

## NEGEV BEDOUINS AND THE STATE OF ISRAEL: SOCIAL CONFLICT AND TERRITORIAL DISPUTE

TAMAR ARIELI\*

### TABLE OF CONTENTS

ABSTRACT .....	82
INTRODUCTION .....	83
I. HISTORICAL CONTEXT OF THE NEGEV BEDOUIN .....	84
II. BEDOUIN SEMI-NOMADISM AND THE QUESTION OF LAND .....	86
<i>A. Bedouin Life Until the Nineteenth Century</i> .....	86
<i>B. Bedouin Life in the Twentieth Century</i> .....	87
<i>C. Land Policy and its Effect on Bedouin Life</i> .....	88
III. ISRAEL AND THE NEGEV BEDOUIN .....	89
<i>A. Bedouin Citizenship and Land Registry</i> .....	90
<i>B. Planned and Unrecognized Bedouin Settlements</i> .....	91
<i>C. Bedouin Social Circumstances</i> .....	93
IV. BEDOUIN TERRITORY CLAIMS AND CONFLICT .....	94
<i>A. Israel's Policy Change</i> .....	95
<i>B. Conflict's Effect on Discourse</i> .....	96
V. BEDOUIN AS INDIGENOUS PEOPLE .....	98
CONCLUSION .....	100

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\* Dr. Tamar Arieli is the head of the Politics and Government Program in the Interdisciplinary Department of Tel Hai College, Israel. Tamar is a political geographer - her research focus is on the study of borders. From 2017 to 2018, Tamar served as a visiting professor in the Religious Studies program of San Diego State University and was a fellow of the Israel Institute.

## ABSTRACT

Conflict resolution efforts of nearly seventy years between the Negev Bedouin and the State of Israel tend to focus on the main issue of disagreement—land ownership and its proof.<sup>1</sup> Yet, beyond legal aspects of ownership, historical narratives, and culturally different values attached to land are used and manipulated in this conflict by direct and indirect players. Territorial conflict often lasts longer than the material benefits seem to merit due to added issues of identity and attachment, which develop over time.<sup>2</sup> Therefore, the legal lens is limited in addressing this complex: historic, political, social, economic, cultural, and ethnic conflict. Inter-cultural engagement between a modern state and a semi-nomadic people challenge the prospects of conflict resolution. This is similarly challenged in other contexts of the Middle East, Australia, Canada, and the United States. Political and ideological aspects, along with the factor of time, have further entrenched the regional Arab-Israeli conflict. These factors have increased the toll on the entire Negev population and environment—especially on the Bedouin population.

The narrative of indigeneity is a recent strategy in this conflict, linking the Bedouin struggle with that of First Peoples, Aborigines, and Native Americans.<sup>3</sup> This context widens the narrow legal discourse currently employed in Israel regarding Bedouin land rights. However, the narrative of indigeneity has not been helpful in resolving this conflict. This context also contributes to prospects of comparative research. As the overall context of the ongoing Arab-Israeli conflict unfolds, the question of Bedouin indigeneity can also polarize and politicize the conflict—distancing the parties from urgent pragmatic compromises. Therefore, linking the narrative of indigenous people

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1. See Shaul Krakover, *Urban settlement program and land dispute resolution: The State of Israel versus the Negev Bedouin*, 47 *GEOJOURNAL*, 551, 551-52 (1999), <https://doi.org/10.1023/A:1007004021598> (last visited Oct. 29, 2018).

2. See Ron E. Hassner, *The Path to Intractability: Time and the Entrenchment of Territorial Disputes* 31 *INT'L SECURITY*, 107, 138 (2006), <http://www.jstor.org/stable/4137509> (last visited Oct. 29, 2018).

3. See Havatzelet Yahel, Ruth Kark & Seth J. Frantzman, *Negev Bedouin and Indigenous People: A Comparative Review*, in *SOCIETIES, SOC. INEQUALITIES AND MARGINALIZATION: MARGINAL REGIONS IN THE 21ST CENTURY* 1 (Raghubir Chand et al. eds., 2017).

2018] NEGEV BEDOUINS AND THE STATE OF ISRAEL 83

worldwide is unlikely a productive strategy in addressing the conflict of Bedouin land rights.

#### INTRODUCTION

The Bedouin are Israeli citizens of an ethnic minority within the larger Palestinian-Arab minority. Bedouin life and culture have transitioned from pastoralism to agriculture over hundreds of years, adapting to changing economic, political, and social circumstances.<sup>4</sup> Contemporary aspects of Bedouin society—settlement, education, family, and work patterns—reflect both these external and internal forces. These societal aspects form the context for the legal-social conflict between the Bedouin and the State of Israel over land rights and ownership.

Conflicts and disputes can be viewed as separate processes, divided by the question of perceived negotiability.<sup>5</sup> Disputes can be escalated to the level of conflict and entrenched through a variety of mechanisms. Paradoxically, the quest for justice may pose formidable barriers to conflict resolution. As the gap between positions grows, expecting a just solution for either parties' claims entrenches conflicting narratives and reduces the likelihood for pragmatism and compromise.<sup>6</sup> The passing of time increases group territorial identity and attachment through multiple mechanisms and thus furthers conflict entrenchment.<sup>7</sup> Third party involvement is another factor, which could empower the parties to resist compromise, potentially reducing prospects for conflict resolution.<sup>8</sup>

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4. See John Shoup, *Nomads in Jordan and Syria: Cultural Survival Quarterly Magazine* (Mar. 1984), <https://culturalsurvival.org/publications/cultural-survival-quarterly/nomads-jordan-and-syria.html>.

5. See generally John Burton and Frank Dukes, CONFLICT: PRACTICES IN MGMT., SETTLEMENT & RESOL. 5-6 (1990).

6. See Yehudith Auerbach et al., *Barriers to Peace in the Israeli-Palestinian Conflict*, 406 JERUSALEM INST. FOR ISRAEL STUD. 15, 71-72 (2010).

7. See Ron E. Hassner, *The Path to Intractability: Time and the Entrenchment of Territorial Disputes*, 31 INT'L SECURITY 107, 109 (Winter 2006-2007), <http://www.jstor.org/stable/4137509> (last visited Oct. 29, 2018).

