Sephardic Halakha, History, and the Israeli-Arab Conflict

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Since before the days of Israeli statehood, rabbis have written responsa about how the state should treat the minority Arab population. Following the Six Day War, these responsa expanded to address questions of how halakha views relinquishing Israeli territory, Arab sovereignty, and the treatment of terrorists (and their families), and more. *Posekim* (halakhic decisors) from both the Sephardic and Ashkenazic camps have written about these issues, and some of these responsa were written by Israeli chief rabbis over the last 70 years. In those *teshuvot* (responsa), the Sephardic *c*hief rabbis tend to emphasize the importance of fair treatment for the Arab population, and post-1967, a willingness to trade land for peace. On the other hand, the Ashkenazic chief rabbis tend to view the biblical issue of *lo tehonem* (generally understood as the prohibition of allowing non-Jews to acquire territory in Israel) as a total, non-negotiable prohibition, and are unwilling to negotiate with Arab parties in any way that involves relinquishing territory.

This is not to say that there aren't Ashkenazic *posekim* who have written in favor of Arab sovereignty or fair treatment of Arabs. However, this paper will focus on the *piskei halakha* of five former Israeli chief rabbis. From the Sephardic chief rabbis, I will be looking at the responsa of Benzion Uziel, Hayyim David Halevi, and Ovadia Yosef. Of the Ashkenazic ones, I will focus on Shlomo Goren and Avraham Shapira. I have chosen to limit my research to these five rabbis for two reasons. First, the number of *teshuvot* on the Israeli-Palestinian conflict is vast and non-uniform; it would be difficult for me to make a broad statement about all of the Ashkenazic or Sephardic *piskei halakha* on this topic. Second, I want to write about rabbis who were clearly involved in political processes as well as religious ones, because part of my argument hinges on the political reality of Ashkenazim and Sephardim throughout history.

Why is there such a stark contrast between the way these Sephardic and Ashkenazic chief rabbis speak about Israeli-Arabs and the Israeli-Palestinian conflict? I believe that Sephardic *piskei halakha* about Israeli-Arabs and the Israeli-Palestinian conflict should not be viewed in a vacuum: rather, they are reflective of a Sephardic approach to halakha throughout history, and are also influenced by the treatment and role of Sephardim in Israel.

First, I will define what I mean by Sephardic halakha. Then, I will speak in broad terms about the differences in how Sephardic and Ashkenazic halakha developed and offer a few reasons for those differences, based primarily on Zvi Zohar's research. Then, I will speak about Sephardim in Israel in the twentieth century. Finally, I will discuss the differing halakhic opinions on Arabs and the Israeli-Palestinian conflict based on the five *posekim* mentioned above.

What Is Sephardic Halakha?

Following the pogroms of 1391 and the expulsion of 1492, Jews from the Iberian Peninsula (Sephardim) resettled across the Middle East. However, they did not adopt the practices of the Jews who lived in the regions in which they resettled. Instead, Jews throughout the regions began to take on many of the new Sephardic Jews' customs.[1] This trend was further amplified following the codification of Sephardic halakha in 1565 in Rabbi Yosef Caro's *Shulhan Arukh*. Middle Eastern communities (except for the Jewish community of Yemen) generally accepted the text as authoritative, [2] which meant that many of the laws these communities were following came from a Spanish *posek*. Even Iraqi Jews, who had been the premier rabbinic authorities since the time of the Babylonian Talmud,[3] began to refer to themselves as Sephardic following the publication of the *Shulhan Arukh*.

In the last century, the amalgamation of Sephardic and Middle Eastern halakha has grown further. Rav Ovadia Yosef, the Sephardic Chief Rabbi of Israel from 1973 to 1983, declared Rabbi Yosef Caro as the *mara de'atra* (master of the place) of Israel. Rav Ovadia believed that because Rav Yosef Caro lived and codified Jewish law in Israel, Sephardic and Middle Eastern Jews living in Israel should follow the halakha as stated in the *Shulhan Arukh*, and not their own local, traditional customs. This assertion was met with resistance by both Moroccan and Yemenite rabbis; the former rejected the claim that Rav Caro was the *mara de'atra*, and continued following their own customs.[4] Rav Ovadia even went so far as to criticize the Ben Ish Hai, one of the most prominent Iraqi *posekim* of the nineteenth century because he would cite Ashkenazic and Lurianic stringencies in his writings.[5] This claim angered many within Rav Ovadia's own community. Despite some opposition, Rav Ovadia's *piskei halakha* have become the most prominent contemporary Sephardic *teshuvot*, and Sephardim (and even many Ashkenazim) use his *teshuvot* to determine practical halakhic practice.

