Between rights and denials: Bedouin indigeneity in the Negev/Naqab

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Abstract
The paper examines the nature of indigenous identity among Bedouin Arabs in Negev/Naqab, Israel, against a background of conceptual, legal and political controversy. It traces theoretically and comparatively the rise of indigeneity as a relational concept, deriving from colonial and postcolonial settings. The concept is shown to be part of the globalization of human rights struggle, with a potential of the indigeneity discourse to empower colonized and exploited minorities, as well as provide a platform for transitional justice. The heart of the paper provides a rebuttal of several arguments made by a group of scholars associated with the Israeli state, named here “the deniers”, who have worked to reject Bedouin (and general Palestinian) claims for indigenous status, thereby denying their entitlement to a range of human and communal rights. The paper offers a systematic examination of historical and geographic evidence and reveals that “the deniers” have raised several relevant questions and dilemmas. However, these do not undermine the typical indigenous characteristics of the Naqab Bedouin Arabs. Research shows clearly that Bedouins belong within the group of indigenous societies according to accepted international definitions and norms. This understanding obliges the Israeli state to protect Bedouin Arabs from further removals, dispossession and marginalization, as well as correct, where possible, the profound damage caused by their past dispossession, eviction and marginalization.

Keywords
Bedouin, indigenous, Israel, Negev, recognition

Who and what exactly is an indigenous group? This question obviously touches upon contested theoretical, historical, legal, and political issues. In Israel/Palestine, the question has recently surfaced as a fiercely debated scholarly, legal and political bone of contention.
Being recognized as “indigenous” legitimizes attachment to a land and localities, and to a set of cultural, economic and political rights, of groups dispossessed and exploited for generations by states that have overtaken their lands and political power. The State of Israel has recently launched a multidimensional effort to deny the claim by Bedouin Arabs in the Southern arid region, known as Negev in Hebrew or Naqab in Arabic, to indigeneity status. This effort includes refuting responses and reports submitted to UN bodies in official submission, voicing adamant opposition to the claim in numerous meetings with Bedouin community leaders, and producing scholarly publications refuting Bedouin indigeneity by a group of state-associated scholars termed here as “the deniers”.  

This article discusses the validity of the claims made by the state and the Negev Bedouins. It first discusses the definitions of indigeneity, sketches the development of indigenous politics in recent decades, and examines the role played by power in shaping scientific “truth” and its effect on public policy design. Next, the article discusses the characteristics of Bedouin Arab society in Israel/Palestine and its compatibility with the widely accepted international definition and norms of indigeneity. 

In a nutshell, the paper demonstrates that the recent arguments denying Bedouin indigeneity do raise relevant concerns that have rarely been discussed in the literature. As such, the “deniers” make an important contribution to the public discussion. However, the article mainly shows that these arguments make little impact on the status of Bedouins as an indigenous group, chiefly because of the clear overlaps between their historical, cultural and geographic characteristics and the contemporary perception of indigeneity. These characteristics have been recognized in international laws and norms, which require that the modern state protect indigenous identity, land, and political rights. The following analysis thus argues that in the case of the Bedouins in the Negev, rights should override denials. The conclusion of our detailed analysis leads to denial of state denial, prevalent in most Israeli reactions to Bedouin indigenous claims.  

The article’s focuses on conceptual, political, and legal insights. It relies on the rich empirical knowledge already accumulated in previous studies on the Bedouins, analyzed here through the “lenses” of the indigenous discourse. Notably, our approach to indigeneity is relational and political: we do not claim the existence of an essentialized and permanent indigenous identity. Rather, we argue that under the present local and international circumstances, the Bedouins are embracing indigeneity in their attempts to draw on international human rights discourse for recognition and localities considered by the state as “illegal”, protect their narrative, lands and collective rights. Given this context, our analysis of Bedouin indigeneity should not be read as a simplistic “yes” or “no”, but rather as assessment of their compatibility with contemporary international norms and power relations. Indigeneity, we suggest, is both a reflection of collective history and sentiment, as well as a strategic tool for resisting persisting marginalization and dispossession.  

It is therefore important to situate the discussion in its historical and geographical context. The Bedouin Arabs in southern Israel/Palestine are part of a cross-border tribal society which has lived for centuries in the areas now called Jordan, Israel and Sinai (Egypt). After 1922, when the borders of Mandatory Palestine were demarcated, the Bedouins became part of the Palestinian Arab majority, and after 1948, an ethnic group within Israel, and part of the Palestinian Arab minority. The struggle for recognition of their indigeneity status should be seen as part of a broader effort by all Palestinians for recognition of indigenous and national rights in their homeland, and has its unique emphases related to the history, geography and culture of the group in the Negev, as well as its civil status in Israel (see Jamal, 2011; Jabareen, 2002, 2012).
Needless to say, the debate around Bedouin indigeneity is not purely academic, and does not occur in a vacuum. It is enmeshed in the controversy over the “Dead Negev Doctrine” articulated by the state’s legal, planning and historiographical arms, to deny Bedouin past and contemporary rights, and justify the dispossession of a most of its lands (see Yiftachel et al., 2012). This denial has had painful material manifestations on the ground that impacted on the entire Bedouin society. It is particularly painful for dozens of the so-called “unrecognized” localities, home to about 100,000 citizens, which are mostly located on their ancestral lands. Non-recognition means the denial of basic services such as electricity, water, clinics, sanitation, roads, public transportation and education. At the same time, the unrecognized localities suffer recurring waves of state violence, amounting to about 800–1000 demolition in each of the last four years. To put this figure in proportion: this figure is three times higher than the number of demolitions in the entire West Bank, which accommodates close to three million people.

Another painful manifestation of denying Bedouin indigeneity is the state’s official maps and documents, which refuse to acknowledge the continued presence of most Bedouins in their historical living spaces. Figure 1, for example, presents the Beersheba Metropolitan Plan legally approved in the summer of 2012. Some 35 Bedouin communities, their centers marked with red circles, are completely ignored by the latest plan for the areas. This plan settles for defining some lands as “search areas” for possible “establishment” or “construction” (note, not “recognition”) of future Bedouin localities, to be built anew, according to state’s suburban guidelines. The left side of Figure 1 shows the same area based on a 2012 aerial photograph, clearly showing the extensive areas occupied by Bedouins “on the ground,” with each locality being marked with a different color. While most of these communities have existed for generations on their ancestral lands, the state denies the legitimacy of their very existence.

Erasing localities off the map is not a new practice, and follows long years of total denial of Bedouin rights as an indigenous group with a long history in the Negev. As described

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**Figure 1.** Bedouin localities—plan and reality. Left: Spatial distribution of Bedouin localities based on aerial photography, 2012. Right: Beersheba Metropolitan Plan (approved 2012) with added red circles indicating centers of unrecognized Bedouin localities.
below, Bedouin resistance to this policy is growing, and has reached significant achievements in recent years, by obtaining the recognition of 10 previously “unrecognized villages”, now included in the Beersheba metropolitan areas, as well as a certain improvement of the terms offered to Bedouins for settling their land claims. Nevertheless, recent government plans such as the Prawer-Begin Plan, which caused waves of protest and struggle, and was “temporarily shelved” by previous minister Yair Shamir, and Beersheba’s Metropolitan Plan which is still being implemented, threaten to uproot tens of thousands of Bedouins from their localities, while attempting to develop recognized localities. As detailed in what follows, the indigenous discourse is a significant bone of contention in Bedouin struggle against these plans, since one of the fundamental rights of indigenous group is protection against arbitrary displacement from their historical lands.

Indigeneity and its challenges in the Negev

Over the past few decades, indigeneity has emerged as a key concept in the struggles of communities and peoples subjected to the rule of an external force, after residing for generations under their own cultural, legal and territorial self-rule. The rise of the indigenous movement is a part of the globalization process, which brings together marginalized groups subject to attempts to oppress or even exterminate them, usually by European settler societies or modern, postcolonial states (see: Escobar, 2001; Friedman, 1999; Kingsbury, 1998, 2001; Niezen, 2003). When governments deny indigeneity, resistance often develops, expressed in a wide variety of practices protecting pre-conquest land, identity and ways of life, particularly among subaltern groups (Amara et al., 2013; Amin, 2002).

The Bedouin Arabs in the Negev are part of the Arab Palestinian people. In recent years, they have developed an indigenous discourse in response to the state’s constant uprooting and dispossession attempts. For that purpose, Bedouin organizations have jointed the global network of indigenous communities, led by the United Nation Permanent Forum on Indigenous Issues (UNPFII). The State of Israel, on the other hand, has consistently refused to recognize their indigenous status, as indicated in a 2011 report by the UN’s Special Rapporteur:

... the Special Rapporteur acknowledges the position of the State of Israel that it does not accept the classification of its Bedouin citizens as an indigenous people given that [as argued by the state] Bedouin tribes arrived to the Negev area late in the Ottoman era, mainly from Saudi Arabia and Egypt, to an already existing legal regime. (Anaya, 2011: 30).