8. Patrick Regan, *Third Party Interventions and the Duration of Intrastate Conflicts*, 3, 23-24 (2002) <http://www.jstor.org/stable/3176239> (last visited Oct. 29, 2018).

These three factors: perceptions of justice, the passing of time, and third-party involvement, establish the territorial dispute between Israel and its Negev Bedouin citizens. This article analyzes the evolution of the territorial dispute between the Negev Bedouin and the State of Israel, and its escalation to an entrenched social-political conflict. This conflict extends beyond questions of the legal right of land ownership and dominates its discourse and portrayal.

### I. HISTORICAL CONTEXT OF THE NEGEV BEDOUIN

The Negev semi-arid desert stretches over 13,000 square kilometers, or 4,700 square miles, and encompasses nearly sixty percent of Israel's territory.<sup>9</sup> The Negev outlines Israel's borders with Egypt's Sinai desert to the south, the Gaza strip to the southwest, and Jordan's Arava Valley to the southeast. The Negev's northern border extends from an area near Gaza on the Mediterranean coast to the shores of the Dead Sea.

The Bedouin geographic origins are in the desert and semi-desert regions of the Arabian Peninsula.<sup>10</sup> Contemporary Bedouin tribes live in North Africa, Iraq, and the Levant.<sup>11</sup> Historically, the Bedouin engaged in: nomadic herding of goats and camels, light seasonal agriculture, taxation of caravans, and tributes collected from non-Bedouin settlements.<sup>12</sup> Their lifestyle as nomadic people depended on water conditions and year-round pastoral land and evolved as these resources became scarce.<sup>13</sup>

Under the Byzantine Empire, permanent settlements of farmers and traders along the Negev's northern semi-arid regions served as a front-line defense against southern Nabatean tribes.<sup>14</sup> Incoming migration of Bedouin tribes seeking expanses for livestock cultivation transformed

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9. *Negev Desert Region, Israel*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/Negev>.

10. *See generally id.*

11. *Bedouin People*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Bedouin>.

12. *See id.*

13. *See Yahel et al., supra note 3, at 14.*

14. *See Rehav Rubin, The Romanization of the Negev, Israel: geographical and cultural changes in the desert frontier in late antiquity*, 23 J. HIST. GEOGRAPHY 267, 270-71 (1997).

2018] NEGEV BEDOUINS AND THE STATE OF ISRAEL 85

the Negev's population and economic organization, during the seventh century, and the thirteenth to sixteenth centuries.<sup>15</sup> Nomadic life eliminated permanent settlements, including Beer Sheva.<sup>16</sup>

Clinton Bailey's early anthropological study of the Negev Bedouin found that, as nomads, Bedouin have lived in the Negev desert for hundreds of years.<sup>17</sup> Bailey cites Bedouin oral tradition, which describes the continuous migration of tribes displacing older ones.<sup>18</sup> Although these oral traditions portray migration patterns and land arrangements, they are unreliable as historical sources to date and map the Negev Bedouin's arrival and landholdings.<sup>19</sup> Bailey found that early thirteenth and fourteenth century sources name major Bedouin tribes of the Negev and Sinai, but these tribes are not found in these areas today.<sup>20</sup> Yet, a German explorer by the name of Ulrich Jasper Seetzen, in 1807, compiled a list of tribes showing "all the major groups present at that time were already there by the early nineteenth century. . . ."<sup>21</sup>

During the sixteenth through twentieth centuries, under Ottoman rule, the Negev Bedouin population significantly increased with the incoming of nomadic Bedouins and *fellahin* from Egypt, as well as slaves, or *abid*, from Sudan.<sup>22</sup> Farmers, or *fellahin*, are a recognized sub-population of Bedouins who joined the Bedouin over the years as land tenants.<sup>23</sup> Rather than "true" Arab Bedouin, the *fellahin* are viewed

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15. A. Allan Degen, *Traditional livestock production among Bedouin in the Negev Desert*, in INT'L HANDBOOK RES. ON INDIGENOUS ENTREPRENEURSHIP 115, 117 (Léo-Paul Dana & Robert B. Anderson eds., 2007). Islamic conquests contributed to this migration in the seventh century, and the Mamluk rule during the thirteenth to sixteenth centuries.

16. *Id.* at 117-18.

17. See generally Clinton Bailey, *Dating the Arrival of the Bedouin Tribes in Sinai and the Negev*, 28 J. ECON. AND SOC. HIST. ORIENT 20, 46-49 (1985).

18. *Id.* at 24.

19. *Id.* at 25.

20. *Id.* at 22. For historical context, the Crusades occurred during the thirteenth and fourteenth centuries.

21. *Id.* at 2.

22. A. Allan Degen, *Traditional livestock production among Bedouin in the Negev Desert*, in INT'L HANDBOOK OF RES. ON INDIGENOUS ENTREPRENEURSHIP 117 (Léo-Paul Dana & Robert B. Anderson eds., 2007).

23. *Id.* *Fellahin* originated from different areas in Gaza, Egypt, and Jordan.

as socially and culturally subordinate within Bedouin society, carrying out much of the agricultural and other perceived menial labors.<sup>24</sup>

## II. BEDOUIN SEMI-NOMADISM AND THE QUESTION OF LAND

### *A. Bedouin Life Until the Nineteenth Century*

East Asian historiography has romanticized the Bedouin as remaining untouched and unchanged by the outside world until the last decades: a “world without time” reflecting the unchanging desert culture.<sup>25</sup> However, this perception of nomadism does not fully represent the nature of Bedouin life. Nomadism is also a means of adapting to political and military circumstances, more than merely adapting to environmental and economic ones.<sup>26</sup> Populations maintain nomadic patterns in order to benefit from political and economic advantages. Therefore, over the past hundreds of years, the changing circumstances in the Middle East have affected patterns of Bedouin life.<sup>27</sup> Those continuous Bedouin adaptation patterns were affected by coercive circumstances and economically motivated political opportunities.

Until the nineteenth century, the Bedouin lived mainly as nomads with only few permanent settlements or structures, excluding cemeteries. Pure traditional Bedouin nomadic way of life began to evolve in the nineteenth century with increased privatization of Bedouin land and diverse employment reflecting Ottoman and Zionist

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24. Gideon M. Kressel et al., *Changes in the Land Usage by the Negev Bedouin Since the Mid-19th Century*, 28-30 *NOMADIC PEOPLES* (1991).

