on the Sabbath wherewith to produce charcoal on which to forge the iron [for the knife which is to be used for a circumcision]. In the place of R. Yosi Ha-Galili the flesh of fowl was eaten with milk.
\end{quote}

The Rashba\textsuperscript{41} explains that although the residents of these cities followed rejected, minority opinions, “[the rabbis] did not rebuke them since they were behaving in accordance with their teacher.” He further asserts that this passage is a precedent for those communities which adopt the rulings of the Rif, or the Rambam.
He does, however, acknowledge that if a local scholar disagrees, they may follow his view, as the Rif and Rambam are not their actual teachers.

This is most likely the reason why Jews of Ashkenazic descent not only follow the customs of their Ashkenazic ancestors, but they are also inclined to accept the rulings of R. Moshe Isserles (Rema), just as Sephardic Jews generally observe ancient Sephardic customs, and follow the rulings of Sephardic decisors, such as R. Yosef Karo, and later Sephardic authorities.

One Who Travels or Relocates to a Different Place

The mishnah (above) also discusses one who travels from one place to another.

He who goes from a place where they work to a place where they do not work, on from a place where they do not work to a place where they do work, we lay upon him the restrictions of the place whence he departed and the restrictions of the place whither he has gone; and a man must not act differently [from local custom] on account of the quarrels [which would ensue].

The mishnah implies that one must observe the customs of his place of origin, as well as his new community. However, other gemarot present a more complicated picture. The Rishonim disagree as to which customs a traveler must observe.

Rabbeinu Nissim (Ran), in his commentary to Pesachim, explains that if one intends to return to his place of origin, he is bound by his original customs, yet he must also take into account and avoid straying from the local customs, in order to avoid “machloket”. If, however, he intends to permanently relocate, he is only obligated to observe the customs of his new community. The Rambam disagrees, and implies that one who permanently moves to a new community must still observe his prior customs. Although the Shulkhan Arukh appears to follow the Ran, elsewhere he implies that one should keep one’s former customs as well. The Acharonim discuss this apparent contradiction.

Interestingly, based upon the different understandings of minhag ha-makom we raised above, we might suggest that the Rambam does not view minhag ha-makom as rooted in the place, but rather, as a binding personal obligation accepted by his ancestors. As a personal obligation, it does not disappear when one relocates to a different community. The Ran, and others who disagree, may view minhag ha-makom as related to the specific place, or alternatively, as the Rivash himself most likely understands, the original obligation was conditional, depending on the residence of the person. Those who enacted the original custom did not intend for later generations to retain these customs even after moving to a different place and joining another community. We will return to other ramifications of this question shortly.

Although the Talmud discussed individuals who travel, or relocate, Jewish history has unfortunately seen many mass emigrations, often due to pogroms or expulsions. How should a community, which relocates to another city or country, relate to its customs? We will cite a few of the many teshuvot written on this topic. Overall, we can identify two different approaches: some maintain that the immigrant community should accept the norms of the new city, while others affirm their right to maintain their own customs, akin to “two batei din in one city.”
On the one hand, R. Yosef Karo\(^5\) (1488 – 1575) relates to a disagreement between the Ashkenazic and Sephardic communities in Bulgaria. The original Jewish community of the area was of not of Ashkenazic origin; they were most likely of Greek/Italian ancestry. R. Yosef Karo served as the rabbi of Nikopol, close to the newer Ashkenazic community in Pleven. In response to a debate regarding different *kashrut* practices, R. Karo ruled that the newer Ashkenazic emigrants were obligated to join and accept the customs and halakhic policies of the older Sephardic community. He writes:

> It is clear that anyone who comes from a place where they are strict to a place where they are lenient, and they do not intend to return, they do not retain the customs of their former place, but rather they behave in accordance with the place to which they arrived… It is therefore obvious … that the Ashkenazim who live in Pleven may eat from the Sephardic examinations, and furthermore they are not permitted to be stringent upon themselves because of “la’az” (calling into question the behavior of others) and *machloket* (potentially causing communal strife).

R. Karo maintains that even if the Ashkenazic emigrants expand their communities and move to nearby cities, they must still observe the customs of the Sephardic community which they joined.

On the other hand, R. Shmuel di Medina (1506 – 1580, Salonika) a contemporary of R. Karo, known as the Maharashdam, also dealt with a conflict between the original, native community and newer immigrants. He suggests that “[what the *Gemara*] said only applies to an individual, or to individuals who come to a place which acts in a more strict manner, in which case they are “nullified” to the city people who were there… *but when an entire community comes it is as if they are [still] living in their city, and they follow their own customs, and those who are [already] in the city follow their customs, and there is no problem of *lo tillgodedu*.” The Maharashdam clearly views the customs as bound to the community, not the place.

What if a community relocates to a place with no established customs? It appears that the Maharashdam (above) would rule that they should retain their original customs. Similarly, R. Chezekiah da Silva (1659–1698), in his commentary to the *Shulchan Arukh*, the *Peri Chadash* (468), writes:

> The stringencies of the place which he left are not removed until they establish themselves in a city which has a more lenient custom, but [they are not removed] in a city which has no established custom.