Importantly, our approach to the concept of indigeneity is relational, historical and political, and has issue with the essentialist approach to the subject. In other words, we do not claim that it is a single system which formally and permanently defines groups with an indigenous identity around the world, and that the Bedouin group has characteristics that permanently and eternally assign it to the indigenous category. Inspired by critical identity theories and philosophical arguments by thinkers such as Antonio Gramsci, Gayatri Spivak, Iris Marion Young, Chantal Mouffe and Stuart Hall, our approach assumes that collective identities are always formed in the context of a political struggle and are dynamic in the face of changing circumstances. This is also the situation among Bedouins in the Negev: a series of political circumstances, mainly ongoing displacement by the state and their marginalization in the national Palestinian struggle, have led Bedouin organizations to adopt the indigenous category, which enables local and international struggle with growing chance of success.
The Bedouin struggle for recognition is also based on international definitions of indigeneity which have also developed in the course of a global political struggle of peoples subordinated to modern states. Thus, the international struggle is also informed by definitions which have not emerged out of an obvious objective reality, and are not officially legal. Rather, they have developed out of identifying the characteristics of dispossessed groups and the attempt to stop their deprivation by international recognition and protecting their rights. Spivak (1988) calls this move “strategic essentialism”—mobilizing supposedly profound and eternal categories for a temporary political cause. In a similar vein, Antonio Gramsci, followed by Chantal Mouffe, explains the emergence of “antagonistic” identities which challenge the nation-state’s hegemony as the result of a persisting exclusion from national space, culture and economy. This political dynamism explains the adoption of the indigenous category by Bedouins only in recent years. This also enables us to imagine later stages in their struggle when indigeneity may become superfluous or taken-for-granted, and perhaps be replaced by other categories of struggle and resistance. The political power of the concept lies in its ability to empower the claims of dispossessed groups to their rights and resource. This also explains the state’s adamant opposition to the recognition of Bedouin indigeneity.

As already mentioned, an acrimonious scholarly debate has been raging around Bedouin indigeneity. As indicated by recent review articles (see Frantzman et al., 2012; Karplus and Meir, 2012, 2013), most researchers—above all Bedouin Arabs themselves—support defining the Bedouins as an indigenous groups (see Amara and Yiftachel, 2014; Amara et al., 2012; Bennet and Dargiel, 2011; Berman, 2006; Berman-Kishony, 2008; Coates, 2004; Matari, 2011; Nasasra, 2011, 2012; Nasasra et al., 2014; Rangwala, 2004; Roded and Tzfadia, 2012; Yiftachel et al., 2012).

Other researchers—hereafter termed “the deniers”—argue that the Bedouins do not meet the definition of indigeneity. Professor Ruth Kark, for example, argued in her capacity as an expert witness for the state in the Al-Uqbi trial, where Bedouins claim ownership of their ancestral lands in Araqib:

In my understanding, the indigeneity concept is inapplicable to the context of the Bedouin tribes of the Negev currently living in Israel/Palestine, for the reason that their context lack the main characteristics which have brought other states to recognize groups as indigenous. (Kark, 2010: 73)

Subsequently, Ruth Kark and her colleagues (Yahel et al., 2012) published a strongly worded article, titled “Are the Bedouins an indigenous group? The fabrication of Palestinian history.” It decisively concludes that

The Bedouins in the Negev may not be considered an indigenous people in the conventional sense of the term. If anything, the Bedouins have more in common with the European settlers who have immigrated to other states and interacted with existing populations, causing negative consequences for the latter. Moreover, more than having suffered from the attitude of strangers towards their indigenous lifestyle, the Bedouins have migrated mainly within the Ottoman Empire, subject to the same familiar administrative and legal system, whose tenets have largely remained in place under the British Mandate and Israeli government as well. (14)

In their article, Yahel et al. (2012) raise the following key arguments:

- The Bedouins have invaded and immigrated to the Negev only in the last 200 years, hailing from the Arabian Peninsula. Therefore, they do not enjoy the status of first occupants and are closer to the status of an invading people; the first occupants and holders of indigenous rights to the Negev are the Jews.
The Bedouins have no history of sovereignty or significant self-rule.

The Bedouins claim private land holdings, while indigenous peoples usually demand collective ownership.

Bedouin culture has transformed to become urban; not much remains of the Bedouin’s authentic indigenous desert identity.

Israel has never applied a terra nullius doctrine to the Bedouin areas but continued to apply the Ottoman and British laws.

Bedouins in neighboring states do not demand indigenous status, which puts the struggle in Israel into serious question.

Bedouins claim private (family) land ownership, while typically indigenous land claims are collective and non-commodified property.

This denial, purporting to rely on historical data and research findings, is backed by an intensive political repudiation of the Bedouin indigeneity by Israeli policymakers. Ehud Prawer, head of Bedouin Policy Planning area at the Prime Minister’s Office since 2008, argued as follows:

The attempt to claim that the Bedouins are an indigenous group in the Negev is fraught with difficulties. Not only is it historically inaccurate, but it antagonizes unnecessarily, presenting the Jews in the area as invaders, which runs contrary to the fact that we have returned to our homeland. Again, I say, adopting the indigeneity approach will damage any Bedouin attempt to attain civil equality in Israel.  

Several months later, Minister Benny Begin, co-author of the Prawer-Begin Plan, declared in a public conference:

I have heard some talk as though the Bedouins are an “indigenous people” in the Negev. I want to remind the audience that the People of Israel and the State of Israel are sovereign in the Negev. True, the Bedouins have an attachment to the land and we take this into due consideration, but I propose that everyone remember that the People of Israel are living in their historical homeland in the Negev. There is no contestation of this fact nor will there ever be.

While the opposition of the Jewish state to the Bedouin indigeneity status is logical, if not justified, the arguments advanced by “the deniers” are less understandable. The “deniers” are, after all, researchers and scholars, whose claims should be analyzed carefully according to scholarly standards. The lion share of this paper is devoted to this task.

**Indigenous identity: a global movement**

During the last several decades, the issue of indigeneity has taken center stage in several regional and global forums. The emergence of the UNPFII and related philosophical approaches to justice and human rights, as well as ethnical approaches to identity and culture, have raised public awareness of the concept of indigeneity and the current situation of indigenous peoples (Hirtz, 2003). Since the 1970s, indigeneity has turned from an anthropological, geographical and historical adjective of certain groups into a normative concept and a source of political empowerment for the colonized. Typically, these groups were oppressed, mainly by imperial and colonial powers which occupied their homelands, displaced, dispossessed and at times committed genocide against them, but also within postcolonial and modern nation-states which maintained the oppression of indigenous groups and marginalized their access to representation, lands and resources. Indigeneity is
recognized by international bodies and laws, even if such recognition is only partly applied in member states. International networks, academic scholars, and human rights organizations work continuously to translate indigeneity to the language and policy and rights. Civil society and academic research, as well as human rights activism, have thus become a source of authority and legitimacy for framing the struggle of oppressed native groups within the indigenous legal and moral discourse (Kingsbury, 1998, 2001).

In the first few decades of the “new empowering indigenous discourse,” the international definition of indigeneity was reshaped and found its way to several constituent UN documents. Such definition, for example, is comprehensive and widely used in documents of the International Labor Organization (ILO) which is affiliated with the UN and the World Bank. Far from being a formal–legal definition, it reflects the political struggle and the institutional backing given to certain peoples and groups whose territories had been taken over by colonial empires and modern nation-states, and includes several major characteristics broadly agreed upon in the literature:

- History of self-rule prior to being subjugated by the current regime
- Continuous self-determination as an indigenous group
- Desire to maintain a unique identity
- Continuous and consecutive relation with a given territory
- History of discrimination and dispossession by the modern state and
- International recognition.

The research literature offers more than one definition of indigenous peoples, and also features a lively debate over the validity of some of the characteristics associated with indigeneity (Bowen, 2000; Tuen, 2007: 24). For example, the leading expert Kingsbury (1998, 2001), who studies the status of indigenous groups in international law, has criticized the relative rigidity of the UN definition, and warned against conceptual inertia that could exclude certain groups that have “lost” some of their indigenous characteristics due to a history of oppression. Therefore, he supports a narrower common denominator, which includes the major characteristics of indigeneity as they have emerged in different areas and eras under the oppression of modern regimes.

Kingsbury’s critique is echoed in studies by several leading researchers, including Waldron (2003) in law and philosophy and Niezen (2003) in legal anthropology. Naturally, it is difficult to apply the same definition to groups which differ in important cultural, historical and geographical aspects, and it is also difficult to determine which colonial penetration has generated indigenous struggle, and which groups had preceded others in a given territory, or to which extent they have lived under self-rule. Moreover, indigenous tribes have often fought one another, conquering and displacing each other throughout history. This realization has led to a more nuanced scholarly approach to indigeneity which examines it from various directions and emphasizes its complexity while attempting to offer solutions without compromising the struggle against discrimination and dispossession (e.g. Alfred and Corntassel, 2005; Bennet, 2004; Bowen, 2000; Fowler, 2011; Nair, 2006; Newman, 2007; Tsosie, 2005).

Waldron demonstrates the dynamism of key concepts such as first occupancy and prior occupancy, and shows how historical dynamics have transformed the nature of the indigenous status along the generations, with colonial peoples who used to subject others to their rule becoming subjugated themselves. In the case of India, for example, it is unclear whether the “history of self-rule prior to being subjugated to the current regime” refers to the 8th century BC or to the British occupation in the 18th century. The situation of the
Mauri people who immigrated to New Zealand some 600 years ago and occupied it from its Polynesian inhabitants also raises doubts. An even more questionable case is the Scandinavian one, where the Sami people arrived very shortly before their occupiers, and have since lived together on the same territory. Yet, all these are considered today as indigenous groups.

The complex view of indigeneity challenges the simplistic and informed view offered by “the deniers” (Frantzman et al., 2012; Kark, 2010; Yahel et al., 2012), who argue that indigenous peoples must be present in their territory “since time immemorial”, like the Aborigines in Australia or the First Nations in North America. The emphasis of most researchers who have studied indigeneity is therefore on previously autonomous cultural groups, strongly connected to their lands, which was *subjugated to a modern state*. The precise timing of the group’s arrival to a given territory is not particularly relevant to the dynamic relations of control between the group and the state, and hence not included in any contemporary credible definition of indigeneity. Hence, the date of Bedouin arrival southern Palestine/Land of Israel (which is not fully known) is irrelevant to the determination of Bedouin indigeneity. The key issue is the obvious and irrefutable existence of an autonomous Bedouin society in the Negev for hundreds of years prior to the arrival of Israeli rule.