25. Kurt Goering, *Israel and the Bedouin of the Negev*, 9 *J. PALESTINE STUD.* 3 (1979).

26. William Irons, *Nomadism as a Political Adaptation: The Case of the Yomut Turkmen*, 1 *AM. ETHNOLOGIST* 635 (1974).

27. *See generally id.* at 635-36. Over the past hundreds of years, the Bedouin have been under Ottoman, British, and Israeli regimes.

2018] NEGEV BEDOUINS AND THE STATE OF ISRAEL 87

influences.<sup>28</sup> Technological development of new transportation options and regional infrastructure reinforced these trends.<sup>29</sup>

### *B. Bedouin Life in the Twentieth Century*

Despite the Negev Bedouin's prevailing image of nomads and shepherds, in the early twentieth century most Negev Bedouin lived a semi-nomadic life—defined as movement within a twelve to thirteen-kilometer radius, based on extended periods of settlement and agriculture.<sup>30</sup> This evolution of traditional lifestyle became the basis for the development of an intricate internal-social system of land ownership, grazing rights, and water access.<sup>31</sup> Another expression of lifestyle adaptation was the ongoing reciprocal relations between the Bedouin and urban centers.<sup>32</sup> Beer Sheva drew in three of the major Negev Bedouin meta-tribes to settle, benefitting from development and employment opportunities.<sup>33</sup>

Nomads largely view land as a commons—serving all, but owned by none. Adapting to semi-nomadic and sedentary lifestyle, with increasing exposure to Western culture, facilitates the development of a more direct, tribal, and personal claim to land as a source of wealth and marker of identity. Parallel to deepening settling trends, Falah traces Bedouin oral knowledge of a developing internal social system of land ownership, grazing rights, and water access.<sup>34</sup> However, these

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28. See generally Israel Finkelstein & Avi Perevolotsky, *Processes of Sedentarization and Nomadization in the History of Sinai and the Negev*, BULL. OF THE AM. SCHS. OF ORIENTAL RES. 67, 77; see Kressel, *supra* note 26.

29. See generally Mohamed Awad, *Settlement of nomadic and semi-nomadic tribal groups in the Middle East*, 79 INT'L LAB. REV. 25-56 (1959). The Suez Canal is one example of a technological development of new transportation options.

30. Ghazi Falah, *Israeli State Policy towards Bedouin Sedentarization in the Negev*, 18 J. PALESTINE STUD. 71, 79 (1989).

31. See generally *id.* at 81-88.

32. See Emanuel Marx, *The Political Economy of Middle Eastern and North African Pastoral Nomads*, in NOMADIC SOCIETIES IN THE MIDDLE EAST AND NORTH AFRICA: ENTERING THE 21ST CENTURY, 78, 81, 86 (Dawn Chatty ed., 2005).

33. See Ruth Kark & Seth J. Frantzman, *The Negev: Land, Settlement, the Bedouin and Ottoman and British Policy 1871-1948*, 39 BRIT. J. MIDDLE E. STUD. 53, 56, 58 (2012).

34. See generally Falah, *supra* note 31, at 81-88.

88 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 49

changes were largely unaccompanied by actual registration of land ownership.

*C. Land Policy and its Effect on Bedouin Life*

In the nineteenth century, the Ottomans developed a robust policy to consolidate control and administration of their empire.<sup>35</sup> Under the *Tanzimat* reforms, the Ottoman Land Law of 1858 instituted an unprecedented land registration process designed to facilitate law and order as well as boost the empire's tax base.<sup>36</sup> Few Bedouin opted to register their lands due to their under-appreciation of written documentation of land ownership, as well as their preference to avoid taxes.<sup>37</sup> Therefore, this law classified much of Bedouin territory in the Negev as *mewat*—state-owned dead or not economically viable land.<sup>38</sup>

In 1927, a British report still described the Bedouin as the “untamed denizens of the Arabian deserts.”<sup>39</sup> However, during the British Mandate rule, the price of livestock, especially camels, dropped, further reducing Bedouin income from this traditional occupation and deepening the trend towards permanent settlement, agriculture, and alternative livelihoods. The cultural change deepened as the British established the first formal schools for the Bedouin.<sup>40</sup>

Widening and deepening of sedentary trends, together with increasing exposure to British and Jewish lifestyle and commerce, accelerated Bedouin transition to a monetary economy with a demand for new market products.<sup>41</sup> New employment opportunities especially benefited the Bedouin *fellahin*, and land tenants, as a means of

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35. See *Religions – Islam: Ottoman Empire (1301-1922)*, BBC, [http://www.bbc.co.uk/religion/religions/islam/history/ottomanempire\\_1.shtml](http://www.bbc.co.uk/religion/religions/islam/history/ottomanempire_1.shtml), (last updated Sept. 4, 2009).

36. Knowpia, Bedouin, <http://www.knowpia.com/pages/Bedouin> (last visited Nov. 11, 2018).

37. Kark & Frantzman, *supra* note 33.

38. Kark & Frantzman, *supra* note 33, at 55.

39. Martin Ira Glassner, *The Bedouin of Southern Sinai Under Israeli Administration*, 64 GEOGRAPHICAL REV. 31, 36 (1974).

40. Ismael Abu Saad, *Towards an Understanding of Minority Education in Israel: The Case of the Bedouin Arabs of the Negev*, 27 COMP. EDUC. 235, 236 (1991).

41. See generally Marx, *supra* note 32, at 86.



2018] NEGEV BEDOUINS AND THE STATE OF ISRAEL 89

loosening their social and economic subordinating ties to the Bedouins, thus decreasing the phenomenon of land tenancy.<sup>42</sup>

Moreover, the Bedouin lifestyle and traditional land arrangements continued to challenge British Mandate authorities, laws, and bureaucracy.<sup>43</sup> This is reflected in the British Land Order of 1921, which stipulated that anyone who cultivated *mewat* land had to register the land within two months to claim ownership.<sup>44</sup> Again, Bedouin did not take advantage of this opportunity, reflecting their traditional perceptions of land, ignorance regarding the significance of British bureaucracy, and preference to avoid paying taxes.

