Three of the best critical scholars of contemporary Palestine have successfully combined legal, geographical, and political analysis into a forensic study of how Israel has weaponized the law against the most vulnerable of all inhabitants of Palestine, the Bedouins. A remarkable multidisciplinary feat, this book provides an essential understanding of settler colonialism.

Emptied Lands investigates the protracted legal, planning, and territorial conflict between the settler Israeli state and indigenous Bedouin citizens over traditional tribal land in southern Israel/Palestine. The authors place this dispute in historical, legal, geographical, and international-comparative perspectives, providing the first legal geographic analysis of the "dead Negev doctrine," used by Israel to dispossess and forcefully displace Bedouin inhabitants in order to Judaize the region. The authors reveal that through manipulative use of Ottoman, British, and Israeli laws, the state has constructed its own version of terra nullius. Yet, the indigenous property and settlement system still functions, creating an ongoing resistance to Israel’s Judaization policies. Emptied Lands critically examines several key land claims, court rulings, and spatial policies, while offering alternative local, regional and international routes for better reality and justice.

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EMPTIED LANDS
To Claudia, my wife, best friend, and life partner, with all my love.
(Sandy Kedar)

To my father, Abo Amir, and son, Yazan, with much love.
(Ahmad Amara)

To the Bedouin Arabs who have suffered from the endless conflict and to their never-ending hope for human safety, rights, and recognition.
(Oren Yiftachel)
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EMPTIED LANDS
LEGAL AND GEOGRAPHIC FOUNDATIONS OF THE NEGEV
INTRODUCTION:

terra nullius in zion?

1.1 rockets in “open space”

Four events that occurred during the violent summer of 2014 provide an appropriate starting point to this book. During what was known as Operation Protective Edge or the War on Gaza, Israel bombed large parts of the Gaza Strip and Hamas launched rockets on Israeli cities and towns. The first event occurred in July 2014, when journalist Elisheva Goldberg visited the unrecognized Bedouin village she named Tel al-Barad, home to approximately 300 people:

When I visited one recent afternoon, a rocket had just landed in the village’s livestock pen. According to government sources, the rocket had fallen in one of the country’s “open areas”—a term Israeli officials frequently use when describing rocket attacks, and one implying that the rockets dropped harmlessly in empty fields. But “open areas” are not always empty. They also encompass many of the Bedouin villages of southern Israel.

The second event occurred on July 18, 2014, the eleventh day of fighting. In the early evening a rocket launched from Gaza fell on another Bedouin unrecognized village, Qasr al-Sir, near the city of Dimona, killing an Israeli Bedouin citizen, Auda al-Wajj, and wounding two of his daughters. The Israeli daily Haaretz reported that

the family . . . lived in an unnamed patch of tin houses some three kilometers from Dimona [or 30 kilometers east of Beersheba]. The rocket exploded in the yard outside their house, and showered it with shrapnel . . . No sirens sounded . . . and
there’s nowhere to hide,” Sheikh Juma’a Akshahar told Haaretz. . . . “The state isn’t
intercepting these rockets and isn’t protecting the citizens in the shacks. We are
transparent.”

Internal security minister Yitzhak Aharonovich arrived at the scene and told
Sheikh Juma’a that Iron Dome cannot cover 100% of the area and does not
protect open areas. Aharonovich was referring to the effective Iron Dome
missile-defense system, which is credited with the small number of Israeli ca-
sualties. The low number is also attributed to people taking shelter within sec-
onds of hearing a siren. However,

none of these [protective] mechanisms operate in “open areas” . . . For the Bed-
ouins of southern Israel—who are Arab, Palestinian, and Israeli all at once—there
is nowhere to run. They find themselves both outside the protection of the Israeli
state and targeted by Hamas. They are a population that has fallen through the
cracks—a population protected by no one.

A petition by the Association for Civil Rights in Israel to the High Court of
Justice on behalf of local Bedouins soon followed, requesting that the state
supply Bedouin villages with defensive facilities similar to those provided to
nearby Jewish settlements. The Court rejected the petition, upholding the gov-
ernment’s position that the lack of shelters and mobile safe rooms (mamad)
is not the result of discrimination against the Bedouins but rather their illegal

Figure 1. Bedouin unrecognized village near Beersheba.
settlement and unauthorized building. According to the Court, “While the state is obliged to its residents’ security in general, it has no specific obligation to provide protection to all residents.” The panel of three justices added that the state policy on this matter “does not contain any flaw that would justify this court’s intervention.”