Our dynamic approach argues that the nature of indigenous identity is determined in a mutual and constantly evolving interaction between “top-down” and “bottom-up” forces. The occupying force, the modern state or colonial power, has created a “local”, different and inferior identity and segregated the locals from the general political identity through legal, military and cultural means. At the same time, the local group promoted its own indigeneity from the “bottom-up” by relying on tradition, as part of its struggle to attain rights and maintain its identity. Naturally, this situation spawns a process of changing identities, both of the dominant and dominated group, and the two undergo constant identity transformation. This relational and interactive view, which takes all identity-generating forces into account, is held by most leading theorists on indigeneity (see Clifford, 2001; Forte, 1998; Golden, 2001; Nair, 2006).

Crucially, this dynamism is sorely lacking in the deniers’ account, which reject the analogy between their demand for “authenticity” of the Bedouin society and the lack of a similar demand in the case of Jewish society, which they claim is the country’s true indigenous group, although its identity has transformed radically since Biblical times. This analogy undermines the validity of their argument, as the identity of each group clearly changes with time. Thus, the key identity component in the concept of indigeneity is the group’s desire to maintain its uniqueness from the majority community, while accepting the inevitable dynamism of every group’s identity.

**Indigeneity and the modern state**

The concept of indigeneity is, by its very nature, challenging to the ruling state—it demands affirmative recognition, compensation for generations of oppression, and the return of lands and other resources. The literature shows that such indigenous demands are backed by the recently deployed global “umbrella” which reinforces the struggle to change public policies and legal systems and recognize their claims to autonomy and self-determination (Alfred, 1999, in Maaka and Fleras, 2000: 9; Niezen, 2012; Stea and Wisner, 1984). Clearly, the reemergence of indigenous identities after generations of dislocation, humiliation and neglect has begun to challenge modern states, which have never included indigenous groups as legitimate distinct identities. The typical approaches in the 20th century were to
first eliminate or evict; and in in later decades—when international law and norms have increasingly protected the indigenous – dispossess and marginalize those groups. This progression has occurred, for example, in South Africa, Chile, Israel/Palestine, India, or Brazil. Alternatively several states attempted to coercively absorb indigenous groups into the dominant identity—as in Australia and Canada. The most typical policy towards indigenous groups can be conceptualized as “internal colonialism”—a term describing relationships similar to external colonialism, characterized by appropriation, exploitation and segregation, albeit applied to groups within the borders of the sovereign state (see Hechter, 1975; Yiftachel, 2010; Zureik, 1979).

Following significant geopolitical and legal changes, in the 21st century, states approach their indigenous peoples in diverse ways, although all exhibit a significant gap between global norms and indigenous poor conditions “on the ground”. Some examples can be illuminated: in Botswana, for example, all groups are officially considered indigenous peoples, and thus the state discriminates against the Bushmen who have controlled the territory prior to its establishment. In its Law of Return, Israel has granted a pseudo-indigenous status to immigrant Jews who have never lived in its territory, while the native Palestinian Arabs are not recognized as such. Australia and the USA use a very narrow definition of indigeneity in order to minimize the number of those entitled to this status, a situation exacerbated by the fact that members of the relevant groups became citizens only in the mid-20th century (Wolfe, 2007: 27).

On the more benevolent side, western scholars have developed a philosophical and legal system known as “transitional justice”, which translates erstwhile indigenous rights (or rights of group’s subjected to previous regimes) into rights included in the legal systems of currently ruling states. This approach helps generating norms for indigenous groups in order to protect their culture and land through the process of regime change. Among other things, it acts to compensate groups and individuals harmed by arbitrary moves carried out by the new authorities and returns their land and rights to the extent possible. Nevertheless, this redress is subject to the condition of preventing new injustices toward members of majority populations who have settled indigenous areas in good faith (Teitel, 1999).

The transitional justice concept, which we recommend as a policy framework for the Bedouins in present-day Israel/Palestine, takes the recognition approach advanced by key theoreticians (e.g. Kymlicka, 1995; Sandercock, 2000; Young, 1990) and political philosopher Fraser (2000, 2003). Informed by the multicultural paradigm (Yona, 2006), this approach requires attending to minorities’ ethnic-spatial needs on the basis of historical and current recognition, given the array of their cultural–social characteristics and as part of dealing with past injustices. This involves a fundamental change in the form of affirmative recognition, which these scholars consider the appropriate way of redressing the historical injustices towards indigenous groups, combined with just redistributive considerations in the present. In other words, the recommended policy framework includes a set of practices designed to redress past injustices (albeit sometimes partially) by reformulating them as a set of forward-looking rules that can be accepted by the entire population.

Roded and Tzfadia (2012) further developed the recognition paradigm, and argued that in every immigrant-settler society, a dominant pattern of recognition emerges towards indigenous minority groups, which defines the state’s regime. They found that in Israel/Palestine, this pattern ranges between “hostile” and “indifferent” types of recognition; in other words, between harming and neglecting the minority. Without clear categorization, the group cannot set legitimate objectives for itself; and hostile recognition marks the minority group as “intruding on” or “threatening” the majority group. This type of (mis)recognition leads to oppression, antagonism and ethnic polarization, and is typical of ethnocratic
regimes where the government apparatus is appropriated by a dominant group to promote its own interest and identity, while excluding and neglecting other groups. In such regimes, common among settler societies, key democratic features, such as citizenship, elections or legislation – originally designed to ensure civil equality – fail to transform the deeply engrained patterns of ethnic-spatial control by the dominant group and ongoing oppression of its indigenous communities (Yiftachel and Ghanem, 2004).

Knowledge and the indigenous condition

This conflictual situation clearly suggests the need to discuss knowledge and power relations. Much has been said about the knowledge on indigenous peoples (re)produced in western states and inspired mainly by the colonial period, which portrayed these people as backward remains of dark, pre-modern periods (Grant, 2000; Reynolds, 1987). Democratization processes and indigeneity’s emergence on the international agenda in particular have challenged our existing knowledge, creating a change in the framing of indigenous groups as “backward” or “primitive”. The collective organization of indigenous peoples empowers them as an internationally recognized entity facing the state that has sought to overwhelm them, as they rewrite history from their own point of view using scientific tools and supported by interdisciplinary and international cooperation. Theirs is a history of ethnic cleansing, exploitation, dispossession and discrimination repressed in previous, state-sponsored official and scientific narratives. This activity has spread to diverse research, artistic and political spheres, including legal actions designed to achieve recognition of material and spiritual rights (Nadasdy, 2003).

Many indigenous peoples also demand to integrate the customary law that has shaped their lives for centuries in the modern legal system. This demand includes the acceptance of oral testimonies as legal evidence valid in societies which have had little use for written documents; it also includes recognition of traditional rituals, holy sites and land ownership and tenure arrangements that incommensurate with the western concept of private land. Indigenous knowledge is increasingly revealed to be valuable not only for the indigenous peoples but also to dominant groups, in areas such as the environment, health and art, where it permeates into the dominant discourse and transforms it. Supported by empirical studies, this knowledge informs epistemological, philosophical, and theoretical alternatives. At the same time, it challenges legal precedents and policy patterns that have become widely entrenched in the west (Nadasdy, 2003; Selvadurai et al., 2011). The struggle over knowledge production subverts the majority group’s hegemony as the monopolist of historical and scientific knowledge (Sandercock, 2003) and undermines, albeit not yet transforms, the power relations between the state and the indigenous group.

One of the foundational moments in the global politicization of indigeneity occurred in September 2007, when a prolonged process of mobilizing international bodies culminated in the United Nations Declaration on the Rights of Indigenous Peoples. This declaration acknowledges the sufferings of these peoples due to ongoing discrimination as well as laid down their legal rights. It was ratified by the UN General Assembly: 143 voted for, 4 voted against, and 11 abstained. The four objectors—Australia, Canada, USA and Russia, have since endorsed the Declaration. Israel did not vote. Several clauses of the document are particularly relevant to the Bedouin case:12

Article 10: Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.
Article 26: 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to territories and resources [owned or held by indigenous peoples]. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

To conclude, there is a clear common denominator in the current perception and definition of indigenous groups, although there is no complete agreement on all details. In recent decades, indigeneity has become a new locus of identification in the politics of identities and rights, and its consensual definition is broad enough to contain a range of groups victimized, excluded and discriminated by modern states (whether colonial or postcolonial) which have taken over the territories where these groups had lived autonomously for generations. The struggle of these groups has both a local and global character, generating a dynamic of change in most states with indigenous peoples. Most of these states have ratified the international conventions governing these peoples, despite their simultaneous commitment to national uniformity within their borders (Niezen, 2003). This complex process has profound political and moral implications, and may be expected to continue raising the importance of the indigenous category in decades to come (Castree, 2004).

The common denominator of the definition of indigeneity clearly applies to the Bedouins of the Negev, who have lived autonomously in this desert area subject to a clearly defined legal and tribal structures for centuries, including the Ottoman and British periods, until its subjection to the Israeli state, and its exposure to policies of evictions, denial and marginalization, alongside partial civil incorporation, to which we now turn.

The Bedouin Arabs in the Negev: an indigenous group

The Bedouins in the Negev are clearly a tribal society stretching across arid areas in the Middle East. As emphasized by Special Rapporteur Anaya (1996), the terms “indigenous” and “tribal” may be understood according to Article 1, Paragraph 1, of ILO Convention 169 on Indigenous and Tribal Peoples which declares it applies to:

(a) Tribal people in independent states whose social, cultural, and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations.