It is not surprising, therefore, that he also writes:

> Members of a city who were expelled and established their residency in a new place in which there are leniencies and stringencies which are different than their own, how should these exiled [Jews] act? Like the custom of the place from which they came, or the place in which they will establish their residency? Any new city, if it is known where the people came from, they should follow the custom of the town from which they came, as it is a new city. If, however, they arrive at a city which already has a quorum, if numerous people come, they are like individuals and they must observe the stringencies of the place which they join, and their...
The Peri Chadash also appears to believe that the customs are communal, and not dependent on location, and therefore these people cannot change their customs until they join a new community.\textsuperscript{52}

Alternatively, the Shiltei Gibborim, written by R. Yehoshua Boaz b. Shimon Baruch (d. 1557), himself a refugee who settled in Italy after being exiled from Spain, writes,\textsuperscript{53} “if all of the people of a community are uprooted from their place, and the place stood without Jews for a number of years, and then another Jewish community comes from a different place… I am not sure if they are obligated to follow [the previous customs] or not.” R. Yaakov Reischer (Bechofen) (1661-1733), in his commentary to Hilkhos Pesach, Chok Yaakov\textsuperscript{54} (468:9), insists that in this case the prior customs are no longer binding.

This issue arose numerous times regarding communities who were compelled\textsuperscript{55} or chose to change their nosach ha-tefillah. For example, a number of posekim relate to the decision of the Chassidim, who changed their nosach ha-tefillah from Ashkenaz to Sephard. While some supported this practice,\textsuperscript{56} others objected.\textsuperscript{57} (The posekim also note that certain individuals\textsuperscript{58} also chose to change their nosach, and discuss whether one may voluntary choose to do so.\textsuperscript{59})

R. Yisrael Meir (HaKohen) Kagan (1839 –1933), in his Be’ur Halakhah,\textsuperscript{60} rules that a community cannot give up its accepted stringencies unless it joins a community with a different, more lenient tradition. Furthermore, although he assumes that a community which relocates may adopt the customs of the new location, he cites the Shiltei Gibborim, who insists that if the community no longer exists, one who relocates to its location is not bound by its customs. He adds that if a small group remains which identifies as a “kehilla”, which includes rabbinic leadership (“moreh tzedek”), a regular minyan, a mikveh, etc., the original minhag ha-makom remains and those who wish to join this community must accept their customs. Finally, he confirms that it is common for multiple “kehilloth” to exist side by side; as long as they function independently, they are not bound by each others’ customs.

Part II: Contemporary Applications

In light of the above sources, we may ask whether European or Sephardic Jews who left their homes and resettled in America, or Israel, were obligated to keep their customs? Of course, according to the Peri To’ar, cited above, many customs may be viewed as family, and not geographical customs, and are still binding. However, even those who deny the notion of a binding family custom may still agree that unless these new immigrants join a specific community with different customs, they are bound by their former customs. For example, although the Shiltei Gibborim (cited above) suggested that communities which are exiled to a different place may not be obligated to retain their customs, the Peri Chadash\textsuperscript{61} maintains that they may not change their customs unless they integrate into a new community with different customs. We must admit, however, that the modern reality is slightly different than that which is described by these posekim; nowadays an individual may leave a community, and move to another city, without actually joining a new “community”.

It is worth noting that we do not find halakhic literature which testifies that individuals or communities who relocated wished to change their customs. The opposite is most often the case, and the posekim were only called upon to deliberate when one community’s adherence to their customs caused conflict in a new community.

Pesikah Adatit in the 20th – 21st Century

http://www.torahmusings.com/2016/05/role-challenges-minhag-21st-century/
Although it has been customary for communities which relocated in the past centuries to retain their customs, most posekim have not explicitly confronted this question. Instead, recent halakhic authorities focused on peripheral questions, such as whether and when adhering to different customs might pose a problem of lo titgodedu (forming different groups with different halakhic behavior). In more recent years, the relevance of ancient ethnic customs has begun to be questioned, and there is no doubt that in the upcoming years, this question will occupy the minds of halakhic thinkers.

There are a number of reasons why this issue will become more acute. First, in some areas, especially within the Israeli Religious Zionist community, Ashkenazic and Sephardic Jews marry each other, and they and their children often form new communities, with one beit kenesset, one rabbi, and one common communal infrastructure. This leads to technical difficulties, as well as larger questions of personal identity. Second, as Ashkenazic and Sephardic Jews live among each other, it becomes both more difficult, and for some, somewhat distasteful, to continue customs which, in their view, divide the Jewish people. Finally, many young Israelis (and others), in the 21st century, almost 80 years after leaving their ethnic homelands and joining together to build one shared Jewish state, no longer identify with their historic, ethnic roots, and no longer indentify with a specific, defined community. This may be due to the community's inclination to favor future centered nationalism, and may also be related the early Zionist and Israeli historiography, which attempted to minimize the Diaspora experience. I am not commenting on whether this is a positive or negative phenomenon; it simply is.