The perception and treatment of a Bedouin Arab village that has existed for at least six decades and accommodates several hundred residents merely as an “open space” or “open area,” an Israeli version of the terra nullius doctrine, is a telling entry point to this book, in which we analyze the legal geography of the contested Negev (in Arabic, Naqab) region. Most Bedouin localities in this region are officially classified as “unrecognized” and “illegal,” and their populations are considered “trespassers” on state land. The lack of recognition of dozens of villages, though their inhabitants commonly live on their ancestors’ land, derives from state denial of the indigenous land regime that existed in the Negev before the establishment of Israel in 1948 and from Bedouin indigeneity.

Since its establishment, the Jewish State has dedicated major efforts to securing its control over the land. In this framework Israel and its indigenous Bedouin citizens have been entangled in a protracted legal and territorial battle over traditional tribal land in the Negev region. This is the most intense and extensive land dispute currently taking place within Israel proper (i.e., excluding the post-1967 occupied territories). The heart of this land dispute lies in opposing conceptualizations of ownership, possession, and land use. On the one hand, the Bedouins claim land rights based on customary and official laws, possession and cultivation of the land for generations, and tax payments to previous regimes, which, in their view, should provide proof of ownership and be integrated into contemporary land laws. On the other hand, Israel, drawing on highly formalist and, in our eyes, distorted legal interpretations of Ottoman and British statutes, views all Bedouins residing in their villages as illegal trespassers invading state land. The Bedouins are often portrayed by the state as intrinsically nomadic invaders from other regions who survived well into the twentieth century as pastoralists and plunderers. As such, they did not acquire any rights to Negev lands. Their “illegality” is implicated in a number of situations, including criminalization, house demolition, and the treatment of their habitation areas as empty, thus deserving no state protection in times of war.
Several maps illustrate some of this dispute. Map 1 illustrates the location of the Bedouin living area in relation to the entire Israel/Palestine region and marks the siyaj (sayag in Hebrew, literally “fenced”) region, into which all Bedouins were concentrated after the 1948 war. Map 2 zooms in on the Bedouin regions around Beersheba, including our main focus of the ‘Araqib area, which lies some 10 kilometers north of Beersheba. It shows the spatial pattern of Bedouin informal (mostly unrecognized) localities, where more than 100,000 Bedouins resided in 2016, and the seven planned towns into which the state attempted to urbanize the entire indigenous population of the region in the past. Map 2 zooms in on the land claims of the tribes in and around ‘Araqib. Map 3 provides further necessary background by showing the extent of Bedouin land claims and current “unrecognized” development in the Beersheba metropolitan region.

As will become clear in the following chapters, contrary to state claims, Bedouin Arabs have resided in the Negev/Naqab region of southern Israel/Palestine for centuries before the establishment of Israel, subsisting on a mixed economy that combined pastoralism and agriculture.
Map 2. Location and land claims of ‘Araqib and Zehilika. Source: Regional Council of the Unrecognized Villages and Israel Land Authority.

Map 3. Bedouin land claims and the unrecognized Bedouin localities. Source: Regional Council of the Unrecognized Villages, aerial photograph 2015; and Israel Land Authority.
A short caveat on the term *Negev* is in order here. Although *Negev* is the standard geographic term used in the study of southern Israel/Palestine, it has not been constituted as a defined geographic unit or as a separate administrative unit under any of the last three regimes that exercised power over the area (Ottoman, British, and Israeli). *Negev* is a biblical term that refers to a smaller area of land than what is considered the Negev region today. Further, in its earlier English version, the “Negeb” (with a *b*) used to refer mainly to a climatic unit of a desert region and not to a geographic or politically defined territory. During Ottoman rule, part of the region was under the administration of the Gaza Subdistrict, which was in turn part of the Jerusalem Governorate. Later, in 1900, the Ottomans established the Bir al-Sabia’ kaza (Beersheba Subdistrict), which came to include large parts of the region’s territory. The British largely maintained the administrative division but stretched it all the way to the Dead Sea. This meant that the Beersheba Subdistrict came to constitute an area of 12.5 million *dunums* of British Palestine, constituting nearly half the land mass (a *dunum* is about one-fourth of an acre). The region was generally referred to by its Arab inhabitants as the Bir al-Sabia or Bilad Ghazza. However, today Palestinian Arabs refer to it as the Naqab. In this book we continue to refer to the region as the Negev/Naqab, as it is currently known to the locals and to others.