Moreover, according to Article 6 of a UN paper on “The concept of indigenous peoples,”

The two terms “indigenous peoples” and “tribal peoples” are used by the ILO because there are tribal peoples who are not “indigenous” in the literal sense in the states in which they live, but who nevertheless live in a similar situation – an example would be Afro-descended tribal peoples in Central America; or tribal peoples in Africa such as the San or Maasai who may not have lived in the region they inhabit longer than other population groups. Nevertheless, many of these peoples refer to themselves as “indigenous” in order to fall under discussions taking place at the United Nations. For practical purposes the terms “indigenous” and “tribal” are used as synonyms in the UN system when the peoples concerned identify themselves under the indigenous agenda.

As mentioned above, one of the key arguments of “the deniers” is that the Bedouins in other Middle-Eastern states have hitherto avoided any claims to indigenous rights. Indeed, while the discussion of indigenous peoples’ rights has reached the international agenda more
than 30 years ago, it has begun to emerge in the Middle East only in recent years. There are several explanations for that. The first and foremost has to do with the process of identity building in postcolonial states which has usually involved a national unity myth at the expense of ethnic minority groups. Israel is no different in this regard, as its nation-building process has involved denial of the Mizrahi (Eastern) and other diasporic identities of significant Jewish immigrant communities, not to mention non-Jewish identities. As shown by recent critical studies, the colonial situation has left its marks on many postcolonial states, leading to the continued marginalization of indigenous groups in Africa, Asia, and the Middle East. This problematics is currently being discussed, leading to a growing dissociation of European colonialism and the entitlement for recognition of the indigeneity of groups from these regions (e.g. Fenelon and Morguía, 2008; Hall and Patrinos, 2010; Kymlicka, 2008; Niezen, 2003: 74–76; Waldron, 2003).

Another explanation is that in some Middle-Eastern states, such as Saudi Arabia, Jordan and the United Arab Emirates, the Bedouins are a dominant group and thus cannot be considered an indigenous minority.

A third reason is related to the prevalent characteristics of the regimes in Arab states, including lack of democracy, weak civil societies and the absence of significant third sector organizations able to leverage the politicization process involved in claiming indigenous status (Berlin, 2004). Nevertheless, we do find frequent reference to Bedouins as an indigenous groups rooted in distinct areas, as well as recognition of their tribal way of life in Jordan, Syria and Egypt (including studies comparing between the indigenous Bedouin populations of Israel/Palestine and Jordan (Bennet and Dargiel, 2011; Berman-Kishony, 2008; Chatty, 2010; Fuleihan, 2011; Hussein, 2010; Kark and Frantzman, 2012; ILO/ACHPR, 2009; LaBianca, 1995).16

We claim that the insufficient attention to the Bedouins as indigenous in the Middle East cannot be used as an argument against recognizing their status as such. Just because women in Saudi Arabia are rarely heard demanding equal rights, for example, does not mean they are not recognizable as a group entitled to such rights. And as part of the Bedouin tribes in the Middle East subjugated and oppressed by the state, the Negev Bedouins are also a distinct indigenous group. Indeed, as suggested above, a large group of researchers consider the Bedouins indigenous. The Bedouins living in Israel/Palestine also identify themselves as an indigenous people who desire to maintain their culture, customs and laws; who have lived continuously in their territory for centuries; who constitute a subaltern minority group forced to accept the sovereignty and dictates of a modern state; and who are a member of UNPFII. As opposed to arguments made by “the deniers”, which focus on relatively secondary issues, the Bedouins match the definition of indigeneity almost to the letter.

In the following sections, we discuss in depth one of the key issues related to the Bedouin indigeneity: the struggle for land. We will see that Israel’s rigid position that denies most of the Bedouin rights to their ancestral lands have recently been challenged by an alternative approach which develops its knowledge “bottom up” through the Bedouin communities themselves, and their accumulated knowledge on the region, on their own culture, and its relations with groups and regimes that have predated Israel.

**Official knowledge: the state and Bedouin rights**

More than anything else, attempts by the state to impose control and social change result in misery. But the course of Tuareg suffering during the past century of colonization and state marginalization has created the possibility of their identification with indigenous peoples elsewhere in the world...
The ambitions of the state in attempting to create a coherent national culture and the simultaneous development of indigenous activism have each in different ways made such indigenous self-identity possible. (Niezen, 2003: 85–86)

In the above quote, Niezen explains that the growth of indigenous identity may be related to oppressive circumstances. He compares the cases of the Crees in Canada and the Tuaregs in the Sahara in order to describe a new identity based on indigenous activism (2012). This is important for our purposes, since it adds another explanation for the emergence of the Bedouin indigeneity consciousness as a response to oppressive state policies.

The State of Israel does not recognize Bedouin customary land law. Moreover, court precedents have repeatedly ruled that all Negev lands are state lands over which the Bedouins have never had ownership. The state’s de jure ownership rights are exercised on the ground by displacing and concentrating the Bedouins in the Restricted (Sayag/Siyaj) Area, a policy stringently applied from 1948 to very this day. Until 1966, its inhabitants—together with most of Israel’s Arab citizens—were subjected to martial law. Today, the vast majority of Bedouins still live in that area, which stretches between Beersheba, Dimona and Arad with a small “finger” towards the northern Negev. The seven townships built there since the late 1960s were designed to house the entire Bedouin population. Their jurisdiction areas are small: despite representing 15% of the entire population of Beersheba metropolitan region, their municipal jurisdiction covers about 0.8% of its area.

The state’s plans notwithstanding, about half the Bedouins, mostly those inhabiting ancestral lands, refused to move to those towns and remained in 46 so-called “unrecognized villages,” without zoning plans, infrastructures or construction permits, but mostly on lands which they claim to own (Azmon, 2007; Shadow Report, 2009; Swirski and Hasson, 2005; Yiftachel, 2003, 2009). During the last decade, the government has partially recognized 11 localities, and incorporated them into two Bedouin Regional Councils holding Hebrew names—Neve Midbar and Qassum (previously Abu Basma). Note that the recognition processes have not included state acceptance of Bedouin customary ownership, so that land use plans for these localities have not been completed, let alone implemented to this day, and building permits are still denied to the entire population. The partially recognized localities are in a slightly better status to the other 35 unrecognized localities, given the lifting of previous eviction and village destruction threats. Yet, the inability to build legally or receive state services and infrastructure make their life styles, cost and struggles, very similar to the other unrecognized communities.

The state’s refusal to recognize Bedouin customary land rights relies on a legal doctrine named “the Dead Negev Doctrine” (Amara and Yiftachel, 2014; Yiftachel et al., 2012), through which it had distorted both Ottoman and British law to retroactively deny Bedouin ownership of their lands. The Dead Negev Doctrine was established as a historical precedent in the Supreme Court’s decision regarding the Al-Hawashla (1984), which has not been seriously challenged since, mainly due to Bedouin legal weakness and social marginalization. The doctrine denies Bedouin rights to lands possessed according to customary law, and is thus reminiscent of the Terra Nullius Principle formerly used by colonial societies worldwide to classify the lands they settled as “empty,” and their indigenous inhabitants as devoid of land and political rights.

As recently demonstrated (Yiftachel et al., 2012), the Dead Negev Doctrine relies on a controversial interpretation of the British Mewat Land Ordinance from 1921 (in turn, an interpretation of a previous Ottoman law), which supposedly does not allow registration of unregistered land after this date, and nationalizes all formally unregistered land which lies
over a mile and a half from villages built before 1858—being the year in which the Ottoman Land Code was enacted. The State of Israel denied the status of “village” to all Bedouin communities in the pre-1948 Negev, thereby practically classifying all Negev lands (which would thus be uniformly considered “distant from any village”) as “dead” (mewat in legal Ottoman) and than be declared as state-owned. This interpretation runs counter British rulings and policies regarding “dead lands,” and ignores conflicting regulations and laws passed by the British, as well as the fact that in land settlements applied in various areas in Mandatory Palestine, cultivated, allocated, and settled lands have generally been registered by their holders’ names, even if these have not registered them by 1921. In other words, despite Israel’s claim to legal continuity from the British, the Israeli doctrine is diametrically opposed to the British approach in interpreting the connection between possession and ownership.

Finally, the Dead Negev Doctrine also ignores extensive acquisitions of Bedouin lands which enabled the establishment of dozens of Jewish settlements prior to 1948. If the Bedouins were not the owners of those lands, how could they legally sell them to the Jewish settlers?

As noted, The Dead Negev Doctrine is described and challenged in detail in a recently published article (Yiftachel et al., 2012). Our current interest, however, is not in the legal discussion, which is clearly important, but in clarifying this dimension of the state’s denial of Bedouin land rights anchored in indigenous law, custom and documents, which it refuses to acknowledge.

