



INDIANA UNIVERSITY PRESS

The Politization of History and the Negev Bedouin Land Claims: A Review Essay on Indigenous (In)justice

Author(s): Seth J. Frantzman

Source: *Israel Studies*, Vol. 19, No. 1 (Spring 2014), pp. 48-74

Published by: Indiana University Press

Stable URL: <https://www.jstor.org/stable/10.2979/israelstudies.19.1.48>

REFERENCES

Linked references are available on JSTOR for this article:

https://www.jstor.org/stable/10.2979/israelstudies.19.1.48?seq=1&cid=pdf-reference#references_tab_contents

You may need to log in to JSTOR to access the linked references.

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at <https://about.jstor.org/terms>



Indiana University Press is collaborating with JSTOR to digitize, preserve and extend access to *Israel Studies*

JSTOR

The Politization of History and the Negev Bedouin Land Claims: A Review Essay on *Indigenous (In)justice*

ABSTRACT

In recent years the study of the Negev Bedouin land claims has become a specialty of a small group of dedicated scholars. The aim of their research is to provide evidence that supports the notion that the Bedouin are an indigenous population whose rights were confirmed in the British and Mandatory period and therefore should be recognized by the State of Israel. The edited volume *Indigenous (In)justice* presents a case study of how research on this issue has selectively marialed historical sources to aid a contemporary political-geographical issue affecting a minority community.

Review Essay

Indigenous (In)justice:

Human Rights Law and Bedouin Arabs in the Naqab/Negev

Edited by Ahmad Amara, Ismael Abu-Saad, and Oren Yiftachel

Harvard University Press (Cambridge, MA, 2013)

*I*NDIGENOUS (IN)JUSTICE IS AN EXAMPLE OF WHAT SHOULD BE CALLED “post academics” where the agenda dictates the research, and any evidence that is contrary is ignored.¹ In contrast to the new historians, who relied on primary sources, this research on the Bedouin reflects a post-historical study where sources, primarily secondary, are mustered deceptively.² The

research presented in an edited volume, such as this, includes only authors who agree, rather than a range of conclusions and perspectives.

What defines this post-scholarship is that many of the scholars are non-specialists and they often don't use traditional methods of inquiry. For instance, in this volume, Ismael Abu-Saad is a Professor of Education writing on "Social-political upheaval" and Noa Kram is a PhD candidate in Social and Cultural Anthropology who studies in a program that "combines critical social thought with advocacy, while prioritizing education for social justice",³ but her article is on "legal struggles for land ownership" and is passed off as a history paper. The notion of advocacy in pursuit of social justice implies that the ends dictate the means.⁴

Examining this book as a case study provides us with several important results. First, it presents us with a window into how research was warped in order to serve a specific cause. Second, it provides an explanation of how the situation of the Negev Bedouin has been removed from its context and cast as an international issue, to cater to a narrow agenda relating to Israel, which harms and demeans the rights of indigenous people worldwide.

THE BEDOUIN AND THE NEGEV: DISPARATE NARRATIVES AND A RESEARCH AGENDA

The Negev is Israel's largest geographic region (12m dunams), almost 60% of the country. Less than half of the estimated 160,000 Negev Bedouin⁵ reside in "unrecognized" settlements, most of which are loose clusters of farmsteads that stretch over 800,000 dunams of land.⁶

The debate about Bedouin land rights in the Negev can best be summed up with a 2000 Ariel Sharon quote from *Karkab*; "900,000 dunams of government land are not in our hands, but in the hands of the Bedouin population . . . the Bedouins are grabbing new territory. They are gnawing away at the country's land reserves."⁷ In contrast, Amara and Miller explain, "The process of Judaization and concomitant Bedouin dispossession has been ongoing since the inception of the state."⁸

This juxtaposition of the state and the Bedouin is shoe-horned into a formulaic where the "indigenous" Bedouin seek rights to "their lands" from the "colonial settler state" in comparison either to Apartheid South Africa⁹ or Australia.¹⁰ Israel is not compared to her neighbors, even though they share Bedouin tribes and a similar history of colonial rule; instead research on the Negev Bedouin presents them as living in a vacuum.¹¹

Indigenous (In)justice is a project of the Human Rights Clinic at Harvard Law School.¹² In their introduction, Ismael Abu-Saad and Ahmad Amara lay out the pattern that the book will follow. “Since the British and Israelis have developed a strong legalistic culture in Palestine, the law is an essential prism for understanding the Bedouin question.”¹³ They note that a legal continuum links the present legal issues in the Negev with the Ottoman Land Code (OLC) of 1858.