For these reasons, I will be referring to halakhic literature from the entire Middle East and North Africa as Sephardic halakha. This does not mean they are the same, and many of the most prominent "Sephardic" *posekim* are actually not from the Iberian Peninsula.

General Differences between Sephardic and Ashkenazic Halakha

Rabbi Marc Angel has argued that an essential difference between Ashkenazic and Sephardic *posekim* is that Ashkenazim tend to view the halakhic process as both an intellectual and metaphysical process. This meant that access to halakha was reserved for rabbinic figures, and when it was discussed, it was often in ways that neglected the real-life impact on the daily lives of people. On the other hand, Sephardic *posekim* have seen halakha as naturally woven into life, and not extraneous to it. [6] In his view, that difference in outlook helps to explain why Sephardim tend to be more lenient in their *piskei halakha*, while Ashkenazim are stringent and often adamant about retaining tradition.

Angel also claims that Sephardic *piskei halakha* emphasize that religious observance should be enjoyable, and do not subscribe to the asceticism of many Ashkenazic responsa. In other words, in a line Angel quotes from Rav Hayyim Yosef David Azulai's writings, Sephardi *piskei halakha* cling to the Kabbalistic notion of *hessed* (kindness) and Ashkenazic *piskei halakha* to *gevura* (heroism).

Zvi Zohar names another distinction between the development of Sephardic and Ashkenazic halakha, and offers reasons for why these schools developed as they did. Zohar argues that unlike Ashkenazic *posekim*, who, following the Enlightenment, adopted the *Hatam Sofer*'s stance of *hadash assur min haTorah* (anything new is prohibited by the Torah), Sephardic *posekim* were willing to engage with innovation and treated each new question on its own terms. The first explanation Zohar offers for the difference in approach is what he terms "contextual-environmental".[7] According to that approach, rabbinic responsa are a product of the contexts in which they are written. European Jewry did not know they were in the midst of a cultural revolution until after the French Revolution[8] and immediately following the revolution, the Reform movement was formed. In response, European *posekim* felt the need to curtail any innovative thought in halakha, because they were worried it would lead to the loss of halakhic practice altogether. On the other hand, Sephardic rabbis realized innovation was coming, because they saw European innovation before it began to happen in the Islamic world. Because they could see that the world was experiencing a fundamental shift, they did not think that adding more stringencies to would keep people invested in traditional Judaism.

Additionally, unlike the anti-religious nature of the European Enlightenment, reform in the Islamic world was not anti-clerical.[9] Rabbis in the Middle East were not suddenly dealing with a hostile, skeptical population, as were European rabbis. Because of that, they were able to approach new questions with greater flexibility.

The other approach Zohar presents is what he terms "immanent factors," or the Sephardic attitude in general toward halakha and Torah.[10] Sephardim believed that part of the Torah's timelessness was its ability to be rediscovered in every era. They did not subscribe to the notion that anything new is forbidden by the Torah.

Another "immanent factor" affecting the development of Sephardic religious worldview was the openness to philosophy and secular studies.[11] Because Sephardim valued the study of math, medicine, and other subjects, rabbis were expected to have knowledge and expertise in these topics. An example of this attitude can be found in Rabbi Israel Moshe Hazan's *Sefer She'erit haNahala*. Hazan praised enlightenment thinkers such as Moses Mendelssohn for "restoring the Holy Tongue," and was not critical of them, as Ashkenazic rabbis often were.[12] Interestingly, one of the critiques hurled at Rav Ovadia Yosef from other Sephardic rabbis was that his objection to learning secular studies, such as science and art, was directly in contrast to how Sephardic *posekim* historically viewed engaging with those subjects.[13]

Zohar offers many examples of these Sephardic attitudes from across the Sephardic world. One example of this attitude toward innovation can be seen through a *teshuva* written by Rabbi Abdallah Somekh, the leading *posek* in nineteenth-century Iraq. In 1877, Jews living in India asked Rabbi Somekh if they could travel by train on Shabbat, if they paid before Shabbat. An Ashkenazic rabbi had ruled against it because he considered it to be *uvda d'hol* (weekday activity), but Rabbi Somekh ruled that although one could not use an intercity train on Shabbat (an issue of traveling outside of the *tehum*, or distance one is allowed to travel on Shabbat) there were no issue of *uvda d'hol* when traveling by local train on Shabbat.[14] Rabbi Somekh did not assume that new technology was automatically problematic on Shabbat. Instead, he looked closely at each individual example (in this case, the intercity versus local train) and made a separate, specific decision for each case.