Throughout the past several centuries, the Bedouins, like other indigenous peoples, developed a distinct land regime that regulates their settlement system and self-rule over property, including ownership, division, sale, and conflict resolution. Since the 1970s, despite their partial urbanization and incorporation into the Jewish state, the Bedouins have continued to hold to many aspects of their traditional culture, customary law, and social organizations. Their settlement system, based on traditional patterns of landownership, is still in place in the north, northeastern, and central Negev, where the unrecognized localities exist. In other parts of the Negev, Israel has evicted and destroyed most Bedouin settlements.

### 1.2 *Terra Nullius?*

Israel is a settler state, established through waves of immigration and settlement by Jewish refugees and immigrants (initially from Europe and later mainly from Arab and Muslim countries and the former Soviet Union), who settled into what was predominantly an Arab region during the Ottoman and
British periods. The state was established between 1947 and 1949 through a violent conflict known as the War of Independence for the Jews or the *Nakba* (disaster) for the Palestinians. Close to two-thirds of all Palestinians, including most Bedouins, were driven out of their lands by Jewish forces and became refugees. Most have remained refugees to this day.

Israel’s approach to Bedouin indigenous space developed during its formative years and has increasingly resembled the colonial legal-geographic concept of *terra nullius*. To be sure, the precise definition of *terra nullius* is tricky. It is clear that the doctrine derives from the Roman legal concept of *res nullius* and evolved to represent lands belonging to no one, emptied of sovereignty, ownership, or long-term possession rights. The concept denotes practices used by European powers and settlers to dispossess indigenous populations, exploit their natural resources, and settle their lands. By delegitimizing indigenous histories, legal systems, and property rights and by granting such rights to the incoming settlers, *terra nullius* is one of the most effective and notorious hallmarks of the racist colonial period, as noted by David Hollinsworth, reporting on the case of Australia.

Australia was declared to be *terra nullius* (land legally owned by no one), an unencumbered wilderness able to be claimed by the British Crown. This strategy enabled the British to class their occupation as “peaceful settlement” rather than invasion. . . . No treaties or agreements [were signed] with Indigenous leaders. No compensation or legal recognition of Indigenous property rights was made.11

*Terra nullius* is obviously more than a legal concept. It is a frame of mind typifying settler societies and colonizing regimes involved in ongoing external or internal colonial expansion, often at the expense of indigenous groups and national minorities. The powerful effect of the concept is not only legal but also cultural, historical, and ultimately political: stripping the indigenous people and their culture of their status as rightful owners of land, resources, and political power and legitimating such dispossessions by presenting the land as empty.

Notably, the Bedouin Arabs who remained in Israel after the 1948 war did receive citizenship. In 1966 the military rule initially imposed on them in 1948 by Israel was lifted as the Bedouins formally became full citizens. However, this citizenship status did not prevent their long-term marginalization, discrimination, and exposure to a major government effort to *Judaize* the Negev.
(and the rest of the country). The main thrust was massive land nationalization and widespread Jewish settlement in peripheral regions, including the Negev. Like other settler societies that expanded into regions populated by minority groups, the Judaization effort was greatly assisted by a legal formulation that denied most Arabs landownership, possession, or recognition of their localities. Thus a parallel process to Judaization has been the de-Arabization of the Negev land, through eviction, destruction, renaming, legal denial, and coerced urbanization and spatial concentration, which continue to this day.