RE-DEFINING INDIGENOUS RIGHTS TO SUIT THE BEDOUIN

Central to the thesis of this volume is the notion that “The Bedouin share many common characteristics with indigenous groups in other countries” and “are part of the broader indigenous Arab people of Palestine.”¹⁴ Many of the authors accept this definition without elaborating.¹⁵ Rudolfo Stavenhagen and Ahmad Amara¹⁶ quote Erica Irene-Daes, a former Special Rapporteur, on the definition of indigenous she provided in 1996: “Priority in time with respect to the occupation and use of a specific territory . . . the voluntary perpetuation of cultural distinctiveness . . . self-identification as well as recognition by other groups or by state authorities . . . an experience of subjugation, marginalization, dispossession, exclusion or discrimination.”¹⁷ This is a convenient and selective quote, especially in regard to time. The reference that notes that indigenous people merely should have a “priority in time” misses the fully developed Daes definition. In 2001 she wrote: “In many countries, particularly those of the British Commonwealth, exclusive use and occupancy of land from time immemorial gives rise to aboriginal title.”¹⁸ The widely recognized idea of indigenous peoples had always included the time element as a key concept. The World Council of Indigenous Peoples notes “The term indigenous people refers to people living in countries which have a population composed of differing ethnic or racial groups who are descendants of the earliest populations living in the area.”¹⁹ The removal of the time element by the authors is due to the fact that they admit that the Bedouin have only “lived in Palestine since at least the fifth century.”²⁰ There is no evidence that the tribes existent in the fifth century are the same ones there today; the prevailing research shows that subsequent waves of Bedouin moved into the Negev, the last being the Tiyaha and Tarabin tribes in 1799 with Napoleon’s invasion.²¹

Stavenhagen and Amara claim that “The Bedouins of the Naqab have grown increasingly aware of their own ‘indigeneity’ which has shifted

perceptions of their land and territoriality.”²² Yet the authors provide no evidence, from interviews with actual Bedouin, that there is increasing self-identification as an “indigenous people”. Presenting self-identification as a major parameter²³ for who constitutes an indigenous people, as well as the notion of them being marginalized, implies that if the Native Americans simply stopped identifying as “indigenous” and founded their own state, that they would suddenly stop being indigenous. This makes indigeness more along the lines of a form of nationalism in line with an “imagined community”, than a legal term.

The most powerful chapter in this book should have been Rudolfo Stavenhagen’s, co-authored by Ahmad Amara, since Stavenhagen was a former UN Special Rapporteur on the rights of indigenous peoples. They begin by noting that “In many parts of the world, small societies of herders and pastoralists are characterized as indigenous peoples . . . ‘Indigenous’ should be applied to these groups in light of their structurally subordinate position to other dominant groups.”²⁴ This would seem to favor any group that is more mobile.²⁵ The authors change the notion of indigenous to fit the Bedouin; “Indigenous status is dependent not on length of time but rather on occupation and establishment of complete society prior to the current regime.”²⁶ What a “complete society” means is unclear.

Stavenhagen’s decision to change the definition of indigenous people to fit the Bedouin represents a deep harm to the millions of other indigenous people in the world. Broadening the definition so that it places a primacy on “self-definition” makes it a tool in political struggles and demeans its meaning for those marginalized groups that actually do face a struggle for survival.

The editors also claim that the “Bedouins in Arab states do not view the regime as colonial or foreign to them, and hence they do not utilize claims of indigeneity.”²⁷ Indigenous claims are “utilized”, they do not exist *de facto*. Yet the general accepted notions of indigenous people do not view the term “indigenous” as only a tool in a struggle against the state, but a status of a group of people who share certain elements. It follows that if the Negev were, in some future scenario, turned over to Egypt the Bedouin land claims would vanish. This makes the claims transitory, only existing because Israel exists.²⁸

It is worth noting that, compared to other indigenous groups in the world, such as the Navajo, whose population has increased from 134,000 in 1975 to 286,000 in 2010,²⁹ the Bedouin in the Negev have increased from an estimated 14,000 people in 1949 to 170,000 today. Stavenhagen maintains that “For most indigenous people, survival is the major challenge.”³⁰

Far from survival being a major challenge, in fact a rapidly expanding population is the major challenge for the Negev Bedouin.