After statehood, large shares of Bedouin lands were allocated to various organizations whose (at times undeclared) purpose was to Judaize the land. This process relies on various expropriation laws, all of which ignore the Negev’s indigenous past—the legal and tenure regime which has been in place in the area and countenanced by both the Ottomans and British. Nevertheless, throughout the years, the state also spoke with a different voice, promising a fair settlement that would form legal continuity with the British period. Based on that promise, 3220 Bedouins submitted ownership claims for more than 200,000 acres. While claims for about 160,000 acres have yet to be settled, none of the Bedouin claimants have been recognized as owners of their ancestral lands. Some 200 cases have been decided in favor of the state—all based on the Hawashla precedent (Azmon, 2007; Goldberg, 2008). This legal tradition is rooted in the contested claims of the 1975 Albeck Commission Report which concluded that because there were no villages in the Negev before 1858 – all the Negev lands are mewat, and in Israel are all considered state lands. The Bedouins had one chance to register the lands in 1921 according to the Mewat British Ordinance, but have failed to do so, and forfeited their right. These claims are strongly contested by other legal analyses (see Amara and Yiftachel, 2014; Yiftachel et al., 2012). There is a minor “exit route” to the blanket denial of the Albeck report that had become state policy ever since: since the Bedouins have been living on these lands for generations, the commission proposed an “ex gratia” arrangement: the Bedouins will be compensated at a rate of 20% (in money or alternative lands) for their evacuation to the permanent settlements. In other words, ironically, the Bedouins can win recognition of limited land rights only once they have given them up. The Albeck Commission recommendations became the basis of the state’s land-grabbing policies persisting until today (Government Decision No. 1, 15 August 1976: 968) and informed all government proposals in the question (Goldberg, 2008: 18; Swirski and Hasson, 2005). As mentioned, it was reinforced in hundreds of legal rulings, turning the dispossession of the Bedouins into an official government policy, and the Bedouins into a group bereft of its ancestral lands, just like many other indigenous groups worldwide.
Alternative knowledge and Bedouin rights

In contradiction to the denial prevalent in state policies, an alternative body of knowledge emerged in recent years, seeking to establish Bedouin indigeneity as a new basis for their existence in the State of Israel, while negotiating and constructing the perception of indigenous identity. Recall that according to accepted international legal and normative definitions, there are several complementary identity components typical of indigenous groups that include continuous and long-term connection to a given territory, a history of victimization and dispossession, international recognition and self-determination. We will now discuss each of these in turn.

Continuous and long-term connection to a given territory

The Bedouins have strong tribal affiliations as part of their existence in a given territory delineated according to traditional customs. The tribal bond with their ancestral lands is so intimate that when the Jews first arrived in the Negev, they learned much about this terra incognita through the names given by the Bedouins to every riverbed, every hill and every rift, the flora and fauna and seasonal events related to the traditional way of life in the desert (Bar-Zvi, 1991, 1998; Havakuk, 1982; Levi, 1986).

Ben-David (1996: 18–20), Kressel et al. (1991: 39–40) and Marx (1973) suggest that in tribal societies, territory is a prerequisite for political organization and for determining the rights and privileges of the largest kin groups, and that there is a direct correlation between power and land ownership. Supervision and control are required in order to overcome rainfall irregularities and stop foreign tribes from invading.

Unlike the state which has considered the Bedouins as nomads, at least until 1921, leading researchers have concluded that they have been semi-nomadic for centuries. The difference between the two terms is that semi-nomadic groups rely extensively on agriculture, and therefore tend to settle permanently in given areas, with only one section of the community maintaining a pastoral and mobile way of life. As described by Ashkenazi (2000[1956]: 23, 31), the Negev Bedouins “have become attached to the land and settled it, but never stopped raising their sheep, goats and cattle... and continue to] roam within a limited space.” The Bedouin “dira” is a territory owned and shared by a rather small social unit, mainly for residential, pasture and water sources. It is divided into secondary drainage basins and includes a land area earmarked for farming and another for pasture. Consequently, as agriculture developed with the years, the need to establish property rights grew. This required parceling the tribal dira into smaller parcels of land, mainly in arable areas. Between 1890 and 1917, with the involvement of the Ottomans who attempted to exert control over southern Palestine, this parceling into large tribal units was legally validated by the Bedouin society (Ashkenazi 2000[1956]; Ben-David, 1985, 2004; Grossman, 1991; 1994; Marx, 1973; Meir, 2007).

These lifestyle changes, and the greater role of capitalist economic institutions in Bedouin lives, through Ottoman and British policies, involved growing attachment to the land in the concrete sense of specific areas of settlement, cultivation, and real estate investment. Today, this attachment motivates the Bedouin villagers who are fighting to remain on their lands (see Karplus, 2013), but it is also strongly felt even among those who have been displaced and resettled in the townships planned by the government, as described by Abu-Rabia (2013: 181):

The intimate linkage between the ancient ancestors’ tribal sense of belonging to the land and the blood relation that identifies a person with his tribal origin forms a powerful and inseparable
bond tying the Bedouin to his land... The Bedouin Arabs’ memory of place is similar to that of Palestinian society in general... Despite living in a distance of fifty years... from their original land, its memory in the minds of those uprooted from it is still alive and kicking.

In fact, when it comes to land regulation, Bedouin indigenous law in the Negev has already been recognized. The 1928 British Land (Settlement of Title) Ordinance, later adopted by Israel in 1969, gave significant weight to non-legal processes of mapping traditional land titles throughout Palestine, and stipulated that non-official documents as well as verbal testimonies will be admissible according to the principles of fairness and justice. In contemporary terms, we could say that even the British realized quite early on that the Bedouin customary law should be incorporated into the land registration process. In parallel, the Bedouin enjoyed almost total autonomy during the British period, being governed by a statement issued by Winston Churchill (Minister for the Colonies) and Herbert Samuel (High Commissioner to Palestine) that in the Negev, Bedouins rights and practices will form the local law. Even the Israeli 1980 Peace Law recognized traditional ownership as a basis for the new land arrangements in the Nevatim area. There are indeed precedents to recognition of the Bedouin customary land system, although the policy of denial has prevailed, and caused an enduring state–indigenous conflict.

History of victimization and dispossession

As mentioned, the core of indigenous identity has often crystallized on against processes of occupation, colonialism, and subjugation. This core forms the conceptual common denominator that overrides all the variation between the various groups (Niezen, 2003: 87). The Bedouin indigenous group is no exception. Since 1948, it has experienced traumas related to occupation by a dominant external force: refugeehood and displacement; the loss of most traditional sources of livelihood; and the concentration of all the remaining Bedouin population into the Restricted Area (reminiscent of indigenous reserves in other settler states) and subjected to martial law until 1966. Attempts to concentrate the Bedouins in a narrowly delimited area continue to this day through forced urbanization, and the application of the Dead Negev Doctrine and spirit of the Prawer Report (2011) involving house demolitions and land appropriations for Jewish settlements. These interrelated practices combine to form a regime of essentially colonialist supervision and control which undermines the traditional social structure and leads to political marginalization and socioeconomic subalternity which the group finds very difficult to overcome (Roded and Tzfadia, 2012; Swirski and Hazan, 2005; Yiftachel, 2003).

This recurring history of oppression and dispossession by the state has become a dominant and taken-for-granted Bedouin narrative constantly reproduced in public discourse. ‘Atiya al-‘Asem, Head of the (unofficial) Regional Council of Unrecognized Villages (RCUV 2009), argued as follows in a speech against government plans for Beersheba:

I regret to say that the history of the Bedouins in Israel is one of dispossession, oppression and disregard. Most Bedouins were displaced from their lands and villages in 1948, and neglected for more than 60 years – with no development, water or infrastructure. To this day, the Prawer Law threatens to evacuate many of the villages. Moreover, in 2012 the state demolished more than 1,000 houses of Bedouin citizens. What other group “enjoyed” such attention by the state? Only the Bedouins! We are determined to open a new page: stop this evil law and finally reach a situation where we can live in peace in our lands and villages.
**International Recognition**

Given that the rights of indigenous peoples are enshrined in international law and declarations, they have bearing in Israeli law. When it comes to treaty international law, the assumption of interpretive uniformity applies, which privileges interpretations of local laws consistent with the international norm (Sfard, 2010). Thus, although Israel has failed to ratify some of the relevant declarations and conventions, the international norms are supposed to apply to it as significant recommendation, if not total legal obligation. As their status is commensurate with international norms, organizations representing the Bedouins have been admitted into UNPFII, and took part in six global indigenous group conferences since 2005. In the summer of 2011, Special Rapporteur Anaya reconfirmed the Negev Bedouin’s indigeneity in his annual report:

5. The Special Rapporteur considers there to be strong indications that Bedouin people have rights to certain areas of the Negev based on their longstanding land use and occupancy, under contemporary international standards. It is undisputed that the Bedouin have used and occupied lands within the Negev desert long before the establishment of the State of Israel and that they have continued through the present to inhabit the Negev, maintaining their culturally-distinctive land tenure and way of life…

[25]… The Special Rapporteur considers that the concerns expressed by members of the Bedouin people are of relevance to his mandate and fall within the ambit of concern of the principles contained in international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples. (Anaya, 2011: 25, 30)

**Self-determination**

The Bedouins continue to shape their identity given their shared local history, which has created long-term frameworks for political self-determination. This identity has been maintained throughout the generations, despite powerful parallel and at times rivaling identities, such as the Palestinian, Islamic, Arab and Israeli. These additional meta-identities coexist with the indigenous Bedouin identity, which continues to dictate the geographic, ethnic, confederational and tribal contexts in which Negev Arabs conduct their lives. By and Large, the Bedouins in the villages seek to maintain their traditional lifestyle of herding and farming that relies on their customary law (al-‘urf), a distinct traditional culture, longstanding and continuous settlement of their territory and traditional title to their traditional lands in the Negev. The Forum for Coexistence in the Negev, one of the organizations leading the Bedouin struggle, describes this position as follow:

As a formerly nomad or semi-nomad group, the Negev Bedouins have subsisted on livestock farming and agriculture for centuries… Like other indigenous groups, the Bedouins continued to use traditional methods of marking boundaries rather than the western system of land and title registration. .

The Bedouins have retained their language (a Bedouin dialect of Arabic), religion (Islam combined with Bedouin religious traditions), and sociocultural, economic and political characteristics. They are ethnically distinct from the Jewish majority and socially distinct from the Palestinian minority living in Israel (Negev Coexistence Forum for Civil Equality, 2005: 7, 8).

Several NGOs working with and within Bedouin society consistently argue that the Bedouins are the Negev’s indigenous society and are involved in international advocacy for indigenous peoples. The Bedouin native language, culture and religion are based on
those of Arab and Islamic peoples, but their dialect, traditions and beliefs make them a distinct ethnic group, whose boundaries may vary in depth and porosity with neighboring Arab groups. In other words, the Bedouin are distinct in their culture, customs and laws, as well as their notion of identity, and this uniqueness is also articulated in the importance they ascribe to land ownership (Meir, 2007).