### III. ISRAEL AND THE NEGEV BEDOUIN

During the 1948 War of Independence and the military rule imposed on Israeli Arabs in 1951, about 80,000 of the estimated 90,000 Negev Bedouin fled or were evicted, although many eventually returned.<sup>45</sup> Israeli authorities transferred two-thirds of the remaining Bedouin into the *Siyag*—a closed reservation under military supervision east of Beer Sheva, encompassing just 10% of the original size of Bedouin land.<sup>46</sup> Legal restrictions such as the Black Goat Law of 1950, prohibited the grazing of goats outside recognized land holdings in the name of preventing land erosion.<sup>47</sup> Conditions in this demarcated, closed, and isolated area are reminiscent of the native reservations in the United States.<sup>48</sup>

The Negev was seen by Israel as an integral part of the country and needed frontier for future Jewish immigrant settlement and

42. See Gideon M. Kressel et al., *Changes in the Land Usage by the Negev Bedouin Since the Mid-19th Century. The Intra-Tribal Perspective*, 28 NOMADIC PEOPLES 28, 28 (1991).

43. See Kark & Frantzman, *supra* note 33, at 77.

44. See Ahmad Amara, *The Negev land question: between denial and recognition*, Vol. XLII, No. 4 J. PALESTINE STUD. 27, 33 (Summer 2013).

45. Deborah F. Shmueli & Rassem Khamaisi, *Bedouin Communities in the Negev*, 77.2 J. AM. PLAN. ASS'N 109, 111 (Apr. 2011).

46. Chanina Porat, *Israel's Policy on the Bedouin Issue and Left-Wing Alternatives, 1953-1960*, 10 IYYUNIM BITKUMAT ISRAEL 420, 421 (2000) (on file with author).

47. See Shmueli & Khamaisi, *supra* note 45, at 110-11.

48. SHLOMO SWIRSKI & YAEL HASSON, *INVISIBLE CITIZENS: ISRAEL GOVERNMENT POL'Y TOWARD THE NEGEV BEDOUIN* 11 (2006).

development.<sup>49</sup> Harsh restrictions of the Negev Bedouin reflected historical circumstances of war, in which many Negev Bedouin aligned with and supported Arab forces opposing Israel.<sup>50</sup> For these reasons Israel perceived the Bedouin as a potential threat, warranting prevention of Bedouin return and limiting their movement. In reality, the Negev was a border-military zone, which was the scene of frequent military clashes in Israel's early years. In fact, doubts about Israel's sovereignty over the Negev did not cease until after the 1956 war.<sup>51</sup>

#### A. Bedouin Citizenship and Land Registry

The Bedouin were granted Israeli citizenship in 1954.<sup>52</sup> However, just as the Ottoman and British before, Israeli law and policy struggled to address Bedouin civic rights, lifestyle as semi-nomads, claims to land, and social and economic needs.

Israel's land registry relies mainly on Ottoman land registry deeds, or *nesah tabu*.<sup>53</sup> The 1858 Ottoman Land regulations formed the basis for Israel's land policy and laws—as it did for the British Mandate.<sup>54</sup> Most Bedouin land holdings were classified as *mewat* land and these were registered as belonging to the state under both Ottoman and British law.<sup>55</sup> Consequently, the Israeli “Land Law” of 1959, and Land Rights Settlement Ordinance of 1969, nullified Ottoman laws and categorized all *mewat* land as Israeli government land.<sup>56</sup>

In the early years of the State of Israel, beyond the issue of land holdings, a distinct cultural gap was reflected in the patronizing attitudes and policies of the *Ashkenzi*—European leaders of the new

49. See Shmueli & Khamaisi, *supra* note 45, at 111-12.

50. See generally Havatzelet Yahel & Ruth Kark, *Israel Negev Bedouin during the 1948 War: Departure and Return*, ISRAEL AFF., 21(1), 48, 61-70 (2015).

51. Porat, *supra* note 46 (on file with author).

52. Thabet Abu Ras, *The Arab Bedouin and their Lands in the Naqab – The Tribal Dimension of Steadfastness*, 93 ADALAH'S NEWSLETTER 1, 1 (2012).

53. *Ottoman Land Registration Law as a Contributing Factor in the Israeli-Arab Conflict*, BEKI CONGREGATION (2003), <http://www.beki.org/dvartorah/landlaw/>.

54. See generally *id.*

55. See *id.*

56. See Yahel, H., *Land Disputes Between the Negev Bedouin and Israel*, 2 ISRAEL STUD., 1, 11 (2006); SWIRSKI & HASSON, *supra* note 48, at 13-15.

2018] NEGEV BEDOUINS AND THE STATE OF ISRAEL 91

state regarding the Bedouin population.<sup>57</sup> Bedouin life was perceived as unproductive and outdated; the Bedouin as an ultimate “other” who can be transferred and molded to serve the state’s needs. This is reflected in a famous quote of Moshe Dayan:

We should transform the Bedouin into an urban proletariat in industry, services, construction, and agriculture. 88% of the Israeli population are not farmers, let the Bedouins be like them . . . . The Bedouin would not live on his land with his herds, but would become an urban person who comes home in the afternoon and puts his slippers on . . . . The children will go to school with their hair properly combed. This will be a revolution, but it will be fixed within two generations. Without coercion but with governmental direction . . . this phenomenon of the Bedouins will disappear.<sup>58</sup>

Israel consistently views the semi-nomadic lifestyle as inhibiting modern development.<sup>59</sup> However, behind the administrative convenience of settling the Bedouin, Israel has long felt threatened by Bedouin history and lifestyle due to its ramifications in terms of land holdings and the prospects for Zionist visions of developing the Negev.<sup>60</sup>

### *B. Planned and Unrecognized Bedouin Settlements*

In the 1970s and 1980s, Israel executed an urbanization policy, declaring to modernize and benefit the Bedouin population, while implementing the transformative vision of Moshe Dayan regarding Bedouin lifestyle.<sup>61</sup> Moreover, an underlying motivation to settle the Bedouin in townships was to put an end to Bedouin claims of land

57. See Harry Oster & Karl Skorecki, *The population genetics of the Jewish people*, 132 *HUM. GENETICS* 119, 119-20 (2012).

58. See Jillian Kestler-D’Amours, *Peddling the Myth of the Bedouin ‘Take-over,’* Haaretz (July 1, 2013), <https://www.haaretz.com/opinion/.premium-jillian-kestler-myth-of-the-bedouin-take-over-1.5289626>.