1.3 ‘ARAQIB: CHALLENGING LEGAL GEOGRAPHY

The third event to open this book occurred in June 2014, when the Israeli Supreme Court heard an appeal entered by the al-‘Uqbi, a prominent Bedouin tribe whose story and struggle to secure its traditional lands will accompany us throughout this book. At this stage it should be noted that we are involved in the al-‘Uqbi case. One of us (Oren Yiftachel) submitted an expert opinion in support of the al-‘Uqbi family’s claim in the District Court, and the other two of us collected, processed, and analyzed research material in preparation for drafting the expert opinion. We also assisted the al-‘Uqbi family’s lawyers, led by attorney Michael Sfard, in the appeal proceedings. We are also involved in supporting other ‘Araqib tribes in their ongoing land claims.

The al-‘Uqbi Supreme Court appeal challenged a 2012 District Court decision to register their lands as state property. The tribe was the main traditional landowner in the ‘Araqib area, 8–14 kilometers north of Beersheba. The Bedouin plaintiffs, headed by Nuri (Hassan) al-‘Uqbi, assembled data, evidence, expert opinions, and legal, geographic, and historical data that seriously challenged the Dead Negev Doctrine (DND)—the Israeli legal variant of terra nullius—on which we expand in the following section. A long trial in the Beersheba District Court ended in a victory for the state, with a ruling that ‘Araqib lands were mawat (dead lands) and, as such, should be registered as state property.

‘Araqib became a focal point of the decades-long conflict between the indigenous Bedouins and the Israeli settler state, revolving around issues of land, settlement, planning, political power, and legal jurisdiction. In the chapters that follow we examine in detail the case as a key illustration of the indigenous Bedouin struggle to protect their rights and property.
The fourth event to open our book remains in ‘Araqib, where the most famous “unrecognized” Bedouin village, also named ‘Araqib, was demolished by state authorities for the seventy-eighth time in June 2015. The village is located about 10 kilometers north of Beersheba, on land purchased by the al-Turi Bedouin clan from the al-‘Uqbi tribe at the beginning of the twentieth century. The contested site now accommodates a few dozen people. The series of demolitions began in July 2011, when the state decided to evict the community of 300 who resettled in the village during the 1990s after being displaced in the 1950s. ‘Araqib became the symbol of Bedouin resistance, and its ongoing struggle has gained public attention in Israeli and the foreign media.

The Bedouin return to the land has touched a raw nerve with the public, exercising one of the worst fears of the Jewish state: the Palestinian right of return. Hence, despite the Bedouins’ Israeli citizenship and despite the fact that their lands are still under legal dispute, the state has been adamant about preventing a return to the historical tribal site.

Why has the state acted so harshly against the Bedouins in general and against residents of ‘Araqib in particular? Although the sources of the conflict are deep and complex, it has two major foundations. First, the dispute reflects the difficulties experienced by “modern” states and legal orders, especially in colonial settler societies, to fully and equitably include indigenous peoples and their reluctance to do so. Second, the tension between Israel and the Bedouin Arabs should be placed in the context of the ethno-national territorial conflict, which stands at the core of the Zionist-Palestinian struggle. Related to the conflict is the inherent tension between Israel’s claim to be a democracy and its self-definition as a Jewish state. This tension is especially evident in issues that lie at the core of the Zionist project, such as the Judaization of the land.

Thus the conflict between the indigenous Bedouins and the state extends beyond the case of ‘Araqib. It is most conspicuously manifested by the current classification of thirty-five Bedouin villages and localities as unrecognized and eleven other communities as only partly recognized. These localities accommodate more than 100,000 people, constituting almost half the current Negev Bedouin population. The other half resides in seven modern towns—state-planned towns built between the 1960s and the 1990s—into which mostly landless Bedouins were resettled in accordance with state planning policy. Living conditions in the towns are better than those in the unrecognized
villages, with the provision of most (basic) civil services denied in the villages. Yet the towns have remained among the poorest in Israel and are replete with social and economic problems. However, it is the DND—the lack of recognition of Bedouin land rights, traditional villages, and distinct cultural needs—that remains the central axis of the conflict between the Jewish state and its indigenous Bedouin Arab minority.

Until recently, the DND never faced serious academic or judicial challenge. In this book we present such a challenge by examining the DND’s various components and by exposing the manner in which it has caused collective dispossession. Based on thorough research, we reexamine the DND’s historical, geographic, and legal foundations. We demonstrate how those who apply the doctrine use sweeping generalizations and treat all Bedouin land claims uniformly, ignoring or manipulating historical evidence that supports Bedouin landownership and continuously overlooking developments in relevant legal and academic spheres during the last couple of decades.