To conclude, indigenous Bedouin identity is firmly founded on historical, ethnical, geographical and cultural grounds. Despite Israel’s refusal to recognize it, the Bedouins continue to cling to their lands and tribal settings, while formulating their struggles through the political and cultural structures of the modern state.

Rebutting denial

The above discussion demonstrated that in contradiction to the claim made by “the deniers”, most of the prerequisites of indigeneity included in conventional international definitions are met by the Bedouins in the Negev. Nevertheless, “the deniers” have aired several additional claims that have to do with issues that are not referred to in these definitions, but still raise important questions for understanding Bedouin indigeneity. These researchers (Frantzman et al., 2012; Kark, 2010; Yahel et al., 2012) argue that the Bedouins are not indigenous because (1) they have arrived in the Negev as invaders after and well into the colonial occupation; (2) there was no continued Bedouin presence in the Negev due to tribal wars that led to tribal migrations; and (3) Bedouin title claims are individual, rather than collective as customary in indigenous societies. In the following paragraphs, our paper will respond to each of these points.

Argument

The Bedouins arrived in the Negev, mainly from the Arabian Peninsula, after the colonial occupation and therefore have no right of first occupancy. The problematics of the category of first occupancy in the land of indigenous peoples has already been discussed above, noting the difficulty of using this concept for establishing contemporary indigenous rights (or the lack thereof), not the least because it usually relies on historical myths. The most common definition of indigenous peoples replaces it with the term temporal priority, which bases the right on the group’s control and independent life in a given territory, which predated the current regime.

The Bedouin case meets this definition. Even the distant historical origin of most Bedouin tribes from the Arabian Peninsula does little to discredit their claim to indigeneity in the Negev given the fact that many groups have historical narrative of origin referring to a homeland that predated the current one. Thus, the Mauri people in New Zealand originate from the Pacific islands; the Armenians from what is today Turkey; the San people (Bushmen) have migrated to what are today Zimbabwe and Botswana to South Africa; the Hungarians are originally from Mongolia; while the Jews—considered by “the deniers” as the “true” indigenous people of the Negev, have migrated, according to Jewish myths, from what are today Iraq or Egypt (depending on the period). Naturally, these migrations do not in any way refute the indigenous status of these groups in the areas where their current collective identity has taken shape.

First or prior occupancy notwithstanding, it is important to note that the Bedouins have deep historical roots in the Negev. According to the literature, Bedouins, mostly known as “Arab”, began to emigrate from the Arabian Peninsula at the time of the Islamic conquests of the 7th century. Their tribes moved in three main directions: from the southeast,
southwest and northeast to the areas of Sinai, Hijaz and Palestine—and this space came to be contested by the various tribes which occupied and settled territories within it. The Bedouins began penetrating and settling the Negev mainly from the 13th century. An Ottoman census held as early as the 16th century reports extensive Bedouin agriculture in the Negev and tribes which inhabit the area. The oral history of various tribes such as Abu-Rabia, Al-Uqbi and Al-Wahidi also describes long centuries of life in the Negev. The Bedouin society’s structure became finally consolidated in the late 18th century in the form of five main tribal confederations: Tarabin, Tiyaha, ‘Azazme, Thullam, and Jubarat (Bailey, 1980; Sharon, 1989). These were joined in the 19th centuries by Egyptian immigrant groups who became incorporated in the existing tribal structure.

**Argument: The Bedouins emigrated from Ottoman provinces, and are therefore not indigenous**

As mentioned, “the deniers” have concluded that “more than having suffered from the attitude of strangers towards their indigenous lifestyle, the Bedouins have migrated mainly within the Ottoman Empire, subject to the same familiar administrative and legal system...” (Yahel et al., 2012). The research literature, however, paints a different picture. For centuries, the Ottoman Empire had absolutely no control over the Negev. This means that when tribes did arrive in the Negev (which was also not a distinct geopolitical unit at the time), they did not subject themselves to Ottoman rule—because there simply was none! The last Bedouin tribes to arrive in the Negev in the 18th century settled in areas controlled by Bedouins and subject to their traditional law. Moreover, according to most researchers, the Bedouins enjoyed self-rule under their traditional legal system throughout the Ottoman period, apart for a few isolated cases of Ottoman intervention. These included mainly local punitive raids, as well as an attempt to deepen the Ottoman incursion into the desert with the establishment of modern Beersheba in 1900, which also failed to subjugate the Bedouins to Turkish rule. Yosef Ben-David describes this period as follows:

> The Ottoman era is one of contradictions. The Bedouins seem to remember it as the “days of freedom”, as in the common saying: “Al-badia’ min foq al-qanun” (the desert is above the law)—in other words... the Bedouin lives were characterized by autonomy and the absence of external intervention, with the desert affording them an exclusive space for action. This situation continued for about a thousand years, as long as the authorities took no interest in the desert... The main manifestations of the freedom and internal autonomy enjoyed by the Bedouins were: lack of subjection to any government, the organization of tribes and their confederations as miniature states, and the use of force, both in internal conflicts and in raids. (Ben-David, 1985).

This description is diametrically opposed to the claims of “the deniers” as though the Bedouins have lived continuously under Ottoman authority. In fact, their situation was quite similar to that of other indigenous peoples, who have enjoyed a sovereign existence and kept rebelling against attempts to subjugate them.

Other researchers echo Ben-David. Renowned Bedouin researcher Bailey (1980: 35) describes Bedouin life in the 19th century as follows: “The Ottoman presence was barely felt in the 19th century Negev. So, they could not know what was going on among Bedouin population or report on current events at any level of reliability (p. 80).” Based on her review of Ottoman sources, Turkish researcher Avci (2009: 970–971) reaches a similar conclusion noting that the difficulties of the Ottoman government to control the Bedouins are clearly described in countless archive documents, starting from the 1840s. As a sociopolitical
organization, the Bedouin community wielded all the authorities a state claims for itself, i.e. loyalties and obligations, a management apparatus and a system of law and enforcement.”

Further evidence of Bedouin autonomy and centuries of control of Negev lands have been provided in reports by travelers who visited the area in the 19th century. Similar descriptions appear in most contemporary travel books (see Yiftachel et al., 2012: 70–74), but also in Zionist sources. For example, Levontin (1924) wrote as follows about the possibility of buying lands for Jewish settlement in the northwestern Negev: “The burden of the Turkish Empire weighs on them not... there is no cadaster of the Turkish government there—the sheikhs give a title deed, and these sales are confirmed by possession” (quoted in Yiftachel et al., 2012: 58).

Another early Zionist, Dr Yitzhak Levi, met with a delegation of Bedouin sheikhs when visiting Palestine in 1902. As described in a report found in the Zionist Archive, Sheikh Salim Abu-Rabia suggested meeting with Zionist leader Theodor Herzl personally to propose creating a Jewish–Bedouin territory in the Negev. Abu-Rabia also offered 10,000 militiamen to protect the territory earmarked for Jewish settlement. This proposal followed recent Ottoman attempts to gain control over the Bedouins. It, too, is clearly suggestive of the Bedouin’s obvious ownership of Negev lands and their political autonomy. Levi (1914:4) reported as follow:

The sheikh presented himself as the prince of the Thullam, and told me he has some 10,000 riflemen under his command... and added: “According to my information, you are one of the leaders of the settlement in Palestine. Send us Jews to Beersheba, therefore. I will give them land, as much as they want”.

For our purposes, what is particularly important is the fact that the Ottoman authorities have accepted Bedouin land tenure system based on the cultural, legal, and political autonomy enjoyed by the tribes. This autonomy shaped the legal–spatial arrangements which determined the land allocation and land ownership patterns. Much later, Zionist and Jewish National Fund (JNF) leader Yosef Weitz also recognized the existence of an autonomous Bedouin land tenure system, which included internal registration and management of and sale of land. The following is a quote from his diary:

In Turkish times, there was no registration of Negev lands. Land ownership was sanctioned by a tradition recorded in daftars, or notebooks kept by the sheikhs and village chiefs. Every legal action in the land was documented in the daftars and the Bedouins treated them with respect and trust. (Weitz, 1965: 1)

Even after the establishment of modern Beersheba and following deeper Ottoman incursion into the Negev, the empire continued to allow the Bedouins a significant measure of self-government. Although the Ottomans established a land administration in the city and tried to convince the locals to register their titles, it was to no avail—the Bedouins refused to toe the Ottoman line, as did many other indigenous peoples faced with imperialism. The Ottomans responded by trying to create new institutions, but their actual content remained the traditional tribal law. Kressel et al. (1991: 39, 69) describe the growth of the traditional title system in Ottoman times as follow:

After Beersheba was established (1903), the Ottoman government authorities recognized the special autonomous arrangements of Bedouin society. It was this recognition which led to the founding of the tribal court (mahkamat al-‘asah’ir) in Beersheba. The members of this court were sheikhs who represented most of Bedouin tribes, thirty three in number. In ordinary hearings, for example, hearings convened to discuss the ownership of plots, three of them presided: two
would advocate for each of the parties and the third was the one who decided the conflict and his ruling was final...

Three facts arise from the testimonies: (a) at that time, the Bedouins began trading in the lands under their control; (b) the sheikhs acted as property administrators, by issuing the sales deeds *(sanad, or asnad in the plural)*...; (c) the government had no direct interest in Bedouin lands.

All these actions suggest that the Ottoman government did in fact acknowledge Bedouin traditional land ownership. Paradoxically enough, the State of Israel is using the Ottoman Land Code to deny Bedouin land rights, in clear contradiction to the Ottomans’ own approach to the Bedouin population and its assets.