The rabbinic establishment has not fully addressed this issue, possibly due to the topic's sensitivity, and possibly because most of the recent, great halakhic decisors were not born in Israel and did not grow up experiencing what I described above. That said I would like to point to certain trends in some modern halakhic authorities, and then offer my own thoughts on the topic.

Different Approaches to Retaining Ethnic Minhagim in the 20th – 21st Century

I believe that we can identify four approaches among those halakhic decisors who have approached this issue. Some aspire to unify the different customs through compromise (at times mutual), some wish to achieve unity by one group accepting the customs of another, some attempt to temper those customs which may contribute to communal strife, and some maintain (and even strengthen) the authority of ethnic minhagim, although they recognize that while the traditional category of minhag ha-makom may be somewhat antiquated, minhag avot or minhag mishpachah may fill this void. We will only briefly point to those posekim who may represent some of these approaches.

In the years before, and immediately after the establishment of the State of Israel, a number of prominent rabbinic figures grappled with whether or not public, halakhic norms should unify the different, ethnic customs. Two different extremes emerged.

On the one hand, R. Avraham Yitzchak Ha-Kohen Kook (1865–1935), the first Chief Rabbi of the Land of Israel, appears to have argued for the importance of retaining communal customs. In 1932, R. Kook was asked regarding “maintaining the sanctity of family heritage and the holy communal customs within the various groups which are gathering together, in the land of Israel, [including] the pronunciation [of Hebrew] for matters of sanctity, and prayer is one of them.” After discussion the halakhic issues relating to praying in a different pronunciation, he asserts:

There is no permission to change from one pronunciation to another… And [God] forbid that one who is accustomed [to one pronunciation] to abandon it and switch to another, less
precise pronunciation... as each group is obligated to fulfill “and forsake not the teaching of thy mother (Mishlei 1:8),” as is customary in matters of issur ve-heter, and family matters, regardless of whether it is more lenient, or more stringent, and [God] forbid that one should break boundaries, as the acceptance of our ancestors is the fulfillment of our holy Torah.62

Similarly, in a letter63 written in 1913, R. Kook defends his public ruling that Ashkenazim should not buy meat from Sephardic butchers.64 He writes:

And do not be discouraged, my dear, if those who gather here, according to tradition, from different regions, and their religious life developed in different forms, everyone needs to strengthen their customs and traditions… The different practices and traditions do not hinder the unity when every person respects the tradition of another, and furthermore, there are different styles due to the rich spirit which harmoniously gathers together to the greater whole.”

He concludes, however, on a messianic note: “We hope for the days when the tree of Ephraim and the tree of Yehudah will be one tree.”

Only a few years later, R. Ben-Zion Meir Hai Uziel (1880 – 1953), Chief Sephardic Rabbi from 1939-1954, promoted a different position. R. Uziel addresses the observance of different minhagim, and concludes:

In any case, from all which was said it is clear that the different customs in prayer, performance of mitzvot, and different public practices which are done publically in one beit keneset, are included in the prohibition of lo titgodedu, and it is almost as if this is a form of “mitzvah ha-ba’ah ba-aveirah” (a mitzvah performed by sin), and it is clearly not the preferred way to perform the mitzvah. Quite the opposite! It is a mitzvah for us to fulfill, and exhibit in all of our endeavors, and in our service of the Rock of our salvation, the unity of Israel and its Torah.65

R. Uziel’s aspiration to unify the different customs was well known. Elsewhere, he writes:

In general, my view is that we should hasten, as much as possible, the unification of the different textual variations between Sephardim and Ashkenazim, in a noticeable manner, thereby preventing wonder and questions.66

R. Uziel also drew criticism from his colleagues, including R. Ovadia Yosef. R. Yosef critiques R. Uziel’s opposition to allowing the Sephardic practice of allowing yibum, and in this context describes R. Uziel, and writes:

I have no doubt that the Rishon Le-Tziyon, Ha-Gaon R. Ben Zion Uziel’s aspiration to unite
the nation led him to this great distortion… in one meeting of the Chief Rabbinic Council the Gaon Ha-Rav Ben Zion Uziel suggested abolishing the Sephardic shechitah in Jerusalem and to unify all of the shehitot, and that the Sephardim should accept the customs of the Ashkenazim, out of his great passion to unite the entire nation.

R. Yosef reports that in this case, R. Tzvi Pesach Frank (1873–1960), chief Rabbi of Jerusalem, objected and insisted that every community abide by the customs of their forefathers.

While R. Kook insisted on maintaining the integrity and authority of ethnic customs, and R. Uziel posited that, as much as possible, we should strive to arrive at a common practice, R. Ovadia Yosef argued, throughout his writing and throughout his career, that all Sephardim, and all Ashkenazim in Israel, should accept the authority of the “mara de-atra”, the halakhic authority of the land of Israel, R. Yosef Karo, as expressed in the Shulchan Arukh and in Sephardic custom and law. A comprehensive discussion of R. Ovadia Yosef’s position is beyond the scope of this brief paper, but a couple of citations should illustrate this point.