Sephardic *Piskei Halakha* about Non-Jews in the Nineteenth Century

Sephardic *piskei halakha* about non-Jews in the nineteenth century often focused on the merits of non-Jewish people, society, and language. Rabbi Abdallah Somekh's writings serve as a good example for the prevalent attitudes and practices of the Sephardic world at large because he served not only as the *posek* for Jews in Iraq, but also for those who settled in India and other parts of Asia. He also was the teacher of a number of important Sephardic rabbis, so his teachings continued to have influence beyond his life. Jews around the globe turned to "Babylonian rabbis," and to Somekh specifically in the nineteenth century. One striking example is a *teshuva* by Rabbi Somekh about hiring a non-Jew to extinguish a gas light in a synagogue on Friday night. An earlier rabbi had ruled it was permissible to do so, because if a fire would erupt, the non-Jews might attack the Jews in response.[15] However, Rabbi Somekh prohibited this practice, because he thought it was unlikely that the gas light would start a fire. He adds, though, that if there was a fire, it would not cause the non-Jews to cast libel, because the non-Jews and Jews "all have become almost as one people."[16] Rabbi Somekh thought that the integration of Jews and their neighbors was positive, even to the point that halakha could change and reflect that integration.

Rabbi Israel Hazan also had favorable ideas about the Arabs among whom he lived. In *She'erit ha-Nahala* (written in 1862), he referred to the Arabs as "gentiles influenced by the positive side of reality."[17] In a fictional dialogue in the book between a European Jew and a Middle Eastern Jew, the Europeans refers to all "Orientals" (both Jews and non-Jews) as colorful and different. Rabbi Hazan, like Rabbi Somekh, believed there was a strong feeling of unity between Jew and non-Jew.

Sephardim in Israel during the Mandate Era

As is clear from the halakhic literature mentioned above, some Sephardic *posekim* spoke favorably of their non-Jewish neighbors. Without generalizing about relations between Jews and non-Jews in Muslim lands, there were positive elements in these relations. However, the prevalent narrative of Arab-Jewish relations in Israel today is that Jews under Islam lived with under difficult conditions; when Israel was founded, they were forcibly evicted from their homes.[18] But this tells only one part of the long, complex story.[19]

Abigail Jacobson and Moshe Naor argue that Sephardic Jews during the British Mandate saw themselves as the clear mediators between the surrounding Arabs and Ashkenazic Jews, because they were culturally and linguistically similar to the Arabs, and had lived amongst them for centuries. The Association of the Pioneers of the East is a strong example of an organization with this belief. Founded in 1918 by *Bney Ha'Aretz* (Jews who had lived in Palestine pre-World War II), the organization attempted to build a bridge between Jews and Arabs through cultural and educational initiatives.[20] In 1920, the organization combined with the Council of the Sephardic Community in Jerusalem (though each also maintained its own identity), and created the General Organization of Sephardic Jews. One of the goals of that organization was also to develop a positive relationship between Arabs and Jews.[21] After the Arab Revolt of 1936, former members of the Association of the Pioneers of the East founded a political party called the "Liberal Party," whose goal was to mend the Arab-Jewish relationship.[22]

However, during the Mandate period, Ashkenazic Zionist leaders prevented Sephardic Jews from ascending to political power. To the Ashkenazim, Sephardim did not fit into the pattern of

Zionism as a European nationalist movement.[23] As a result, Sephardim were forced to demonstrate their commitment to Zionism.[24]

Sephardim were outraged by their exclusion from the Zionist organizations. The Union of Sephardic and Oriental Jews in the Land of Israel, founded in 1939, criticized the Jewish Agency for not including Sephardim in a delegation in England in 1939. The Chief Rabbi of Egypt, Yosef Katawi Pasha, also criticized the Ashkenazim for ignoring and excluding Sephardim.[25] Rabbi Katawi even rejected the Peel Commission in favor of a binational state.[26] Notably, though he was of Sephardic descent, Rabbi Benzion Uziel managed to work his way up the political ladder. He was the only Sephardic included in the delegation to England in 1939, and he did not criticize the *Yishuv* organizations as many of the other prominent Sephardic figures did.

