

The Power of Monetary Customs to Override Halakha
The Sages in Salonika and Istanbul in the 16th–17th centuries

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This article discusses the attitudes of the Istanbul and Salonika halakhic scholars (hereinafter: the sages) in the 16th–17th centuries relating to the question, whether a self-created monetary custom can override halakha or it is conditional upon receiving any support. Tanaitic and Amoraic sources stated that a monetary custom overrides halakha and does not require any support for the custom. Only during the early halakhic authorities (hereinafter: Rishonim) period did a controversy arise over the question at issue, and it continued in the period under consideration.

This study discusses 66 sources, almost all of which are responsa, written by 18 sages, who dealt with customs in a variety of fields, in particular: commercial affairs, marital rights between spouses and inheritance. Ten of the sages ruled that a monetary custom does not need support in order to override halakha. They justified it on the grounds that people contact with each other based on the custom and it's as if they have made such a condition between them. They relied on Talmudic sources and especially on the Spanish Rishonim (Maimonides, Rosh, Rashba and others).

On the other hand, four other sages ruled that in order to override halakha, the custom must be “a custom of vatikin”, i.e. a custom which sages instituted or endorsed (based on Or Zaru'ah, Mordechai and other Ashkenazi Rishonim), or that it must be enacted as a communal enactment (based on responsa of Alfasi, Nachmanides, Rosh and Rivash). Rabbi Eliyahu Mizrahi explained that an approval of sages is required to verify that the custom is indeed proper and not “a bad custom”. Other sages may also have understood similarly. Four other sages did not decide the question at hand.