In a number of responsa, R. Ovadia Yosef not only argues that Sephardim must maintain their customs and resist accepting the Ashkenazic custom, and rejects R. Kook’s insistence that Ashkenazim retain their customs regarding shechitah, but he even insists that the custom of the land of Israel is in accordance with Sephardic practice, and Ashkenazim, and those who move to Israel, should abide by the "local custom". R. Ovadia Yosef’s ruling is not based, at least explicitly, on an awareness of the new growing difficulty of maintaining separate ethnic customs, but rather on his view of the centrality of the Sephardic tradition, especially of R. Yosef Karo, and its place in the land of Israel.

Although R. Ovadia Yosef’s position was not accepted by Ashkenazic, or Sephardic authorities, recent Religious Zionist rabbis have continued to grapple with this issue.

For example, Religious Zionist rabbis are often called upon to decide whether a new community, made up of Ashkenazim and Sephardim, should build separate batei kenesiyot to pray in their own nosach. Just to offer a sample of this discussion, R. Yair Dreifus, in an article in the yearly journal published by Zomet, Techumin, concludes, "in a place where it is possible to establish separate minyanim, according to each tradition, that is preferable to a joint tefillah." Elsewhere, he comments, “It is worth noting that, at times, willingness to compromise one’s nosach is a reflection of weakness, and distance from one’s roots; it is appropriate to encourage young people to adhere to their tradition (masoret).”

R. Yaakov Ariel, Chief Rabbi of Ramat Gan and a senior Religious Zionist rabbi, disagrees. He writes:

R. Dreifus’ fear … is for the loss of customs which were sanctified by the Jewish people throughout the generations. Therefore, he concludes that if it is possible to establish separate minyanim, [we are] obligated to rule in this manner. In my humble opinion the position of the halakhah is different: The unity of the community is viewed in the eyes [of the halakhah) is a supreme value, more than protecting the tradition of different customs. This unity does not by definition entail blurring the lines of the glorious and sanctified tradition. The colorful traditions of the various edot will continue within the nation of Israel, and within each and every family within their home. However, regarding a local community, the position of the halakhah is that unity is preferred, at least in the public sphere, such as in a beit kenesset which is shared by all of its members.
This debate reflects this very issue—how a community should achieve a balance between communal unity and adherence to traditions.\(^\text{74}\)

Another figure worth mentioning is R. Eliezer Melamed (b. 1961), Rosh Yeshiva of Yeshivat Har Bracha and Rav of Har Bracha, who has emerged in recent years as a popular and well respected author and halakhic authority. His books, \textit{Peninei Halakhah}, can be found in the homes of Religious Zionists, and they are studied in schools and \textit{yeshivot} across the country.

R. Melamed attempts to achieve a balance between guarding and observing communal and ethnic customs, while ensuring that \textit{Ashkenazim} and \textit{Sephardim} can live in harmony, on a national and communal level.

In his introduction to \textit{Peninei Halakhah}, \textit{Hilkhot Berakhot}\(^\text{75}\) he describes his overall methodology regarding this issue.

\begin{quote}
Here it is appropriate to write that the primary guidance of the rabbis is to preserve customs (Pesachim 50b and Y. Eiruv 3), [and] the intention is customs which are commonly observed by people in that place, or ethnic community… Regarding any law which does not have a clear custom we should follow the accepted rules of halakhic decision making… and take into account the authorities of all communities. In the past, however, due to the distance between the Diaspora [communities] they would primarily take into account local and contemporary rabbis. Nowadays, however, that the tribes of Israel are living and learning together, the views of all authorities should be considered.
\end{quote}

In his volume on \textit{Hilkhot Tefillah}, he dedicates a chapter to different texts, and prayer customs. He writes:

\begin{quote}
As a result of the exiles, and the dispersion of communities, variant texts between the different edot were formed… these differences are especially noticeable in the various piyutim, which were composed in the time of the Geonim and Rishonim, and added to the order of prayer on the yamim nora’im and Festivals… It is appropriate that each Jew should continue the custom of his forefathers, even if it is known that a certain nosach is more accurate than another… This is the principle: each custom has its own advantages, and we are unable to determine which is greater.\(^\text{76}\)
\end{quote}

That said, he is sympathetic towards choosing a \textit{beit kenesset} with a different \textit{nosach} for other reasons, and insists that “if strictly observing one’s custom will cause a community to break apart, it is preferable to forgo the obedience to one’s customs.” Furthermore, “each and every place should weigh the competing values, the value of preserving tradition against the value of establishment a strong, and unified community.”

In another article dedicated to this topic,\(^\text{77}\) R. Melamed suggest prioritizing different values, including the foundations of Jewish faith and belief, the biblical and rabbinic \textit{mitzvot}, and customs. He insists that while every value must receive the proper care and attention, the unity of a community is a higher value than protecting and observing customs and traditions. He also writes that different communities should not refrain from learning together, living together and marrying each other.