I believe this history is relevant because the *teshuvot* written by the Sephardic chief rabbis below are undoubtedly affected by the history of those who wrote them. If the *posekim* viewed themselves as the inheritors of a tradition of peacemakers between Jews and Arabs, one must view their halakhic writings as a continuation of that tradition.

Israeli-Arabs and the Conflict in Halakhic Literature

All of this brings us to examine the attitudes of Sephardic *posekim* toward Arabs and the conflict. Of the list I mentioned earlier, there is somebody notably missing, and that is Rabbi Abraham Isaac Kook. Rabbi Kook was the first Ashkenazic Chief Rabbi in Mandatory Palestine. Rabbi Kook's works have famously been used as the mantra for the settlement movement. However, it is difficult to know how Rabbi Kook felt about Arab autonomy, because he died before the state was established. He clearly believed strongly in the power of the Land of Israel, and the power of the Jewish presence in the land. However, many of Rabbi Kook's writings were interpreted by his son, Rabbi Tzvi Yehuda Kook, and then used as the basis for the settlement movement after 1967.[27] It is unclear if Rabbi A.I. Kook was as inherently political as his son, or if his writings were misconstrued in a way to fit Rabbi T.Y. Kook's and *Gush Emunim*'s ideology.

Still, there are certain writings that offer a glimpse into Rabbi Kook's philosophy around non-Jews and innovation at large. Rabbi Marc Angel writes about three issues where Rabbi Uziel and Rabbi Kook differed, and they are reflective of traditional Ashkenazic and Sephardic attitudes. The first was in his approach to conversion: Rabbi Kook believed that people could not convert for marriage, and they needed to keep all of the mitzvoth upon becoming a Jew. Rabbi Kook felt that only the best non-Jews could become a part of the Jewish people.[28] Second, Rabbi Kook thought that the issue of conducting an autopsy on a body (the prohibition of *nivul hamet*, desecration of the body of the deceased) only existed for Jews, and that autopsies could be performed on non-Jews. Finally, Rabbi Kook did not support women's suffrage.

Rabbi Uziel harbored different attitudes toward non-Jews and innovation. He felt that if a person came with the intent to convert in order to marry a Jew, the person should be allowed to convert, and even if they did not know all of the mitzvoth. Rabbi Uziel emphasized the need to ensure that the children from these marriages would be Jewish. Rabbi Uziel also ruled that if done respectfully, both Jewish and non-Jewish bodies could be used for medical autopsies. He believed the prohibition of *nivul hamet* applied to Jews and non-Jews alike, because "there is no difference between Jews and non-Jews, in the sense that all are created in the image of God."[29] Finally, Rabbi Uziel ruled that women should be allowed to vote and hold public office. He did not see the lack of historic

precedent as a reason to deny women this basic right.[30] Rabbi Uziel generally took a more universalistic outlook, based on the fact that all human beings are created in the image of God. Rabbi Kook generally took a more particularistic outlook, less open to change.

Rabbi Uziel spoke specifically about the Arabs. He called on the Jewish state to extend a true hand of peace to the Arab nations, because "the Jewish people are a nation of peace."[31] Rabbi Uziel called for peace with all of the people in the land of all backgrounds and religions.[32]

The tradition of writing in favor of peace with the Arabs and rights for the Arab minorities did not end with Rabbi Uziel. Rabbi Hayyim David Halevi, the Chief Rabbi of Tel Aviv from 1973 to 1998, was a devoted student of Rabbi Uziel. He received a question based on an anecdote from *Yebamot*, which explained the story of the Gibeonites in Samuel. Rabbi Yohanan explains that David put Saul's sons to death as a way to placate the Gibeonites, because many had died at the hand of Saul when he killed their priests, who they depended on for their livelihood.[33] Rabbi Yohanan calls the killing of the Gibeonites a *hillul Hashem b'farhesia* (desecration of God's name in public), and the only way to repair it was by exacting retribution, which is what David did.[34] The questioner was outraged: Should Jews pay credence to the slander of the non-Jews? Why are Jews put to death for the sake of what non-Jews think?