THE BEDOUIN AS SETTLED CULTIVATOR

Abu-Saad and Craemer argue that “Prior to 1948, 90% of the Bedouin population in the Naqab lived as subsistence farmers.”³¹ According to the authors, over 2 million dunams, of 12 million in the Negev, were cultivated. “The Bedouins of the region struggle to retain possession of much less cultivate—386,000 dunams of land [in 2012].”³² Kram asserts that “By 1948, the majority of the Naqab Bedouins were sedenterized . . . they cultivated most of the land in the Naqab that was suitable.”³³ No source is given for this claim. Stavenhagen goes further: “By the middle of the twentieth century, an estimated 95% of the Naqab Bedouins were settled agriculturalists . . . many of their settlements became villages well before the twentieth century.”³⁴ This extraordinary claim has no source. Creating an image of settled cultivators³⁵ seeks to redress the notion of Bedouin as nomads, even though their indigeneity is predicated on them being pastoralists.

The notion of settled Bedouin agriculturalists is clearly contradicted by the 1947 UNSCOP report which notes “The vast area of the Beersheba district, which is arid, semi-desert, supporting at present a very small settled population and about 90,000 Bedouin nomads.”³⁶ The basis for the 2m dunams statistic is Eliahu Epstein’s “Area of Cultivable Land in Palestine” (1936) published by the Jewish Agency, in which he claimed the oddly precise number of 2,109,234 dunams being under cultivation. Epstein, as a Jewish Agency employee, had an interest in showing that the Negev could be cultivated by Jews. Yet when the British published their annual *Survey of Palestine* in 1937 they included a map titled “Cultivation zones” where they labeled the Beersheba sub-district “cultivation unsurveyed”.³⁷

A subsequent British survey of 1946 claimed that 1.64 million dunams was “cultivable”, not necessarily cultivated.³⁸ The *Village Statistics* of 1945 stated 1,934,849 dunams were cultivated by “Arabs”, but did not note how many of them were cultivated by Bedouin as opposed to Arabs who had moved to the sub-district.³⁹ Mandate reports indicate Arabs cultivated seven million dunams in Palestine in 1945⁴⁰ meaning, if the Bedouin “cultivated” two million dunams, the Negev was the most intensively cultivated per capita region in Palestine (20:1 in the Negev versus 5:1 in the rest), which seems dubious.

The claim that most of the Bedouin cultivated the Negev and were settled in farming communities is contradicted by every primary source available to us. The best source is the British Aerial Survey of Palestine. Between January and April of 1945 the British photographed the central and northern Negev as part of a survey of the entire country. H. Muhsam, head of the Department of Statistics in the Mandate notes “Every individual tent or hut, or small group of tents and/or huts discovered on a photograph was plotted on the corresponding spot of a suitable map of the 1:100,000 Palestine series.”⁴¹ An analysis of the map the British produced shows that the British found 9,080 tents,⁴² hardly indicative of a population that was “settled”. There were no Bedouin settlements indicated on Mandatory maps. Muhsam did count isolated dwellings, “In addition 1,600 Bedouin families were living in huts and houses.” Thus around 6,400 people were living in houses, about 10% of the Bedouin population, not the 95% that Stavenhagen claims.

If unsubstantiated claims of widespread cultivation are not enough to convince people of Bedouin rights, biblical sources are also martialed. Duane Champagne, a professor of sociology at UCLA who is an expert on Native Americans, argues that the Bedouin have occupied the Negev “for hundreds, if not thousands of years” and that “indeed, there are biblical references to Abraham meeting and negotiating with the Bedouin peoples living around Beersheba.”⁴³ He provides no source for this biblical assertion because there are no such biblical references.

The story of Beersheba in the Bible is related in Genesis 20–23, when Abraham met the king of Gerar, a king from a settled state far to the north.⁴⁴ If Champagne wants to base his land claims on the bible, it would be Abraham and his Jewish descendants therefore who are indigenous. Champagne’s misuse of the Bible is another example of the way in which scholarship and historical sources are twisted in order to suit the needs of the Bedouin today.