1.4 THE DEAD NEGEV DOCTRINE IN A NUTSHELL

The Negev/Naqab region, a sparsely populated, semi-arid region covering about the southern half of Israel/Palestine, has seen the most conspicuous application of the _terra nullius_ framing (see Map 1). The region was never officially designated as _terra nullius_, but the concept was introduced implicitly through policies that “emptied” the Negev, through the distortion of the Bedouin past and the subsequent denial of their customary law, property regime, right to return, land control, freedom of movement, and collective culture.

Most relevant to this book is the translation of the _terra nullius_ concept into the Israeli land regime. A key move here was the classification of the entire Negev region (and of unsettled areas in other parts of the country) as “dead land” or _mawat_. The term derives from Muslim tradition and later appears in the 1858 Ottoman Land Code (OLC) and in British Mandate legislation. As described in great detail in what follows (and in Chapter 4), the Israeli legal authorities formulated what we term here the Dead Negev Doctrine (DND): a set of legal assertions, based on putative geographic and historical assumptions, under which virtually all land held, used, inherited, purchased, inhabited, grazed, or cultivated by Negev Bedouins is considered “dead,” with its “rightful” owner being the Jewish state.
The DND was forged during the state’s attempt to complete a land title settlement (registration) process initiated by the British Mandate in 1928. The British aimed to systematically organize the various ownership traditions in Palestine based on cadastral surveys and clear land divisions, but by 1948 they had settled only about 20% of Palestine. Critically, the land registration project never reached the Negev, and therefore almost all its land remained unregistered. The only and significant exception was lands purchased by Jewish organizations and settlers from their previous Bedouin owners. Those lands amount to more than 100,000 dunums and are registered in the Israeli land registration offices based on purchases from the previous Bedouin owners. As elaborated later in this book, the existence of such lands starkly illustrates major problems with the credibility of the DND.

The British authorities declared that Ottoman law would continue to apply in Palestine unless repealed or amended by the British Mandate government. Similarly, Israel has kept previous land legislation in force, unless repealed or amended by the Israeli government. As a result, Ottoman and British legislation continued to apply in Israel and became part of its legal system, as Israel claimed the maintenance of legal continuity. In the 1970s Israel applied the Mandate land registration process to the Negev. However, the state’s legal approach modified many of the land settlement principles used by the British. For decades the state decided not to act on the Bedouin land registration claims and instead sought to settle these claims by offering minimal compensation to the claimants. After failing to resolve the vast majority of these claims, since 2004 the state has undertaken a central strategy of submitting “counterclaims” to all lands claimed by the Bedouins. To date, Israeli courts have fully supported the DND and have consistently ruled, without a single exception, that land traditionally owned, inhabited, cultivated, or grazed by the Bedouins should be classified as mawat and thus belongs to the state. The DND, which is still applied by the Israeli courts, is a most vivid expression of the ongoing effect of the terra nullius concept on contemporary Israel/Palestine in general and on its indigenous groups in particular.

Defining the DND is not a facile endeavor. Like terra nullius, “by definition, [it] covers its tracks.” The DND is constantly wavering between norms and facts, substance and procedure, law, history, and geography; these deceiving characteristics make it difficult to pin it down. The DND’s inherent stealthi-
ness is an important channel by which its hegemonic power is forged. However, for clarity, as they are never so articulated, we distill and highlight eight core DND components:

1. Israel alleges legal continuity with and scrupulous application of Ottoman and British land laws, particularly those regulating *mawat* (dead) land. Israeli jurists erected impassable legal barriers, which effectively transform *mawat* into state land. Because previous regimes did not recognize Bedouin land rights, so the story goes, Israel did not dispossess the Bedouins but merely protected state property.

2. The Bedouins did not have an organized and functioning land system that allocated recognizable property rights.

3. The Ottoman, British, and Israeli regimes never recognized Bedouin legal autonomy or their traditional land rights.

4. The Bedouins did not register their land until the date decreed by the British Mewat Land Ordinance (April 16, 1921), anchoring the status of their land as *mawat*, unless they could prove possession and cultivation before the introduction of the 1858 OLC.