In addition, several researchers have suggested that the construction of modern Beersheba in the early 20th century was an attempt by the weakening Ottoman Empire to subjugate the Bedouins and deepen its control over the Negev. Luz (2008) and Ben-David (1996) have shown, however, that the move achieved little success, if any, and at any case did not affect Bedouin land rights. The reason was that the Bedouin system had been sanctioned by the authorities, who allowed the tribes to conduct their local affairs according to their own tradition, a situation which remained largely unchanged until Israel became a state in 1948 (Abu-Sitta, 2009; Al-’Aref, 1934; Ben-Arie and Sapir, 1979; Barslavski, 1947). As described by Marx (1982: 13):

The Thullam tribe, which I studied thoroughly, has inhabited its land for some 200 years, and is among the last to have arrived in the Negev. It is difficult to trace the history of these tribes. Their names have changed and different people have changed their affiliation to these groups throughout the generations... Certainly many have immigrated to the Negev’s uninhabited lands, cultivated and grazed their flocks in them. I would often hear statements to the effect that “we have come and left our marks on these empty territories...”. The Mandate authorities recognized those land rights, and Jewish land buyers also took advantage of them at the time. Bedouins sold lands to Arab peasants and to the JNF, and these real-estate deals were registered in the manor books of the British Mandate government, which also charged property tax from the Bedouins.

Thus, even after the British rule (1917–1948), Bedouin indigenous autonomy remained in force. Bedouin tribes throughout the Middle East collaborated with the British against the Turks, so that the latter usually acquiesced to their demands, including in Palestine. The British learned the lesson of their predecessors’ failures, and did not try to force their laws upon the indigenous population. Consequently, the Bedouins enjoyed autonomy and retained their lifestyle, laws and customs (Bailey, 1980, 2009). This arrangement was given official expression in clear statements made by senior British representatives, including the first High Commissioner for Palestine, Herbert Samuel, and Secretary of State for the Colonies Winston Churchill, in talks with Bedouin leaders. As early as 1921, Churchill “reaffirmed the assurances already given at Beersheba by the High Commissioner to the Sheikhs that the special rights and customs of Bedouin Tribes of Beersheba will not be interfered with.”

Indeed, studies conducted in the Mandate period also show that Bedouins controlled their territory, and that the British rulers did not prevent them from pursuing their indigenous way of life to the fullest. Books written by Al-’Aref (1934), Barslavski (1947) and Granovsky (1947), as well as subsequent descriptions by Danin (1991) clearly indicate that the Negev was a Bedouin area where Bedouin customs, laws and traditions reigned supreme. As reported by Zivan (1990), all the Jewish settlers in the Negev, who inhabited small and widely dispersed communities, formed relationships with local leaders who were the de facto rulers of the desert. Even two of “the deniers” concluded that British control over
the area was slight and did not affect the Bedouin way of life; the British even avoided enforcing the 1942 Bedouin Control Ordinance designed to regulate Bedouin pasture and migration areas in the Negev, and on the whole neglected the affairs of the government in Palestine’s Southern District (Frantzman and Kark, 2012).

In the study of the Mandatory Supreme Court rulings concerning the Negev, Yiftachel et al. (2012) show that the British have collected farming taxes from the Bedouins while respecting the traditional ownership patterns. The Mandate rulings also consistently acknowledged the authority of tribal courts which continued to operate throughout the period of British rule. Importantly, Mandate courts never ruled that the traditional property arrangements were illegal, and not a single acre was ever appropriated from its Bedouin farmers or inhabitants on the basis of the Mewat and Mahlul laws used by Israel decades later.

To conclude, the literature provides conclusive evidence that for hundreds of years, alongside and even under imperial regimes, the Bedouins enjoyed an autonomous life based on continuous connection to the Negev, a unique culture with its own consensual and effective land title system and traditional laws governing all areas of life. This description is typical of indigenous societies worldwide.

Before moving on to the next major argument raised by “the deniers,” we should address two secondary claims. First, “the deniers” argue that temporal continuity was absent due to tribal wars that transformed land tenure arrangements in the Negev. Tribal conflicts and takeovers did occur occasionally in the Negev until the territories were finally established in the second half of the 19th century. The overall picture is that of a Bedouin space with tribal wars—typical of indigenous peoples wherever they are. Thus, this observation in no way detracts from Bedouin traditional right to their land.

Second, Kark (2010) argues that in the 1596 Ottoman census counted only six tribes which have disappeared by now. This is inaccurate: five of the six tribes are still in the area, some of which as parts of other tribes. More importantly, that census surveyed the population only as far south as today’s Rahat, and therefore could not reliably map the additional tribes in the Negev. Finally, let us use Kark’s argument to the other side of this conflict: if, for example, we examine Jewish claims to continuous presence in the Jerusalem area, we can immediately note that most of the clan and family names have change over the generations, while the collective claim remains. This should also be the case with the Bedouin indigenous presence: some stayed, others migrated, and since the mid-19th century, most existing Negev tribes have remained on their territories, unless evicted by Israel.

**Argument: The Bedouins have private land claims, while indigenous land is typically collective**

This point is clearly significant. Indeed, most tribal land claims in indigenous regions worldwide are collective. Nevertheless, the private land ownership claimed by the Bedouins in the Negev today does not invalidate their indigeneity, for two main reasons. First, this aspect is not included in the definition of indigenous groups, and can thus be regarded as a secondary characteristic at best. Second, and more importantly, the main idea behind respecting indigenous rights, including land rights, is to respect them as defined by the prevailing indigenous culture existing prior to its subjugation to a modern state.27

Moreover, the literature shows that a number of indigenous groups around the world have privatized their land title system as part of the customary management of their territories. This has been the case among several indigenous peoples in Africa (e.g. Benjaminsen and Lund, 2002; Bennett, 2004; Cousins, 2009; Du Plessis, 2011; Okoth-
Ogendo, 2002), as well as in the famous case of the Awas Tingni in Nicaragua, where the highly influential Inter-American Court of Human Rights ruled that “both the private property of individuals and communal property of the members of the indigenous communities are protected by Article 21 of the American Convention”, and ordered the Nicaraguan government to return the land in question to those who possess it by virtue of the indigenous law.  

Some researchers argue that the concept of common ownership defined by colonial powers must be deconstructed and reexamined with due attention to its complexity and multiplicity. In most cases, it is the leaders of traditional indigenous societies who allocate lands and regulate the use of common resources in light of the community’s social arrangements and hierarchy. Land is held as a multigenerational asset managed at various levels of private and community ownership combinations. Therefore, the term “common ownership” often ignores the private title to many tribal lands, which is often inherited across the generations and is delimited and demarcated on a family basis.

In addition, “the deniers” tend to ignore the basic logic of the recognition approach, which seeks to give due weight, as much as possible, to the dynamism of indigenous culture and law. Most land arrangements, like all social arrangements, have been dynamic and changed from time to time. In many cases, with the growing economic value of land and ability to trade it, we can identify a move towards agricultural, tourist-oriented and even industrial economy, accompanied by a land privatization process (Cousins, 2009; Du Plessis, 2011; Okoth-Ogendo, 2002).

Bobroff (2001) pointed to the fallacy of this collectivity assumption even with regard to the 19th-century Native Americans. He argues that referring to the indigenous land system this way ignores a dynamic and shifting system with diverse forms of ownership, including private. The conclusion is that indigenous groups must be allocated lands and leave the title arrangements to be decided by their members according to their traditional norms. According to Bobroff (2001: 1621)

Indians did not own all their land in common before allotment and the Dawes Act [the system of land regulations which the federal government sought to impose on the Indians in 1887] did not replace public with private land, an institution previously unknown to Indians. The true story is that Indians had many different, functional, and evolving property systems, many of which recognized private land rights in the land. Far from replacing common ownership with private land, the Dawes Act allowed the federal government to replace these multiple, functioning land systems with a single, dysfunctional system, on that failed to provide for land transfers and rational inheritance.

Therefore, the claim that indigenous people have only collective forms of land ownership is empirically inaccurate and betrays an orientalist approach, one that seeks to freeze the concept of indigeneity and preserve it as a museum piece, while ignoring the dynamism of autonomous living and functional societies.

The demand to “freeze” Bedouin culture into collective arrangements is problematic also historically. As cultivation expanded in the Negev, the dira (tribal territory) was increasingly divided among the families in pasture lands turned into farming plots, particularly in drainage basins of desert riverbeds. In these areas, dryland farming could be sustained as part of the modernization undergone by the Negev tribes in the last two centuries. This form of cultivation and ownership does not detract in any way from their tribalism, distinct culture, and territorial administration which kept following the applicable indigenous law.

At the same time, and with the growing involvement of investors from the Gaza and Hebron areas in the Negev, the Bedouins began to establish a land trading system based on
the sanad, or written title deed which documents land sales and includes details which recur in a consistent pattern: price, parties’ names, the definition of the land area including its boundaries from four directions, special terms, revocation scenarios and related compensations. The sanad is validated by the signatures of several sheikhs as guarantors. At first, the sanad was used mainly to document sales to foreigners, but in the late 19th century, it began being used increasingly among the Bedouins themselves, whether to record sales or to record inheritances. The rahen was a similar document which determined land lease and mortgaging terms, and was used by the Bedouins mainly in transactions with peasants who arrived from other areas, such as Egypt and Gaza, and cultivated the fields of Bedouin landlords. The third legal element in the modern Bedouin system was the arbitration mechanism, which, as described above, was based on the tribal courts (Abu-Rabia, 2005; Ben-David, 2004).