THE NON-INTERFERING OTTOMANS

For many years a central narrative of the history of Palestine was the decline of the Ottoman Empire and its neglect of its Levantine Arab provinces.⁴⁵ However, recent scholarship illustrates how actively the Ottomans attempted to preserve their empire. The OLC of 1858 was only one part of these far-reaching reforms. The authors portray the Ottomans as a weak

power incapable of governing southern Palestine. Once again, history is changed in order to suit the present political desires of a group.

Abu-Saad and Craemer note that the Ottomans “largely ignored the tribal in-fighting [in the Negev],” and then claim that the British “intervened very little in the daily activities of the Bedouin.”⁴⁶ The Bedouin are said to have been a “self-governing society in the area for many generations.”⁴⁷

However, this is contradicted by Ottoman experts. Yasmin Avci writes, “The [Ottoman] government began to use sophisticated means and tactics in order to secure control and encourage the integration of the Bedouin element in the empire.”⁴⁸ Jerusalem Governor Ekrem Bey complained that “the bloody skirmishes between the different clans caused a state of desperate poverty and disorder in the region, and a dramatic decrease in the government’s revenue.”⁴⁹ Far from “ignoring” tribal in-fighting, the Ottomans sought to pacify the Bedouin through military expeditions and cement state control of the Negev by ringing it with planned villages at Kaufakha, Muharaqqa in the northern Negev, and planned towns at Beersheba and on the Egyptian border, Auja al Hafir.⁵⁰

A nuanced understanding of the Ottoman period illustrates just how deeply the empire cared about the Negev. Not only did it almost fall into a conflict with Great Britain over a border incident at Aqaba,⁵¹ it also delineated the border with Egypt in 1906 and engaged in several attempts to settle Bedouin near the fort of Fatish and in the area of the Besor.⁵²

Kram repeats the claim that “Ottoman rule did not interfere with Bedouin affairs” without providing any evidence of this non-interference. Aref al-Aref, the governor of Beersheba sub-district, in a survey of how the Ottomans dealt with the Bedouin notes that they actively interfered in the imposition of law and clearly forbade the Bedouin from using their own customary law in land dealings by introducing a land registry. “There were no formal courts for tribes; rather a management council existed which comprised a team of employees and another of tribal chiefs. The council specialized in examining conflicts within the Beersheba district only.”⁵³

The authors are careful to note that the Bedouin did not pay taxes on lands that they claimed, “Bedouin Arabs evaded land registration in order to avoid tax payments, to escape forced military service and to maintain their traditional land systems.”⁵⁴ Similarly, Abu-Saad and Craemer note “The Bedouin Arabs did not register their land holdings.”⁵⁵

The authors claim that “By the end of the Ottoman period, only 5% of the land in Palestine had been registered, demonstrating that not only the

Naqab Bedouins, but most of Palestine's population had failed to register their land."⁵⁶ This is an interesting argument, but it neglects to mention that since most land in Palestine was classified *miri* and in the Negev as *mawat* or "waste land" being distant from villagers and uncultivated, it was un-owned. Many of the lands that were profitable or in private hands had been registered, especially by effendis, the Ottoman sultan and foreigners who took an interest in investing in Palestine's land inventory.⁵⁷ The Bedouin had ample opportunity to register lands at the Beersheba land registry, especially those *mawat* lands they had supposedly cultivated, and they chose not to.

The Bedouin are often said not to have paid taxes due to "fear of taxation, as well as an interest in protecting their customary systems."⁵⁸ It is interesting that the Bedouin relation to taxes is described as a "fear", the notion that they alone do not register land because of "fear" of taxes provides an excuse that is neither warranted nor appropriate. No population wants to pay taxes, but when a resident of a modern state neglects to pay taxes, at some point it is not due to "fear" but active avoidance and legal forfeiture of land claims is the result.

As with the other chapters, Kram sets out an argument that "Ottoman and British rulers recognized de facto and respected Bedouin land ownership."⁵⁹ This goes along with the claim that the Bedouin practiced "customary" law that was "de facto" recognized, as stated by Bailey, "rights to the land they acquired before 1948 and in accordance with the Bedouin law that then prevailed."⁶⁰ These claims are contradicted by a recent study at Birzeit University that completed a survey of customary, what they call "informal" law⁶¹. "There is *no proof* that any law was issued by the Ottoman state that legalized and organized the practice of informal justice [emphasis added]."⁶² If the Ottoman and British legal systems had decided to accept all land agreements decided on through informal law, often called *urf*, then they would have written it into their extensive legal codes.