59. Kark & Frantzman, *supra* note 33, at 77.

60. See generally Talia Berman-Kishony, *Bedouin urbanization legal policies in Israel and Jordan: similar goals, contrasting strategies*, 17 *TRANSNAT’L L. & CONTEMP. PROBS.*, 393, 393-94 (2008).

61. See generally Thabet Abu Ras, *The Arab-Bedouin Population in the Negev: Transformation in an Era of Urbanization*, in *The Arab-Bedouin population in the Negev* 67, 99 (Maya Popper ed., 2012).

ownership rights. After 1948, the Bedouin land ownership rights, over most of the Siyag-area lands, were transferred and handed over to Israel.<sup>62</sup> Seven Bedouin townships were established offering houses and infrastructure in exchange for the renunciation of ancestral land: Rahat, Tel-Sheva, Arara, Kseife, Hura, Laqiya, and Segev Shalom. Significant resources were invested in these towns and Bedouin residents were registered as owners of their subsidized houses and specific plots of land. The seven towns offered modern services: schools, health clinics, water, and electricity, but lacked infrastructure for local employment and economic development.<sup>63</sup>

The Bedouin were not included in the planning of their future homes and communities nor were their preferences or traditional ways of life considered in this urbanization policy, resulting in significant inter-generational and tribal social conflict.<sup>64</sup> Initially, the dominant population of the townships was the *fellahin*-Bedouin population, who had fewer land claims and therefore seized the opportunities of economic independence and release from the Bedouin. This further decreased the towns' attraction to non-*fellahin* Bedouin and inevitably contributed to inner-Bedouin social conflict regarding prospects of permanent settlement.<sup>65</sup>

In 2009, 192,800 Negev Bedouin encompassed twenty-seven percent of the Negev's population.<sup>66</sup> Nearly two-thirds of the Bedouin population eventually moved into the seven townships.<sup>67</sup> The remaining third live in diaspora localities.<sup>68</sup> These localities are often referred to as "unrecognized villages," which are informal communities not officially recognized by the government and considered illegal.<sup>69</sup> Their illegal status stems both from their unrecognized land ownership

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62. SWIRSKI & HASSON, *supra* note 48, at 17.

63. See Emanuel Marx & Avinoam Meir, *Land, towns and planning: The Negev Bedouin and the State of Israel* 25 GEOGRAPHY RES. F., 43, 50 (2005).

64. *Id.* at 53.

65. See Shlomit Tamari et al., *Urban tribalism: Negotiating form, function and social milieu in Bedouin towns, Israel*, CITY, TERRITORY AND ARCHITECTURE 1, 7 (2016).

66. ARIK RUDNITZKY, *THE BEDOUIN POPULATION OF THE NEGEV: SOC., DEMOGRAPHIC AND ECON. FACTORS* 8 (Maya Popper ed., 2012).

67. *Id.* at 9.

68. *Id.* at 11.

69. *Id.* at 11-12.

2018] NEGEV BEDOUINS AND THE STATE OF ISRAEL 93

claims and from the classification of these village lands as agricultural, not residential. Because these villages are considered illegal, they have few public services or legal permanent structures.

The Bedouin of the unrecognized villages believe resisting resettlement is a strategy to safeguard both land-claims and the Bedouin culture and way of life. An additional incentive to remain in these villages is the unlimited “free” land. The Bedouins perceive the land as free because there are no building permit requirements, nor are there municipal or national taxes.<sup>70</sup> Common belief among Bedouin, which has proven to be true, is that residents of these unrecognized villages ultimately receive higher state compensation for resettlement options—if and when resettlement is agreed upon.<sup>71</sup>

These unplanned and unrecognized Bedouin villages pose multiple challenges to Israel’s executive agencies: education, health, fire, law enforcement, and environment. Israel has not successfully overcome the challenge of how to develop desperately needed infrastructure like roads, schools, and clinics.<sup>72</sup> This infrastructure is necessary to provide basic services to its Bedouin citizens and maintain law and safety in their villages, which are not zoned for development and therefore have no master plans for such infrastructure.<sup>73</sup> This partially explains the notoriously high rates of Bedouin infant mortality, accidents, crime, and irregular school attendance.<sup>74</sup>

### *C. Bedouin Social Circumstances*

Both unrecognized Bedouin villages and their planned townships are classified at the lowest level of social-economic development, suffering from poor infrastructure, few industrial areas, poor education services, and comparatively high crime rates. Most Bedouin are employed outside the Bedouin townships and there is a growing Bedouin student population in Israel’s universities, especially Ben-Gurion University of Beer Sheva.<sup>75</sup> However, the Bedouin are hardly

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70. Yahel, *supra* note 56, at 8.

71. Berman-Kishony, *supra* note 60, at 400.

72. *See id.*

73. Abu Ras, *supra* note 61, at 117.

74. *Id.* at 52, 87.

75. SWIRSKI & HASSON, *supra* note 48, at 17.

integrated into the social fabric of their neighboring Jewish *kibbutz*, *moshav*, and towns, all of whom enjoy state service provision at significantly higher standards.<sup>76</sup> This estrangement is an expression of Israel's widespread perception of Bedouin as a distinct "other"—Arab Muslims who until recently were primitive nomads.

The Israeli media's frequent association of Bedouin with crime in the Negev has exacerbated this social distance. Indeed many Israelis believe that Bedouins have strategically constructed unrecognized villages as a way to gain land in the ongoing Arab-Israeli territorial conflict. However, Israeli policies further this association with illegality by issuing nearly 700 annual demolition warrants without nearly enough permits for legal construction.<sup>77</sup>

#### IV. BEDOUIN TERRITORY CLAIMS AND CONFLICT

From 1971 to 1979, Israel initiated a land registration program through which 3,220 Bedouins submitted claims of territorial ownership encompassing 776,585 square dunam of Negev land.<sup>78</sup> However, nearly 3,000 of these claims are still open, reflecting conflicting ownership claims regarding 571,285 square dunam of Negev land.<sup>79</sup> Since the 1975 Albeck Committee, Israel implemented a policy to encourage the Bedouin to settle and compromise territorial claims, because of the Bedouin's lack of legal land ownership documentation. In recognition of the strong Bedouin attachment to their land, Israel has offered monetary compensation, "beyond the letter of the law."<sup>80</sup> Accordingly, those Negev Bedouin who withdraw ownership claims can be eligible for monetary compensation and land

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76. See generally Jillian Kestler-D'Amours, *Israel: Bedouin 'betrayed' by relocation plan*, AL JAZEERA, July 31, 2016, <https://www.aljazeera.com/news/2016/07/israel-bedouin-betrayed-relocation-plan-160731085348670.html>. A moshav is a cooperative village, typically with eighty to a hundred families. A kibbutz is a commune with one hundred to eight hundred members. These are the two main forms of farm cooperatives in the region. Close to eighty percent of the agricultural output of Israel is produced on these types of cooperative farms.