Obviously, then, the observation that Bedouin land tenure system was privatized and that this distinguishes it from other indigenous societies in the world, is interesting and important, but is not accurate. Moreover, it does not impact on the indigenous status of the autonomous Bedouin cultural traditions prevalent in the Negev until 1948. Just like in other indigenous groups, their traditional laws were dynamic, forming a land regime that changed with the times and was sometimes even privatized, as in Nicaragua or certain parts of Africa. The indigenous validity of the tribal land tenure system is attested to by the fact that even today, the Bedouins fully obey the traditional law, and refuse to accept Israel’s land laws which contradict it (Kram, 2012; Nasasra, 2012).

**Overview**

Over the last centuries, indigenous groups throughout the world have experienced long-term subjugation to modern—colonial and postcolonial—states. Typically, these states denied indigenous rights and identity and worked to displace, replace, at times eliminate, assimilate or isolate any groups that controlled significant territory. Some of these goals are still prevalent in Israel’s public policy, legal system and academia, towards the Palestinian Arab population in general, and the Negev Bedouins in particular.

This denial is recently being resisted globally and locally by movements that reassert an indigenous presence and identity, shaped in a dynamic context of new political, ethical and spatial circumstances. This indigenous challenge highlights the persistence of identity, rights and struggles of groups that predate the modern states, who conducted their lives according to traditional non-western legal and normative systems.

The Bedouin population in the Negev too has been subjected to displacement, eviction, and dispossession and prolonged neglect. In recent years, it has begun to struggle for recognition of its indigenous identity and rights. This approach must not be construed as a belief in essentialized, unchanging and frozen identity, but rather, in the words of Gayatri Spivak, as “strategic essentialism,” which relies on the past for justifying the attainment of present and future rights, while accepting the inevitable changes in group identity and the changing political and legal circumstances.

We must note, however, that the struggle for recognition and transitional justice, while widely practiced is not shared by all scholars and activists committed to indigenous justice. In recent times, several key voices – notably Coulthard (2014) and Simpson (2014) – have begun to chart an alternative course of disengagement and “refusal”. Their approach is based on the premise that settler colonial societies are structurally and inherently engaged in a process of “elimination of the native” (Wolfe, 2006). Within such circumstances, they argue, reconciliation and recognition constitute a type of appeasing strategies by the settling
group to soften the resistance of the colonized. Such an approach is suspicious of multiculturalism and its effort to incorporate the indigenous as a distinct group within the dominant white, or even post-colonial, regime. Indigenous people, the authors claim, should first and foremost rebuild their culture and communities from within, rejecting the hegemonic terms of the settler group. They seek to construct alternative ways to develop the group’s culture, space and economy, with as little as possible compromise with (often couched as “submission”), or appeal, to the colonizing state.

The rejectionist approach is acknowledged and will no doubt frame future conceptual debates on the politics of indigeneity. At present, however, the current context of eviction, denial, and deep neglect brings most Naqab Bedouins and Palestinian leaders in Israel to opt for a campaign of recognition and equality, with a notable attempt to leverage their state citizenship and international connections. To be sure, their new politics of indigeneity stresses history, territory and rights, but their attainment is framed by their status as citizens, with an attempt to leverage their status as citizens, strongly mobilized against further removals and disposessions, as well as for a future of dignified recognition, equality and self-determination.

Within that context, the papers took to task “the deniers” of Bedouin indigeneity, and systematically analyzed their arguments. It shows that some of their claims shed new light on important aspects of Bedouin history, politics and rights. However, these claims do little to refute the high overlap between the characteristics of the Bedouin Arabs in the Negev and the definition of indigeneity in contemporary international laws and norms. The paper’s analysis thus supports the need for recognizing the Bedouins as an indigenous group, with their distinct historical, cultural and territorial attachment and rights in the Negev region.

As shown in the paper, Israeli denial of Bedouin indigenous rights has been strongly challenged by the emergence of numerous studies that highlight the long connections of Bedouins to the region, and the self-determination they had exercised for generations before the establishment of the state. Nevertheless, the state’s legal, land and political systems continue to reproduce narratives, law and policies premised on sweeping repudiation of Bedouin indigenous and human rights.

The struggle for recognition of indigenous status and the associated rights are likely to form a basis for the Bedouin campaign in the coming years for protecting their resources, culture and land, as an attempt to shape their citizenship and collective future. As argued before, the concept of indigeneity will probably ebb and flow according to the level of political struggle and threats of dispossession. The indigenous mobilization is likely to be conducted in parallel, and at times in tension, with mobilization towards Palestinian, Islamic and Israeli identities. There is no space here to deal with the phenomenon of intertwined collective identities, although it must be mentioned as part and parcel of indigenous existence in most post-colonial nation-states.

Finally, we suggest that rather than forming a bone of contention, indigeneity can be used as an historical opening. It presents an opportunity for redressing the colonial relations existing in the Negev since the late 1940s. This is because under certain circumstances, the indigenous concept enables (mutual) recognition and flexibility. Indigeneity and customary traditions, rather than the strict letter of the law, are open to mediation and mutual adjustment, instead of the current reliance on rigid legalities or violent dictates. In such a process, recognition can progress mutually, enabling the transformation and of Israeli Jews from a settler, to a non-colonizing, homeland group. We therefore suggest thinking about indigeneity as an opportunity to give substance to Bedouin–Palestinian citizenship, based on the UNDRIP principles outlined above. This will enable the reconciliation of rivaling cultures brought together by fate of history and geography, whose futures are intertwined.
in the Negev/Naqab. To do so, the ruling forces must shift their paradigm and transform their treatment of indigenous Bedouins from oppression and denials to recognition and rights—the sooner, the better.

Declaration of Conflicting Interests

The two authors have helped prepare materials for the land claim lawsuits of the Al-Uqbi and Al-Turi tribes recently litigated in Israeli courts. Prof. Yiftachel acts as an expert witness on behalf of both tribes.

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Notes

1. The use of the term “deniers” is not intended to link these authors to other forms of malicious denial prevalent in the Zionist-Palestinian struggle, such as holocaust or Nakbah denials. It refers simply to the denial of the Bedouins’ indigenous status.

2. A note on terminology: Negev and Naqab are interchangeable; “Israel/Palestine” is used as a combination, when appropriate, to denote the area demarcated by the British Mandate between Jordan River and Sea; the area is currently controlled by Israel, but also forms the Palestinian homeland; all Palestinians are considered indigenous to Palestine, with the Bedouins constituting a relatively distinct ethno-regional indigenous group.

3. Beersheba Metropolis District Outline Plan, Amendment 4-14-23.

4. Note that the Bedouins are part of the Palestinian–Arab society in Israel/Palestine, which views itself as an indigenous society in the entire land. Bedouin struggle for recognition of their indigenous status has been challenged by some Palestinian scholars who consider it an unnecessary split and weakening of the national struggle. Nevertheless, no Palestinian researcher disputes the claim that the Bedouins are an indigenous society; rather, the dispute is over the strategic choice of terms for the political struggle (see Abu-Sitta, 2012; Amara and Miller, 2012).


6. From Prawer’s lecture in the BGU conference Bedouin Space—Where to?, organized by the Arnow Center on 30 September 2011. http://www.goarad.co.il/?pid = 15&t=mFinal&L1 = 41&L2 = 144&item = 1847

7. From the conference summaries available from the authors. See also http://w3.sapir.ac.il/pm/websapir/QWEB%20-%20PRCommunicates/040112_meriva.htm

8. Separating the positions of the state and the scientific researches is not simple because some of the deniers are part and parcel of the government apparatus. For example, Havatzelet Yahel was employed at that time in the Southern District State Attorney’s Office and responsible for state land claims against Bedouins, and Prof. Ruth Kark has submitted expert opinions on behalf of the state where she denies Bedouin ownership of ancestral lands (Frantzman et al., 2012; Kark, 2010).


13. See Béteille (1998) for an anthropological discussion of the term “tribe” and attempts to distinguish between tribes and indigenous nations reconceptualized through the years.


17. See http://www.hrw.org/he/reports/2010/02/12-0


20. See Al-Hawashla (note 13); and Al-Uqbi deceased v. State of Israel, TA 5278/08.

21. The Albeck Report refers to the “Sayag” area where all Bedouins lived at the time, but the arguments it makes, by direct implications, are relevant to the entire Negev. The report is based on the contested observation that according to the Ottoman Land Code 1858, mewat lands lie over mile and a half away from the village edge. Since there were no permanent settlement in the Negev, the report asserts, all lands are mewat. Since 1921, because of British legislation, these lands cannot be appropriated by virtue of possession or cultivation and if registration did not occur as legally required within two months of the British Law. Hence, according to the Albeck report, the Bedouins in effect forfeited their claims by not building permanent settlements nor registering the lands in 1921. These claims are strongly contested by other legal analyses. See Kedar (2001) and Yiftachel et al. (2012).

22. See note 14.

23. See http://www.haaretz.co.il/news/local/1.2015733

24. See http://baduannaqab.wordpress.com/tag/%D7%99%D7%A2%D7%9C%D7%94-%D7%A8%D7%A2%D7%A0%D7%9F/


26. Churchill declaration is found in: Political Report for March, 1921, Public Records Office, C.O. 733/2/21/21698/Folio 77 March 1921, London; see also http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CCMQFjAB&url=http%3A%2F%2Fwww.haifa.ac.il%2FHe%2FEvents%2FDocuments%2FEchos%2520of%2520legal%2520past%2520law%2520and%2520society%2520workshop%2520Ahmad%2520Amara.docx&ei=cLMJVaiLFMHpauXEqJAF&usg=AFQjCNHGJmmSZHoKGgDg18Oq0_Wd2BdVRQ&bvm=bv.88198703,d.d24

27. Subject, of course, to these rights being legal under the new regime. A notable example for an indigenous right considered illegitimate in democratic regimes is polygamy.

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