TRAVELERS' LITERATURE

Kram seeks to focus on the Israeli courts' use of what she terms "travelers literature". She claims the "court relied on such literature to determine that the claimed land was 'desolate'."⁶³ This "conflates contemporary literature with scientific research." Kram claims, based on Yiftachel, that the travelers were interested in "a specifically Christian perception" along a "route".⁶⁴ No evidence of this claim is presented.

In fact many of the “travelers” were professional surveyors and researchers serving with the British royal engineers, such as Claude R. Conder, and they were not on a Christian mission because there are no Christian sites of pilgrimage in the Negev.⁶⁵ Rather than focus on a “route” many of them provided detailed maps and analysis of much of the northern Negev. The Palestine Exploration Fund Map of 1880 was of such high detail it was still being used by the British in the First World War.

RE-INTERPRETING OTTOMAN LAW

The authors want to argue that “Israeli courts have largely ignored the interchangeability of ‘inhabited area’ with ‘town’ or ‘village’ in certain translations of the OLC.”⁶⁶ But in fact, the authors have not investigated how Ottoman courts or their Arab successors interpreted this meaning. The authors don’t compare the Bedouin claims to those in Syria or Iraq because they prefer to see Israel through the lens of a “colonial settler state” that belongs in Australia or Canada, rather than being part of the fabric of the Middle East.

Amara and Miller claim that Bedouin land rights in the Negev hinge on the interpretation of what constitutes *mawat* land. They note that the OLC defined *mawat* as land that was 1.5 miles from an inhabited settlement. They then accuse the Israeli courts of narrowly interpreting “inhabited settlement” since they “determined that a Bedouin encampment would not constitute a village for these purposes.”⁶⁷ However the authors provide no evidence that Ottoman or Shariah courts, or successive courts in the region, have interpreted “inhabited place/settlement” to mean a Bedouin encampment that is not recognized by the state authorities. In fact the Ottoman census and population registers, *Nafus* and *Salname*, recognize only sedentary villages with stone houses as the unit of measurement for *mawat* land.

The OLC noted “Mevat [sic] lands are those uncultivated areas which lie outside the boundaries of existing villages, and which are usually available for clearing and cultivation.”⁶⁸ Tute notes that it “did not contemplate the extension of inhabited sites . . . their rapid growth in recent years brings them continually nearer to the former *mewat* area.”⁶⁹ There was never a conception that the settled places moved from place to place, as a tent encampment might, rather they were fixed sites.

A WESTERN LEGAL SYSTEM?

“Bedouin culture, however, as an oral culture, did not historically attach the same value to British and Ottoman land titles . . . [F]or a variety of reasons, Bedouins avoided registering their land . . . [they] did not adopt the Western system of land registration.”⁷⁰ The insinuation that land registration and delineation of ownership is “Western” is a nonsensical orientalist view of the “East” as some romantic utopia of primitive communism. In fact, as Eisenman lays out, “Categories of land referred to in Islamic law were included” in the OLC.⁷¹ There was nothing “Western” about the code, which forms the basis for parts of Israeli land laws today. The Bedouin ignored both the Islamic system of law and the subsequent British Mandatory authorities, not because of an aversion to “the West”, but because they didn’t want to pay taxes and knew that under the Islamic system they also were not viewed as owners. Kram claims that the Bedouin resisted “means to turn them into taxpaying subjects of an external authority”⁷² and in doing so admits the real reason for non-registration.

Stavenhagen also claims that “Western legal regimes like the one used in Israel tend to impose restrictive categories of time and space that give rise to a series of binary oppositions, favoring order/agriculture over chaos/nomadism.” This Euro-centric assumption that only the “West” has legal regimes and “favors order” ignores thousands of years of Chinese jurisprudence as well as 1,300 years of Islamic law, and numerous other civilizations in the Middle East, Asia, and Africa that were founded on law and order, dating back to Hammurabi.