Incidentally, R. Melamed insists that the distinction between \textit{Ashkenazim} and \textit{Sephardim} “doesn’t include
that full spectrum of ethnic diversity, as there are at least ten edot known as “Sephardim”… and Ashkenazim, as well, are comprised of different communities, including Lithuanians, Chassidim, Polish, Russian, Ukrainian, Hungarian, ‘Yekkim’ (German), Dutch, etc. The distance between the Polish and Romanian [communities] may be like the distance between that Moroccan and Persian (communities). Furthermore, he notes that even issues often perceived as subject to an Ashkenaz/Sepharad split are much more complex and nuanced.78

Finally, R. Melamed discusses maintaining communal and family unity despite different customs. For example, he records that while it is the custom of Sephardim to participate in Simchat Torah festivities after the Shivah, Ashkenazim generally do not dance during the Sheloshim, and when mourning for a parent, for the entire 12 months. He notes that “in our communities, in which members of all edot pray together, an Ashkenazi is permitted to adopt the Sephardic custom.79

Another figure who has begun to address these issues is R. Nahum Rabinovitch (b. 1928). R. Rabinovitch was born and educated in Canada, later lived in America and England, and is currently the (retired) Rosh Yeshivah of Yeshivat Birkat Moshe, a hesder yeshivah in Ma’ale Adumim. R. Rabinovitch discusses this issue in his responsa, Siach Nachum.

In one responsum80 he mentions how communities maintained their ethnic identity after being expelled from Spain, as discussed above, but writes:

> However even according to the Radakh and Maharshdam, there is no reason to maintain different communities which are not completely separated, in one city, but rather differ only regarding certain customs, and do not have separate batei kenesset, separate shechitah, and separate kashrut…

There is no doubt that in a new community, similar to most of the small towns, we should not eternalize [ethnic] differences in pesikah, for both the community and the individual. In matters of pesikah, the Rav should know how to decide, and convince, and the most important point is that he should prevent machloket by explaining the difference between custom and stringency. And even regarding customs we should not eternalize sharp differences in custom, and the mara de-atra should behave with life wisdom, moderation, and consideration, and to discern what to distance and what to bring closer.

He concludes by adding:

> The common opinion according to which Sephardic Jews always follow the Beit Yosef, and Ashkenazim the Rema, is a mere fairy-tale (agaddah). The Shulchan Arukh was accepted, and spread throughout Israel, not as the exclusive authority, but rather as an authoritative work, along with its commentaries. Indeed, it is well known that regarding many issues the commentaries decide between the Mechaber and Rema, and at times, they decide against both of them- the role of a moreh hora’ah is to clarify and investigate the law and to rule according to reason, which seems to him to be the truth.

In a different responsum,81 he supports the natural development of a nosach achid, one unified custom of
prayer, which will include and preserve the customs of the different communities. Ultimately he concludes, “The most important thing is that all of the residents stand before God, in full unity, brotherhood and friendship.”

Finally, regarding whether a woman should accept her husband’s customs upon being married, he writes, “in my humble opinion, there is room to be lenient, since we are living in a period of the incoming of the exiles and of the creation of new communities, and communal identities have not yet been formed, therefore it is possible to re-establish customs. All of the customs of all of the edot have of whom upon which to rely.”

As mentioned above, this issue has received greater attention in the Religious Zionist community. While a number of the great halakhic authorities of the previous generation, including R. Moshe Feinstein (1885 – 1986) and R. Shlomo Zalman Auerbach (1910 – 1995), wrote about minhag ha-makom, they related to more peripheral issues, and not to the broader changes which occurred over the past century, and their impact, if any, on the legal status of communal customs.

Concluding Thoughts on Pesikah Adatit

I follow with great interest, although not always with halakhic clarity, or agreement, as these issues unfold. I do not know what the future will hold, but I am inclined to believe that in the somewhat foreseeable future, there will not be much change or development in Diaspora communities, nor in Chareidi communities. Questions will be dealt with as always, case by case.

Within the Religious Zionist communities, I believe that while a somewhat significant percentage will strictly adhere to their family, and ethnic customs, and some will completely abandon their ancestral customs, a large, middle portion of the community will slowly develop a new, somewhat hybrid identity. The nosach hatefillah will primarily be the already popular nosach sepharad, which is viewed as similar to both nosach Ashkenaz and Edot Mizrach, and there will be willingness to introduce Sephardic practices into the prayers, such as Sephardic selichot and keri’at ha-Torah. Both Sephardim and Ashkenazim continue to compromise, although the Sephardic concessions appear to be more significant. On Pesach, a large portion of the Religious Zionist Ashkenazic community already eats kitniyot derivatives, oils, margarines and mayonnaise, and relies upon “bittul” for most products, in accordance with numerous authorities, and supported by central Religious Zionist posekim; the differences between Ashkenazim and Sephardim will be reduced to rice, legumes, and cornflakes. This process has already begun and major Religious Zionist posekim endorse most of these practices, for these very reasons.

I am concerned about the impact of this phenomenon on personal, family and religious identity. I am also curious how local rabbis will continue to relate to the differences between Ashkenazic and Sephardic pesikah, or more specifically, debates within the Shulchan Arukh. It seems that many Sephardim have already moved towards accepting non-glatt meat, and the Rema’s leniencies regarding bishul akum. Will rabbis who respond to both Ashkenazim and Sephardim continue to offer different answers? Only time will tell.