Rabbi Halevi answered that this story in the Talmud actually teaches how Jews must treat the minorities that live among them. Israel has an obligation to give charity to all its citizens and ensure they are able to earn a livelihood. By treating them well, Israel makes a "*kiddush shem shamayim v'shem yisrael ba'olam*" (a sanctification of God's name and Israel's name in the world.)[35] For Rabbi Halevi, there was a text-based precedent for fair treatment of non-Jews that applied in the contemporary context.

Rabbi Shlomo Goren and Rabbi Avraham Shapira wrote much more explicitly about land for peace than earlier Ashkenazic chief rabbis (such as Rabbi Kook), which makes it easier to analyze their writings in relation to the Sephardic Chief rabbis. This is true because the *piskei halakha* of theirs that I am referencing were written after the Six Day War. It is easiest to analyze Rabbi Goren's writings in comparison to Rav Ovadia's, because they wrote about the same issue.

Rabbi Ovadia's responsum is notable because it is such an outlier in the Religious-Zionist world. The *teshuva*, titled *Mesirat Shetahim Me'eretz Yisrael B'makom Pikuah Nefesh* (giving away land in Israel in order to save life), was first presented in a lecture in 1989 at Mossad HaRav Kook, and was later published in a number of other places. It is a 14-page, 10-section responsum, where Rabbi Yosef rules that if it is clear, beyond all doubt, that giving land to the Arabs will result in peace, the government may give land to the Arabs, because no mitzva comes before saving a life. In the case of *pikuah nefesh*, Rav Ovadia ruled emphatically that the prohibition of *lo tehonem* is set aside. Rav Ovadia explains that even the Ramban, who considers living in Israel as a Torah obligation, does not believe that holding onto territory at the risk of one's life is necessary.[36] He also adds that because Israel does not have full control of the territories gained post-1967, it is not considered to be the full occupation (*kivush gamur*) that is required for ownership by the Torah, so it is not a problem to relinquish that land to other people.[37]

Rabbi Goren ruled that there is never a circumstance that would allow the state to give land to the Arabs. Unlike Rav Ovadia, Rabbi Goren believed that according to the Ramban, every day that Israel does not annex the West Bank (and Gaza) fully, they are failing to fulfill the mitzva of inheriting the land (*lareshet*).[38] He believed that Israel does, in fact, have halakhic sovereignty over the land, because conquering land through war is a halakhically valid way to acquire land.[39] Additionally, Rabbi Goren believed that it was prohibited to cede land because of *lo tehonem*,[40] but even if the state chooses to give up sovereignty politically, that act of relinquishing would not have any bearing on the land's halakhic status.[41] Rabbi Goren wrote that although individual Arabs may be given rights,

the prohibition of *lo tehonem* prevents Israel from allowing the Arabs as a whole to be given a national homeland on Israel's territory.[42]

Rabbi Avraham Shapira protested the expulsion of Jews from Gush Katif in 2005 for similar reasons as those outlined by Rabbi Goren. He believed that the Israeli government, soldiers, and everyday citizens were all prohibited from giving land to Palestinians under the prohibition of *lo tehonem* and because of the positive commandment of *yishuv eretz yisrael*.[43] Rabbi Shapira believed that included in this prohibition was the requirement of every soldier to refuse (non-violently) to obey an order to remove Jews from their homes[44] (a point that Rabbi Goren makes as well in the *teshuva* above).[45] Shapira adds that there is no question of obeying the law of the land (*dina de'malkhuta dina*) in this case, because the government is acting against the Torah. He ends the teshuva by stating that only the greatest *talmidei hakhamim* should write *piskei halakha* on these issues,[46] which leads one to wonder which *posekim* Shapira considered unqualified to deal with these questions.