The Islamic source of the law was well known in the Mandate. When Goadby and Doukhan were commissioned to write a statement of the land law in Palestine, they noted “It is an ancient rule of Moslem [sic] law, stated in the Hedaya, that ‘whosoever cultivated Mewat (waste) lands with the permission of the Chief, obtains a property in them; whereas, if a person cultivate them without such a permission, he does not in that case become proprietor, according to Hanifa [school of Islamic law]’.” Similarly, under the Ottoman *Mejelle* (Civil Code), “If a person, with the leave of the Sultan, takes and improves a place from arazi-Mewat he becomes the mulk [private freehold owner] of it.”⁷³ The Islamic system of law upon which the Ottomans built and reformed in Palestine, was highly advanced and bureaucratic. That the Bedouin ignored the law is testified to by Aref el-Aref; “The Bedouin who seized control of land for himself or for his tribe did not think about registering the land seized, despite the existence of a

Land Registration Bureau at that time.”⁷⁴ It wasn’t a Western legal system the Bedouin didn’t adhere to, it was the Islamic-Ottoman legal system.

MISREADING THE MANDATE’S LAW

The Mandate period provides an excellent resource for researchers because it produced a large amount of archival material that is readily accessible. Of hundreds of thousands of pages of documents several are employed by researchers to support the claim that the Bedouin enjoy land rights in the Negev. One is a notation by the Chief Justice of Palestine, Sir Michael McDonnell, which they quote; “The absence of title deeds to land in the Beersheba area and the necessity for the production of a title deed under Article 24 of the Magistrate Law, a case such as this appears to be one of those for which the application of tribal custom under Article 45 . . . is specially intended.”⁷⁵

Article 45 stated “The High Commissioner may by order establish such separate courts for the district of Beersheba . . . such courts may apply tribal custom.”⁷⁶ The Beersheba sub-district court functioned under the Jerusalem central court, which could refer cases to it and thence to the tribal courts. The case in question was heard because it was not clear if the land court should decide it or it should be transferred to the tribal court. Since there was an absence of title deeds, as the judge notes, and the residents were from Beersheba sub-district, it was judged to be a case that could be heard by the tribal courts. Far from being a “recognition of Bedouin historical land rights”⁷⁷ as the authors assert, the case illustrates a singular decision to transfer a dispute to the tribal courts. The tribal courts were specifically barred from dealing in property in article 6 of the Tribal Courts Procedural Law 1937, as a normal course of affairs: “The tribal court shall not rule on cases of ownership of immovable property, but it may issue the decision it considers just with regard to taking possession of such property.”⁷⁸ The point of the courts was to deal in cases that didn’t neatly fit into the Mandate system until such time as the Mandate had extended its laws fully to the Negev. The tribal court could not issue title to property, but only mediate between Bedouin on claims they had among themselves; it conferred no land rights in its rulings and was specifically barred from doing so.⁷⁹

The authors also quote a Government of Palestine response to a Jewish inquiry from 1937 in which the government advisor noted “The cultivatable land in the Beersheba sub-district is regarded as belonging to the Bedouin tribes by virtue of possession from time immemorial.”⁸⁰ This

is an interesting statement but it is contradicted by every other document produced by the Mandatory authorities. Not only was the Beersheba sub-district never subjected to land settlement, but at the end of the Mandate in 1945 a map showing state lands remarks of the Negev that it will “no doubt be found at land settlement to be public.”⁸¹ In 1930 John Hope Simpson, in his report to parliament, noted of the Bedouin: “They claim rights of cultivation and grazing, of an indefinite character and over indefinite areas.” The Mandate policy in the Negev never recognized Bedouin land holdings, and repeated this each time that it sought to eventually deal with this issue.

Kram claims that Bedouin began writing bills of sale for land they claimed in the British period due to “influence from merchants from Gaza and Hebron.”⁸² She claims that “The British rule regarded it as sufficient documentation for land registration and the Beersheba tribal court under the British Mandate used it to rule in land disputes.”⁸³ However the Beersheba tribal court was not authorized to register land. Assaf Likhovski writes that “Article 45 of the Palestine Order in Council institutionalized this system, establishing a Bedouin tribal court that applied ‘tribal custom’ . . . the jurisdiction of the tribal court established in 1922 was limited to petty criminal and civil disputes . . . it could not decide cases in which ‘either or both parties is a settled inhabitant of the town of Beersheba’, nor could it decide questions of ownership of property.”⁸⁴ Kram, relying on H. Abu-Rabia, ascribes a power to the court it never had.