Concluding Thoughts on the Role of Custom and Tradition in the Transmission of the Torah

The topic of this symposium is “masorah”. While I look forward to reading the other contributions, to be honest, I cannot really define, and certainly cannot quantify that term. However, I hope that our brief overview of one aspect of minhagim will shed a bit of light on this very important topic.

What emerges clearly from our study, and certainly from a broader perspective of this topic, is that custom
and tradition have always been an integral part of a community’s religious identity and spiritual experience. No matter where the Jewish people traveled, willingly, or against their will, they brought their customs and traditions with them, and did not easily part from them.

Throughout the ages, customs and traditions were the vessel through which the greatest of all mitzvot, “and you shall make them known to your children and to your children’s children the day you stood before the Lord your God at Horeb” (Devarim 4:9-10), was fulfilled. The depth and beauty of Torah, fulfillment of mitzvot and spirit of a community’s inner religious world were conveyed and expressed through its customs. Architecture, dress, song, food, prayers, communal structure, and even halakhic leniencies and stringencies were the vehicles of the masorah. At times, customs and practices not only convey feelings and experiences, but they also reflect, express, and transmit important messages and halakhic principles.

However, as customs, traditions and practices are transmitted, each generation not only observes, but also filters, adapts, removes and at times adds new practices. While the core of Jewish prayer may be the same, its peripheral content (piyutim, etc.), its tunes, the structure and architecture of the synagogue, and even parts of the service are constantly changing, and adapting. And while the essence of a Jewish wedding remains the same, its tone, its tunes, its form, and its customs continue to develop. Models of study, worship, performance of rituals, and leadership differ from community to community. The yeshivah, the kloiz, the Chassidic court, the Modern Orthodox synagogue, the Sephardic beit kenesset, and the shtiebel offer different styles of worship, each resonating with a different community. At times, halakhic authorities are called upon to express their opinion, and at times customs develop without rabbinic support or interference. Sometimes innovations are broadly accepted, and at times they are rejected, and slowly fallout of practice (or out of consensus).

As mentioned above, the Jewish world has undergone great changes over the past hundred years. Many families and communities have been disconnected from their past as the result of wars, and ultimately, the Holocaust. Since then, millions have moved to the modern State of Israel, forming new communities, many of which differ significantly from the communities from which they came. Finally, there are many new challenges to the traditional halakhic lifestyle and difficulties in transmitting the religious values mentioned above, including the need to reconcile the positive elements of Western culture and Jewish autonomy with Torah observance, and the deterioration of respect for religious authority and legal hierarchy.

Within this context it behooves us to act prudently and responsibly, to preserve the integrity, depth, and authenticity of our religious tradition, while offering our children, students, and even ourselves a mode of worship which is not only genuine, but also inspires and resonates. This is no small challenge.

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The next installment in this symposium will appear Wednesday night, May 25. See previous installments here: link
1. Aside from the many articles and books mentioned below, I would like to thank those who offered their thoughts and ideas, those who helped clarify confusing halachic sources, and those who read various drafts of this paper. I would also like to thank R. Gil Student for encouraging me to research this topic, and R. Moshe Shapiro for his thoughtful and careful editing.

2. Professor Haym Soloveitchik, in his seminal article, “Rupture and Reconstruction: The Transformation of Contemporary Orthodoxy” (Tradition, Vol. 28, No. 4, Summer 1994) brought this issue to the attention of the academic and religious community, but focused on a related but different issue – the transition from a mimetic tradition to a text-based society.

3. This essay will not discuss the role of minhag in areas of business, such as its role in defining the mutual obligations between an employer and employee (Bava Metzia 6:1), a sharecropper and a land owner (Ibid. 9:1), neighbors who wish to divide a shared courtyard (Bava Batra 1:1), or numerous other cases in which the Mishnah teaches us that “the law follows the local custom” (Sukkah 3:11, Ketubot 6:4, Bava Metzia 11:1). We will also not deal with rituals which are based in custom, such as taking the aravah on Hoshanah Rabbah (Sukkah 44a) and Hallel on Rosh Chodesh (Taanit 28b), or those mitzvot, such as Hallel, whose details are rooted in custom (Sukkah 3:11).


6. Ran, Nedarim 81b.


9. R. Meir Arik (1855–1926), in his Imrei Yosher (2:136), acknowledges that aside from the traditional text of hatarat nedarim, there is no source in the posekim which states that one who does a certain act three times is considered to have accepted upon himself as a vow. He explains, however, that seemingly one who repeats a behavior three times has in mind to continue this behavior.

10. Maharshdam, Yoreh De‘ah 40.

11. See Shulchan Arukh and Rema, ibid. See also Peri Chadash (496), Chayye Adam (127:7; see also Chokhmat Adam 92:14). R. Moshe Feinstein (Iggerot Moshe, Yoreh De‘ah 1:47) adds that even if he refrained from a certain practice out of doubt, that too is not considered to be a neder. The Rashba (Teshuvot 1:98) and Ran (Pesachim 17a), cited in Shulchan Arukh 214:1, disagree.