77. See Ronen Shamir, *Suspended in Space: Bedouins under the Law of Israel*, 30 LAW & SOC'Y REV. 246-47 (1996).

78. See SWIRSKI & HASSON, *supra* note 48, at 19.

79. See *id.*

80. *Id.* at 20-21.

2018] NEGEV BEDOUINS AND THE STATE OF ISRAEL 95

compensation, without need to prove their claim's validity.<sup>81</sup> The land compensation is usually between twenty and thirty percent of the full claim—for claims of more than 400,000 square meters.<sup>82</sup> For the rest of the claim, monetary compensation is offered. None of the Negev Bedouin who pursued the legal process have been successful.

The Bedouin continue to regard approximately 600 square kilometers of the Negev as their rightful inheritance and continuously petition the government for its return.<sup>83</sup> Numerous claims committees were established to resolve land disputes, but so far there has been no success in bridging the gaps between the Bedouin and the Israeli authorities. Although not all Bedouin claim land ownership, this issue affects the entire discourse between the Bedouin community and the state.

The Albeck Committee established dependence between relinquishment of land claims and prospects of Bedouin resettlement into government-planned localities.<sup>84</sup> However, the Bedouin remain the poorest and most marginalized sector in Israel's society as evidenced by their education, health, and welfare.<sup>85</sup> This policy results in a problematic link between the land dispute and Bedouin welfare—especially in the unrecognized villages—due to lack of government investment in basic infrastructure and services.<sup>86</sup>

#### A. Israel's Policy Change

Current Israeli policy de-links social-economic policy from land regulation. There is no longer a demand for Bedouin to give up any

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81. *Id.* at 21.

82. *See id.* at 21-22.

83. *See generally* Amira Hoss, *Once Again, Israel Denies the Bedouin What it Grants the Settlers*, HAARETZ, July 27, 2018, <https://www.haaretz.com/israel-news/premium-once-again-israel-denies-the-bedouin-what-it-grants-the-settlers-1.6317363>.

84. Noa Kram, *The Naqab Bedouins: Legal Struggles for Land Ownership Rights in Israel*, in *INDIGENOUS INJUSTICE: HUM. RTS. L. AND BEDOUIN ARABS IN THE NAQAB/NEGEV* 147 (Ahmad Amara et al., 2012).

85. Mohammad Darawshe & Amnon Be'eri-Sulitzeanu, Introduction to *THE BEDOUIN POPULATION OF THE NEGEV* III, III-IV (2012).

86. *See generally* Shaul Krakover, *Urban settlement program and land dispute resolution: The State of Israel versus the Negev Bedouin*, 47 *GEOJOURNAL* 551-61 (Jan. 1999).

claims to ancestral land ownership in return for land and money for settlement.<sup>87</sup> This was recognized as counter-productive in dealing with expansion of the Bedouin dispersal.<sup>88</sup> Policies such as the Sharon Plan allocate funding towards law enforcement rather than urban-town settlement.<sup>89</sup> Thus, nine of the previously unrecognized villages were officially recognized and incorporated into the Abu Basma Regional Council, allowing service and infrastructure development.<sup>90</sup>

In 2017, Israel approved a Five Year Plan and allocated 3.2 billion Israeli New Shekel (NIS), equivalent to one billion U.S. dollars, for investment in the neglected developmental needs of the Bedouin population.<sup>91</sup> However, land claims will likely still need to be resolved for housing development and infrastructure to proceed, because the land in dispute often lays within or adjacent to Bedouin townships and villages. Therefore, the Bedouin would have the power to block the government's plan for potential growth, unless the land claims were settled.

### *B. Conflict's Effect on Discourse*

Despite the increased focus on infrastructure needs, the conflict over land rights continues to dominate the discourse between Israel and its Bedouin citizens. The Bedouin Regional Council of Unrecognized Villages (RCUV) believes that recognizing eight formerly unrecognized villages came at the cost of renouncing significant land claims.<sup>92</sup> Furthermore, RCUV foresees that the remaining unrecognized villages will become urban ghettos neglected by the

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87. See generally Kram, *supra* note 84, at 79.

88. *Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context on her mission to Israel and to the Occupied Palestinian Territory (30 Jan.–12 Feb. 2012)* 8 OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUM. RTS. (2012), <https://www.hrw.org/reports/2008/iopt0308/iopt0308webwcover.pdf>.

89. Kram, *supra* note 84, at 49.

90. SHLOMO SWIRSKI & YAEL HASSON, *INVISIBLE CITIZENS: ISRAEL GOVERNMENT POL'Y TOWARD THE NEGEV BEDOUIN EXECUTIVE SUMMARY* 8 (2006).

91. *Five Year Plan for Socioeconomic Development in the Negev Bedouin Localities 2017-2021* (Socio-Economic Development Department et al. 2017), <http://iataskforce.org/sites/default/files/event/pdf-343.pdf>.

92. SWIRSKI & HASSON, *supra* note 48, at 25.



2018] NEGEV BEDOUINS AND THE STATE OF ISRAEL 97

government.<sup>93</sup> Therefore, the RCUV demands Israel to recognize all unrecognized villages and their land claims.<sup>94</sup>

Israel increasingly penalizes Bedouin of the unrecognized villages to counter any benefits of refusing resettlement and to protect its perceived state-land rights. These penalties—state-led legal counter-claims, house demolitions, and crop destruction—have intensified the Bedouin resistance and their mistrust of the Israeli government, police, and justice system.<sup>95</sup> Another result of Israel's penalties has led to political and religious radicalization of the Bedouin, reflected in: the Islamic movement's rapid growth, frequent protests, and decreasing numbers of Bedouin volunteers enlisting in the Israeli army.