5. At least until 1921 the Bedouins did not cultivate the Negev land in any systematic manner.

6. At least until 1921 the Bedouins were nomads and did not have permanent settlements or localities.

7. The Bedouins are not an indigenous group; hence they are not entitled to indigenous rights recognized in international and national jurisdictions.

8. The legal burden to establish Bedouins’ rights against these stipulations rests solely on the Bedouins. Unless they overcome what in reality are insurmountable procedural and evidentiary hurdles, the land is demarcated as *mawat*, and Bedouin land claimants are branded as trespassers, devoid of any right to their ancestral lands. Such methods foster the slippery quality of the DND.

These major claims constitute two basic, partly overlapping and mutually reinforcing planks: legal (components 1–4, 7, and 8) and historical-geographic (components 5 and 6).

As fully detailed in this book, the consequences of the DND have been pro-
found and severe. For about half the Bedouins, who remained on their ancestors’ lands and refused to urbanize and relocate to the Bedouin towns planned by the state, the application of the DND means widespread criminalization as trespassers on the claimed lands inherited from their forefathers or purchased from other Bedouins. In recent years the state has intensified its effort to order, organize, and Judaize the region, resulting in a sharp rise in house demolitions and new pressures to urbanize.

1.5 APPROACH

We attempt to critically examine, for the first time, the legal history and legal geography of the Negev. We focus on empirical, judicial, and conceptual analyses of the main elements of the DND and on solutions to the conflict proposed by both state and indigenous bodies. We also engage seriously with the issue of Bedouin indigeneity, which is linked to the long history of the Bedouins in the region, and to their changing status under international and comparative law and norms.

Our main findings highlight the enduring presence of the Israeli variant of terra nullius as a policy framework in the Negev, which in itself is a recent flashpoint of the struggle over Israel/Palestine. The detailed analysis illuminates the main pillars and rationales of the DND as well as the inaccuracies, distortions, and contradictions of the policy. We thus aim to systematically unsettle, for the first time, the legal-geographic approach used by Israel toward the Negev and its indigenous population, or, in other words, to critically test the hegemonic Dead Negev Doctrine.

We also seek to provide a firm scholarly foundation for a better transformation of the legal, planning, and development approaches advanced by the Israeli state toward the region and its indigenous people. We show historically and comparatively how the terra nullius doctrine has been rescinded, annulled, and derided by international law and many states. We wish to contribute to overturning the harsh DND, arguing that such a move would benefit the Negev inhabitants, Jews and Arabs alike, and assist in the creation of a more just and sustainable regional society.

In the chapters that follow, we analyze and critique the DND by means of a systematic and careful study of the two planks on which it was constructed: geography and law. This investigation is followed by engagement
with the Bedouin indigenous status and articulation of an alternative politics of recognition. To accomplish these tasks, we use a variety of methods and approaches.

1. We carry out a novel and thorough analysis of the historical geography of the Negev for the last 200 years (which has been conspicuously under-researched) based on newly revealed Ottoman, British, and Israeli archival material; and construct a geography “from below” based on Bedouin documents, memoirs, and oral history. Simultaneously, we offer a fresh analysis of the late Ottoman and British Mandate land regimes through the particular perspective of the land dispute with the Bedouins.

2. We conduct a thorough legal analysis of Ottoman, British, and Israeli legislation, adjudication, and law enforcement pertaining to the Negev, focusing on Bedouin land, settlement, and cultural autonomy. This original analysis spans three ruling regimes and is based on new surveys of legal and archival sources in Jerusalem, Istanbul, Ankara, London, Amman, and Washington, DC, as well as private Bedouin archives.

3. We perform a detailed survey and analysis of new developments in international law pertaining to Bedouin rights as an indigenous group. We thereby contribute to a better understanding of Bedouin land status and simultaneously add new insights into the growing literature on indigenous peoples in general.

4. We carry out a comparative review of recent developments concerning indigenous land rights in common law and other jurisdictions.

5. We apply conceptual frameworks, derived from critical legal studies, legal geography, urban theories, and political geography, to the case of the Negev Bedouins, utilizing such concepts as settler colonial society, indigeneity, “gray space,” and internal colonialism, which have been rarely used to analyze the case of the Bedouin Arabs.