13. See Radbaz (Yoreh De‘ah 2:75) and Peri Chadash (Yoreh De‘ah 115)

14. R. Yosef Tzvi Dushinski (Maharitz 82), for example, distinguishes between a stringency made to avoid a biblical prohibition, which is considered to be a vow (Devarim 23:24), and an ordinary stringency.
See Imrei Barukh (R. Baruch Simon), pg. 46.

15. Rosh, Pesachim 4:3.

16. Teshuvot Ha-Rashba 1:98.

17. See Maharshdam, Yoreh De’ah 40, and Chayye Adam, 167:10.


22. For example, R. Shmuel Engel (1853 – 1935), in his Teshuvot Maharash (7:50; see also Shevet Ha-Levi 4:31) explains that a person never had in mind to accept upon himself to be strict in extenuating circumstances. Therefore, he rules that one who is accustomed to immerse in a mikveh daily, but is currently unable to heat the mikveh, or to travel to another mikveh, does not need to perform hatarat nedarim.


24. Pesachim 50b.

25. See Peri To’ar, cited below.


27. Peri Chadash, Orach Chaim 496.

28. Chavot Yair 126. See also Maharam Shik, Orach Chaim 249.

29. Peri To’ar, Yoreh De’ah 39.

30. See, however, R. Yosef Shalom Elyashiv, Vayishma Moshe (pp. 267-268).

31. Iggerot Moshe, Orach Chaim 3:64.

32. See R. Tzvi Schachter, “Hashbea Hishbia,” Beit Yitzchak 39, pg. 515, who suggests that a student from a Chassidic family learning in Israel for a year may rely upon the Dagul Me-revavah, cited above, and not observe gebrochts for a year. This, he claims, is preferable to performing a hatarat nedarim.

33. The Rishonim, and Acharonim, discuss the source of this obligation. Some point to Nedarim 15a, cited
above, which teaches that one who disregards an obligation he accepted upon himself violates a rabbinic prohibition of "bal yachel" (the prohibition of violating an oath). These Rishonim (Rosh, Pesachim 4:10, and Rabbeinu David, Pesachim 50b) explain that so too, the members of the community are bound by local custom, and it is rabbinically prohibited to abandon local custom. R. Sherira Gaon (Sha'arei Tzedek 4:1:20) offers another source. He writes, "How do we know that custom is significant? As it says "You shall not pull back your neighbor's landmark, which the earlier ones have set as borders" (Devarim 19:14) - and so much more so regarding a great enactment … therefore you should act in accordance with your customs and should not change that which you forefathers your predecessors made, and do not budge…" The Chida, in his Shiyurei Berakha (Yoreh De'ah 214:1), concludes that the prohibition is rabbinic. However, R. Moshe Sofer (Chatam Sofer, Yoreh De'ah 107 and Even Ha-Ezer 97), mentioned above, insists that the prohibition may be biblical.

34. R. Yair Bachrach (1639 – 1702), for example, in his Chavot Yair (126), explains that “R. Yochanan was stringent for the residents of Beishan because of the place.”

35. Rivash, Yoreh De'ah 399. See also Masa Melekh (Minhagei Issur, Chakirah Revi’it). Meiri (Pesachim 50b) and Rabbeinu David (ibid.) also explain that those who first began observing the custom accepted upon themselves, and upon their descendants.


37. See Ramban, Milchamot Hashem, Pesachim 17a. See also Rivash ibid. Different reasons are given for this stringency; see Peri To’ar (Yoreh De'ah 39:32) and Korban Netanel (Pesachim 4:8).

38. Rosh, Pesachim 4:3. See also Peri Chadash 496, who disagrees with the Maharshdam.


40. See Ran, Pesachim 17b s.v. venimtzeinu.

41. Teshuvot 253.

42. R. Tzvi Schachter, ibid., suggests that while Ashkenazic Jews may have chosen the Rema, and subsequent European commentators as their primary halakhic authorities, Sephardic Jews may have chosen Sephardic authorities. If so, it may be possible for a Sephardic student, for example, who joins an Ashkenazic community, to adopt their customs (such as refraining from eating kitniyot on Pesach), but remain bound by Sephardic halakhic rulings. The opposite may also be possible.

43. This scope and nature of this assertion is complex, and beyond the scope of this paper. There are certainly different approaches to the role of the Shulchan Arukh in normative halakhic practice. While some viewed the Shulchan Arukh as a final, authoritative code, others simply believed that the Shulchan Arukh narrowed the range of accepted halakhic views.

44. Pesachim 51b and Chullin 18b.
45. Ran, Pesachim 16b – 17b (Rif).

46. Rambam, Hilkhot Yom Tov 8:20.

47. Shulkhan Arukh, Yoreh De’ah 214:2.

48. Ibid., Orach Chaim 468:4

49. See, for example, Shakh (Yoreh De’ah 214:8) and Mishnah Berurah (468:24).


51. Avkat Rokhel 212.

52. Interestingly, R. Yair Bachrakh (Chavot Yair 126) rules that the members of a community who are expelled from their land should retain their original customs, as they hope to return to their land, and are therefore considered to be “da’atan lachzor”.