This territorial dispute has significant social manifestations and ramifications. Within Israeli society, Bedouin of unrecognized villages are often portrayed as squatters, who illegally use land without limitations of bureaucracy, building permits, or taxation. Bedouin of unrecognized villages essentially intimidate official state representatives, including the police, from enforcing law. There is growing public demand within both Jewish and Bedouin populations for equal enforcement of law and planning regulations on all citizens—including the Bedouin.

Support and encouragement for remaining in the unrecognized villages comes both from inside and outside the Bedouin community. Activists and non-governmental organizations empower Bedouin unrecognized and illegal settlements, sharing the belief that these settlements are justified and the authorities should accept the Bedouin demand to remain and retain their land ownership. Others essentially link this territorial dispute to the wider Israeli-Palestinian conflict. A relatively recent trend is the self-identification of Bedouins as Palestinians, despite documented historic rivalries between the two

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93. Jana Van Breckel, *Reclaiming spatial justice for the native Naqab Arab Bedouin: Towards a critical geography of the Israeli land and planning laws* (2016). The Israeli government's neglect of these unrecognized villages manifest itself through limited borders that are inadequate for future growth, and with only minimal state investment in long denied services and infrastructure.

94. See Maha Qpty, *Bedouin Unrecognized Villages of the Negev*, HABITAT INT'L COALITION (Jan. 1, 2004), <http://www.hic-gs.org/document.php?pid=2670>.

95. Berman-Kishony, *supra* note 60, at 402-03.

## 98 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 49

groups.<sup>96</sup> In this vein, “the Naqab Palestinian Bedouin [] have shown the tenacity typical of the Palestinian people to withstand efforts to remove them from their land . . . .”<sup>97</sup> In this discourse, Israel is depicted as a colonial power that displaces indigenous peoples—both Bedouin and Palestinians.<sup>98</sup>

## V. BEDOUIN AS INDIGENOUS PEOPLE

A cornerstone of indigenous peoples’ claims to land is their right to use and/or own their traditional territories. Different definitions of indigeneity offer a mix of objective criteria, such as historical continuity, as well as subjective ones, such as self-definition.<sup>99</sup> Three features are common to most perceptions of indigeneity: “(i) indigenous peoples are descendants of the original inhabitants of territories since colonised [*sic*] by foreigners . . . ; (ii) they have distinct cultures, which set them apart from the dominant society; and (iii) they have a strong sense of self-identity.”<sup>100</sup>

Bedouin self-identity is unique—a Palestinian community of Arabic-speaking people, with a unique dialect, and roots in the Negev stemming over a millennium. “Some demographers have concluded that most of the Bedouin migrated into the Negev from the Sinai Desert in the course of [the last] 250 years (i.e., [between the] 16th-19th Centuries, . . . )”<sup>101</sup> hence weakening Bedouin claims for recognition as indigenous to Israel. The Ottoman Empire’s tax records of the 16th century show that tribes living in the Negev, at the time, “are not those

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96. Havatzelet Yahel, Ruth Kark & Seth J. Frantzman, *Negev Bedouin and Indigenous People: A Comparative Review in* SOCIETIES, SOC. INEQUALITIES AND MARGINALIZATION: MARGINAL REGIONS IN THE 21ST CENTURY 20 (Raghubir Chand et al. eds., 2017).

97. INT’L WORK GRP. FOR INDIGENOUS AFFS, THE INDIGENOUS WORLD 2009, 427 (Kathrin Wessendorf ed., Apr. 2009).

98. See ALEXANDRE KEDAR, ET AL., EMPTIED LANDS: A LEGAL GEOGRAPHY OF BEDOUIN RTS. IN THE NEGEV 8-9 (Stanford University Press 2018).

99. See *id.* at 159.

100. Jérémie Gilbert, *Nomadic Territories: A Human Rights Approach to Nomadic Peoples’ Land Rights*. 7 HUM. RTS. L. REV. 681, 694 (2007).

101. ADA KATSAP & FREDERICK L. SILVERMAN, ETHNOMATHEMATICS OF NEGEV BEDOUINS’ EXISTENCE IN FORMS, SYMBOLS, AND GEOMETRIC PATTERNS 19 (2016).

2018] NEGEV BEDOUINS AND THE STATE OF ISRAEL 99

residing there today.”<sup>102</sup> Thus, the contemporary Bedouin population of Israel has relatively recent tenure and attachment rather than historic ownership rights to Negev land, based on 200 to 300 years of tenure and settlement. In Israel, the relatively recent introduction of the claim of indigenusness is usually accompanied by the presentation of the Bedouin as a dispossessed people.<sup>103</sup> This developing discourse demonstrates Hassner’s insight regarding the effect of the passing of time in unresolved conflict. Time affects territorial conflict materially by clarifying the boundaries of the disputed territory and symbolically by strengthening the social perception of the territory’s integrity and value.<sup>104</sup>

Indigenous claims are usually accompanied by the accusation of dispossession. To present the Bedouin as a dispossessed people, activists and their supporters make two main claims: (1) the Negev belonged to the Bedouin for centuries before the founding of Israel; and (2) the Ottoman Empire and the British Mandate, as the historical rulers, both recognized Bedouin traditional historic ownership of Negev land. According to this accusation, Israel chooses to ignore these legal rights, effectively dispossessing the land’s indigenous population in favor of Zionist ideals and settlement.<sup>105</sup>

The indigeneity of the Bedouin has been met with a certain amount of international success, gaining official recognition from United Nations’ institutions and the European Union. Both entities have effectively made declarations claiming that the Israeli Bedouin deserve the defense of international law regarding the rights of indigenous peoples. In July 2012, for example, the European Parliament called “for the protection of the Bedouin communities of the West Bank and in the Negev, and for their rights to be fully respected by the Israeli authorities, and condemns any violations.”<sup>106</sup> These violations include house demolitions, forced displacements, and public

102. Yahel, Kark & Frantzman, *supra* note 96, at 14.

103. *See, e.g., id.* at 1, 11, 12.