6. We translate these critical analyses into proposals for transforming the denial embedded in the DND into recognition. In other words, philosophically, we seek to transform terra nullius into transitional and distributive justice. Thus in the latter parts of the book we outline possible avenues for future corrective legal and spatial practices, drawing on indigenous mobilization and the concepts of human rights and equality.
1.6 BOOK STRUCTURE AND MAIN FINDINGS

This book is divided into five parts. In the present part (Part I), we introduce the book’s topics by outlining the conflict’s legal and geographic origins. In Chapter 1 we review the existing literature and approaches to the study of Negev Bedouins and present several critical theoretical approaches that frame and inspire our book, including legal geography, (post)colonial studies, urban studies and planning, and indigenous identity and mobilization. Finally, we offer an overview of the DND.

In Part II we examine the legal frameworks governing Bedouin land possession since the late Ottoman era through the British Mandate period and up to the current Israeli period. We closely examine the Israeli construction of the DND and its attempt to reinterpret Ottoman and British legislation. Based on legal-historical research, we demonstrate that the state’s claims of legal continuity from the Ottoman and Mandatory regimes that preceded Israel are unsupported. Likewise, we demonstrate that Israel’s assertion that the Bedouins lacked land rights cannot be sustained.

In Part III we empirically and then critically examine the historical-geographic components of the DND. We demonstrate that, contrary to prevalent official descriptions, beginning in the Ottoman period, the Bedouins gradually transformed from seminomadic agropastoralists into settled agriculturalists who enjoyed extensive legal autonomy. During this period, the indigenous community ruled itself in most aspects of life, most notably by coding and institutionalizing a land and settlement system, which was accepted by both Ottoman and British rulers as well as by the new Zionist settlers and establishment. In this part we also show that the large tracts of land in the northern Negev were not mawat. They had been owned, possessed, inhabited, and cultivated by Bedouin Arabs for generations—Bedouin Arabs who accumulated significant property rights under both Ottoman and British rule.

In Part IV we explore the changing legal geography of indigeneity and its effects on Negev Bedouins. After arguing that the Bedouins are an indigenous people, we review international and comparative law pertaining to land conflicts between indigenous groups and settler and nation-states. We show that in recent decades the organization and mobilization of indigenous peoples around the world have resulted in a marked change, whereby states and international bodies increasingly recognize indigenous rights. Our analysis shows that the
2007 UN Declaration on the Rights of Indigenous Peoples has increasingly (though not fully) assumed the status of binding customary international law. The changing international legal environment places added pressure on Israel to reform its DND in particular and policies toward the Bedouins in general.

In Part V we examine the evolution of state proposals and strategies in resolving the dispute. We first review and analyze several generations of Israeli development plans, such as coerced urbanization, modernization, law enforcement, and nationalization of land. Most important, we outline the main recommendations and proposed solutions for the Bedouin land issue advanced by the recent Goldberg and Prawer governmental commissions appointed for this purpose and the heated controversy surrounding them. We also systematically analyze the state’s land use and development plans for the region, noting that despite the plans’ evolution over time, the Bedouins, who form about a third of the population of the Beersheba metropolis, are presently absent from most plans, thus causing profound hardship and distress. We then present the indigenous voices and visions for the region’s future. We outline an alternative plan devised by the representative organization of the Negev Bedouins, the Regional Council of the Unrecognized Villages, along with other NGOs and experts, as a promising strategy to resolve a major part of the conflict.

In the Conclusion we revisit the al-‘Uqbi case and deal with the possible transformation of the DND into transitional justice. We further demonstrate that Israeli law does have sufficient tools to overwrite or bypass the debilitating DND. A new enlightened and savvy political approach would enable the Bedouins to attain property rights to their ancestors’ lands and introduce criteria of distributive justice for the future management of land and development needs.

Hence we conclude that it is possible and necessary to replace the DND with a decolonizing approach based on principles of recognition, equality, and transitional justice. The process of reconciliation between the Bedouin Arabs and the state will bring about a more egalitarian and fair allocation of space and will benefit everyone living in the Negev—Bedouins, Jews, and others—as well as the entire Jewish-Palestinian conflict.