Conclusion

Why do Rabbis Uziel and Halevi advocate for fair treatment and rights to minorities, whereas Rabbi A. I. Kook's writings pointed in a different direction? Why was Rabbi Ovadia Yosef willing to allow land to be exchanged for peace, while Rabbis Goren and Shapira vehemently opposed any relinquishing of land or Arab autonomy, and even advocated for Israeli citizens to protest the government's decision to evacuate Jews? I have argued throughout this paper that these attitudes are not random. Sephardic *piskei halakha* have historically been more universalist in orientation and more accepting of non-Jews and non-Jewish customs than Ashkenazic *piskei halakha*. Additionally, Sephardic Jews have historically seen themselves and have been seen by their neighbors as part of the Arab world.

Notes

[1] Joseph Ringel, "The Construction and Deconstruction of the Ashkenazi vs. Sephardic/Mizrahi Dichotomy in Israeli Culture: Rabbi Eliyahou Zini vs. Rabbi Ovadia Yosef," *Israel Studies*, Vol 21 No 2 (Indiana University Press, 2016), 184.

[2] *Ibid.*

[3] *Ibid.*

[4] *Ibid.*, 186.

[5] *Ibid.*, 186.

[6] Marc Angel, “Reflections on Halakah and Piety,” *Conversations, 13 13–25*. 2012.

[7] Zvi Zohar, *Rabbinic Creativity in the Modern Middle East* (Bloomsbury Publishing, 2013), 355.

[8] *Ibid.*, 356.

[9] *Ibid.*, 357.

[10] *Ibid.*, 360.

[11] *Ibid.*, 365.

[12] *Ibid.*, 209.

[13] Ringel, 187.

[14] Zohar, 25.

[15] *Ibid*., 28g.

[16] *Ibid.*

[17] *Ibid*, 216.

[18] Abigail Jacobson, Moshe Naor. *Oriental Neighbors: Middle Eastern Jews and Arabs in Mandatory Palestine* (Brandeis University Press, 2016), 2.

[19] Jacobson, Naor, 2.

[20] *Ibid.*, 31.

[21] *Ibid.*, 18.

[22] *Ibid.*, 33.

[23] *Ibid.*, 18.

[24] *Ibid.*, 20.

[25] *Ibid.*, 41.

[26] *Ibid.*, 42.

[27] "The Emergence of Jewish Fundamentalism in Historical Perspective" (https://www.sas.upenn.edu/penncip/lustick/lustick12.html).

[28] Marc Angel, "Rabbi Kook and Rabbi Uziel: Two *Posekim*, Two Approaches," *Conversations*, 32 77–88, 2018.

[29] Quoted in Angel, from *Piskei Uziel*, Mossad haRav Kook, Jerusalem 5737, no. 32, pp. 178–179.

[30]Quoted in Angel, from *Piskei Uziel*, no. 44.

[31] Benzion Uziel, *Mikhmani Uziel* (Republished in Hebrewbooks.org, originally 1939), 330.

[32] Uziel, 424. For a full discussion of Rabbi Uziel's teachings, see Marc D. Angel, *Loving Truth and Peace: The Grand Religious Worldview of Rabbi Benzion Uziel,"* Jason Aranson, Northvale, 1999.

[33] *Yebamot* 79b, Talmud Bavli.

[34] David Ellenson, After Emancipation: Jewish Religious Responses to Modernity (Hebrew Union College Press, 2004), 411.

[35] Hayyim David Halevi, *Asei Lekha Rav* 7:70–71. For a full discussion of Rabbi Halevi's teachings, see Marc D. Angel (with Rabbi Hayyim Angel), *Rabbi Haim David Halevy: Gentle Scholar and Courageous Thinker*, Urim, Jerusalem, 2006.

[36] Ovadia Yosef, *Mesirat Shetahim Me'Eretz Yisrael B'Makom Pikuah Nefesh* (Republished in *Tehumin*, originally published 1989), 10.

[37] Yosef, 11.

[38] Shlomo Goren, *Ma'Amadam HaHilkhati Shel Yehuda, Shomron, Hevel, V'Aza* (*Pninei Halakha, Ha'Am v'HaAretz*, 2012), 258.

[39] *Ibid.*, 260.

[40] *Ibid.*, 264.

[41] *Ibid.*, 261.

[42]*Ibid.*, 269.

[43] Avraham Shapira, *Teshuva b'Inyan Gerush Yehudim* (Republished in *Pninei Halakha, Ha'Am v'Ha'aretz*, 2012), 299.

[44] Shapira, 300.

[45] Goren, 270, 272.

[46] Shapira, 301.