54. Chok Yaakov, Orach Chaim 468:9. See also Be’ur Halakhah, ibid..

55. The Chatam Sofer (5:188), for example, discusses a case in which there were two separate communities, Ashkenazic and Sephardic, who lived in a certain city. Most of the members of these communities were expelled from the city, and the remaining Jews, who came together to form a new community, asked which customs they should accept.

56. See, for example, Divrei Chaim 2:8.

57. See Shoel U-Meishiv 3:1:247 and Maharam Shik, Orach Chaim 43. See also R. Ovadia Yosef’s Yabi’a Omer (Orach Chaim 6:10).

58. The Chatam Sofer (1:15) records that his teachers, Rabbi Natan Adler and Rabbi Pinchas Levi Horowitz, changed their nosach ha-tefillah (and pronunciation!) to the Sephardic nosach. Similarly, the Maharam Shik (Choshen Mishpat 24) suggests that if one feels that he or she will achieve greater kavvanah through praying in a different nosach, one may change a customary nosach.

59. See, for example, R. Yosef Eliyahu Henkin’s Edut Le-Yisrael (pg. 162).

60. Ibid.

61. Peri Chadash 468. See Also Shuchan Arukh Ha-Rav 468:15.

62. Orach Mishpat, Orach Chaim 17.

63. Iggerot Ha-Rayah 576. See also “Le-shenei Batei Yisrael”, in Maamarei Ha-Rayah.
64. See Iggerot Ha-Rayah 559, addressed to R. Ben Zion Uziel, who as we shall see, adopted a different view.


66. See R. Yitzchak Nissin’s Yain Tov, 4.

67. See Rabbi Dr. Binyamin Lau, “Lehachzir Atarah Le-yoshnah: Maaval Chutz U’fnim shel Ha-Rav Ovadia Yosef,” Akdamot 8 (Kislev, 5760) and “Shemirat Minhagei Avot mul Achdut Ha-Halakhah: lyun Be-Mishnato Ha-Hilkhatit shel Ha-Rav Ovadia Yosef,” Akdamot 10 (Kislev, 5761). These articles were later incorporated into “Mi-Maran ad Maran: Mishnato Ha-Hilkhatit shel Ha-Rav Ovadia Yosef”, Miskal-Yediot Aharonot Books and Chemed Books, 2005.

68. See Yabi’a Omer, Even Ha-Ezer 6:14 regarding yibum, and Even Ha-Ezer 3:12 regarding using the Sephardic text of the ketubah, and Yechaveh Da’at 4:36 regarding whether Sephardic students in Ashkenazic yeshivot should wear their tzitzit out.

69. See Yabi’a Omer, Yoreh De’ah 5:3.

70. Yabi’a Omer, Orach Chaim 5:43.


72. See below, footnote 2, where he responds to R. Ariel.

73. R. Yaakov Ariel, “Le-Achdutah shel Ha-Kehillah Be-Nosah Ha-Tefillah (Teguvah),” Techumin 9, pp. 200-201. Elsewhere (Be-Ohalah Shel Torah, vol. 2 no. 1) R. Ariel advises a new community to decide upon one nosach and to adhere, in public and private prayer, to that nosach.

74. This question motivated R. Shlomo Goren (1917 –1994) to establish a nosach achid, a unified text of tefillah, for soldiers, in 1963. R. Ovadia Yosef (see, for example, Yalkut Yosef, Kitzur Shulchan Arukh 101:9) rejected this nosach. In practice, this nosach did not gain popularity and is not used today.


76. R. Melamed adds that “only after the establishment of a Sanhedrin will it be possible to set one, unified nosach, which will include the positive points of all of the customs.”


78. See, for example, Harchavot Le-Peninei Halakhah, Shabbat 4:6:1 and 14:6:1. R. Maor Cayam, a close student of R. Melamed, brought these examples to my attention.


80. Siach Nachum 86.
81. Ibid. 87.

82. Ibid. 88

83. In an interesting responsum (Badei Ha-Aron 28), R. Re' em Ha-Kohen, Rosh Yeshivah of Yeshivat Otniel, writes, “In light of the above, it seems, in my humble opinion, that in a generation of kibutz galuyot one should restore the law of kitniyot to its original parameters and not to add additional stringencies.”

84. R. Soloveitchik develops this theme in his essay, “A Tribute to the Rebbetzin of Talne,” Tradition 1978.

85. In an interesting exchange, R. Yoel Katan and R. Binyamin Hamburger debate the merits of preserving, in practice, the German customs lost over the past 100 years. R. Katan suggests that the appearance of unity created by the “luach” of R. Yechiel Michel Tikochinsky is preferable to reviving the customs of German Jewry. R. Hamburger insists that “and forsake not the teaching of thy mother (Mishlei 1:8)” entails preserving and living in accordance with these traditions. See Yerushateinu 4 (5740).

86. See, for example, Seridei Esh 1:9 regarding praying in the vernacular.