104. Ron E. Hassner, *The Path to Intractability: Time and the Entrenchment of Territorial Disputes*, INT’L SECURITY, 107-38 (Winter 2006-2007), <https://www.jstor.org/stable/4137509>.

105. *See generally* ALEXANDRE KEDAR ET AL., EMPTIED LANDS: A LEGAL GEOGRAPHY OF BEDOUIN RTS. IN THE NEGEV (2018).

106. 2013 O.J. (C 349E) 87 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2013:349E:FULL&from=EN>.

## 100 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 49]

service limitations.<sup>107</sup> The European Parliament also called on the Israeli government to withdraw the Praver Plan, the 2011 Bill on the Arrangement of Bedouin Settlement in the Negev.<sup>108</sup> The Praver Plan combines economic development and integration of the Negev Bedouin with the resolution of their land claims, recognizing and expanding some unrecognized villages and relocating approximately 40,000 Bedouin to existing, recognized local councils.<sup>109</sup>

However, the claim of indigeneity works both ways. As opposed to the view of Israel as a colonial state, Zionist ideology—through which the State of Israel was founded and settled—views the Jewish people as indigenous to the Land of Israel. This ideology is based on ancient Jewish settlement and kingdoms, continuous Jewish presence in the land, and religious attachment. Foreign intervention on behalf of the Bedouin is perceived as a political tactic, which uses the Bedouin for the wider Arab-Israeli conflict. This foreign intervention disregards specific context and legalities to weaken the historic and moral basis of the State of Israel. Thus, many Western states are perceived as hypocritical for insisting on the rule of law and contemporary treatment of indigenous peoples and minorities, in comparison to many Western states' own colonial histories.

## CONCLUSION

Bedouin life and culture have transitioned from pastoralism to agriculture over hundreds of years, influenced by gradual adaptation to changing economic and social circumstances as well as by political

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107. *Id.*

108. Jack Khoury, *European Parliament Condemns Israel's Policy Toward Bedouin Population*, HAARETZ (July 8, 2012, 4:43 PM), <https://www.haaretz.com/european-parliament-condemns-israel-s-bedouin-policy-1.5265139>; Jillian Kestler-D'Amours, *Israel's Bedouin Battle Displacement*, AL JAZEERA (Aug. 29, 2013), <https://www.aljazeera.com/indepth/features/2013/08/2013828125945288209.html>.

109. *See The Bill on the Arrangement of Bedouin Settlement in the Negev ("Praver-Begin Plan")*, INTER-AGENCY TASK FORCE ON ISRAELI ARAB ISSUES (July 2013), <http://iataskforce.org/sites/default/files/resource/resource-1058.pdf>; *see* Martin Michaels, *Homeless In Their Own Land: 40,000 Bedouin Face Forced Relocation In Israel*, MINTPRESS NEWS (June 27, 2013), <https://www.mintpressnews.com/homeless-in-their-own-land-40000-bedouin-face-forced-relocation-in-israel/164414/>.

2018] NEGEV BEDOUINS AND THE STATE OF ISRAEL 101

coercion.<sup>110</sup> Trends in Bedouin society—settlement, education, family, and work patterns—reflect both these external and internal forces. Cultural, social, and legal disparities linger when lifestyles evolve and are often a basis for conflict—as in the case of the Bedouin and the State of Israel.

The question of indigeneity is a central historic-ideological debate. However, the question of Bedouin indigeneity polarizes and politicizes this conflict, distancing the parties from urgent pragmatic compromises. Heightened political conflict is known to produce polarization at the extremes,<sup>111</sup> yet this can be enough to divert the mainstream discourse from pragmatic compromise to hardened positions. One certain thing we can learn from the context of indigeneity in countries such as Canada and Australia is that indigenous people may win territorial disputes, but the territory alone is not enough to improve their social-economic prospects.<sup>112</sup> An integrated effort combining the resolution of territorial disputes with government planning and investment in infrastructure, services, and social integration is needed to fix inequities that have developed over decades.

Berman-Kishony adds a regional dimension to this debate, recommending that Israel learn from Jordan in addressing this complex conflict.<sup>113</sup> Despite the different circumstances, Jordan and Israel share ambitions of modern and Western-oriented urbanization and development. These Western-oriented ambitions are often viewed as

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110. See generally Gideon M. Kressel et al., *Changes in the Land Usage by the Negev Bedouin Since the Mid-19th Century*, 28 *NOMADIC PEOPLES* 28-55 (1991); see Seth J. Frantzman & Ruth Kark, *Bedouin Settlement in Late Ottoman and British Mandatory Palestine: Influence on the Cultural and Environmental Landscape, 1870-1948*, *NEW MIDDLE EASTERN STUD.* (New Middle Eastern Studies, June 15, 2011), <http://www.brismes.ac.uk/nmes/wp-content/uploads/2011/06/NMES2011FrantzmanKark.pdf>.

111. María José Hierro & Aina Gallego, *Identities in Between: Political Conflict and Ethnonational Identities in Multicultural States*, 62 *J. CONFLICT RESOL.*, 1314, 1332 (2018).

112. See Francis Mitrou et al. *Gaps in Indigenous Disadvantage Not Closing: A Census Cohort Study of Social Determinants of Health in Australia, Canada, and New Zealand from 1981-2006*, *BMC PUB. HEALTH* (Feb. 2014), <https://bmcpublikealth.biomedcentral.com/track/pdf/10.1186/1471-2458-14-20>.

113. Talia Berman-Kishony, *Bedouin Urbanization Legal Policies in Israel and Jordan: Similar Goals, Contrasting Strategies*, 17 *TRANSNAT'L L. & CONTEMP. PROBS.*, 393-412 (2008).

## 102 CALIFORNIA WESTERN INTERNATIONAL LAW JOURNAL [Vol. 49]

incompatible with local Bedouin lifestyle and traditions, specifically traditions regarding land-holdings. Jordan has been relatively successful in balancing Bedouin ambitions of retaining traditional cultural and political forms, as well as the right of the state to regulate the allocation of land and to pursue economic development.<sup>114</sup> The comparison with Jordan, an Arab state of Bedouin origin, illustrates the extent at which politics, ideology, and ethnicity are entwined in this territorial conflict in Israel. Due to this sensitive and pragmatic conflict, a resolution needs to derive from an interest-based dialogue, rather than on penalties and politicization.

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114. *Id.*