THE MAWAT LAND ORDINANCE

The authors also misinterpret the 1921 Mawat Land Ordinance. Kram repeats the claim that it “provided a narrow opportunity to register *mawat* land”⁸⁵ and that those that did not “would lose any ownership rights.” The source for this is Rosen-Zvi,⁸⁶ but the reference deals with the modern Israeli courts’ take on the land ordinance. An article ostensibly posing as an expert analysis on land law doesn’t bother to reference the primary sources relating to the law.

The sixty-six word ordinance had two parts, the first of which states, “Any person who without obtaining the consent of the administration breaks up or cultivated Waste [*mewat*] land shall obtain no right to a title deed for such land and further will be liable to be prosecuted for trespass.” Only the second paragraph notes that those who had already cultivated such land should “notify the Registrar of the Land Registry”.⁸⁷ The first

paragraph clearly states that with the consent of the administration people could still revive *mawat* land, and that even if they didn't register their land the administration could still provide such consent after two months.

The authors claim, relying on Sandy Kedar, that "The British themselves had routinely circumvented" the ordinance.⁸⁸ Kram and other authors don't reference the full ordinance because it contradicts their claims. For instance, she writes "The British authorities never fully implemented the 1921 Mawat Land Ordinance, allowed Bedouins to register lands in their name even after the two month period stipulated in the ordinance."⁸⁹ This sounds remarkably similar to Abu Husayn in his 2003 book, "The British and the pre-state Zionist institutions continued to recognize Bedouin land rights after the Mawat Land Ordinance."⁹⁰

Stavenhagen and Amara repeat the claim about the 1921 ordinance, without actually seeming to have read it; "The Mandate government issued an order in 1921 calling on Naqab inhabitants who cultivated, revitalized and improved *mawat* land to register their land. For a variety of reasons the Bedouin largely chose not to do so, and their land remained unregistered."⁹¹ The Mandate's 1921 ordinance didn't "call" on anyone, and certainly did not mention the Negev; it simply substituted one paragraph for article 103 of the land code.

The ordinance has come down as one of the main reasons for the Bedouin losing rights to land they claim to have owned. However, it was not intended to get people to register their *mawat* claims, but rather to prevent new *mawat* claims from arising after 1921. After 1921 when the state subjected land to survey, registration, and settlement of title, it allowed people to base their claims prior to the 1921 ordinance and in a sense "circumvent" it. However in this case the authors argue the Bedouin should be allowed to claim that their ownership dates from before 1921, but since the Negev had no fixed settlements except for Beersheba in 1921, the land was all *mawat* and thus a form of state land.

The Mandate government and subsequent scholars have interpreted the meaning of the ordinance to be the conservation of the land from encroachment by squatters. In 1930 the Mandate reported to the League of Nations: "In order to conserve the State Domain, the 'Mawat' Lands Ordinance was passed, prohibiting unauthorized encroachment, and requiring persons who had already cultivated or developed waste land to lodge within a limited time applications for titles."⁹² Similarly Warwick notes that the ordinance was designed to "conserve natural vegetation and prevent soil erosion."⁹³

If the ordinance was primarily designed *not* to deal with the Negev, but the whole of Palestine, and to institute a regulated system of land management of public resources, why has it become the centerpiece of the Bedouin rights argument in relation to the Mandate? Because the authors want to argue that the Bedouin, ignorant of the ordinance, were deprived of their rights by its narrow time window; but in fact the ordinance was not directed at existing claims, rather the creation of new claims. The Bedouin simply had no existing claims prior to 1921; they constructed all the unrecognized villages afterward.

MANDATORY SOURCES MISINTERPRETED

Kram claims that “The 1931 British census of Palestine pointed out that 89.3% of the Bedouins in the Naqab earned their livelihood through agriculture.” Actually the census says that of 42,868 supported by agriculture, only 10,377 earned their living from it. However, the same census notes that a “primitive method of enumeration”⁹⁴ that was adopted was inaccurate. Kram neglects to quote from the next page of the census where it is noted that “very little of the land of the sub-district is registered in the land office . . . most of the land may be described as *mewat*, not having been assigned or disposed of by deed . . . at present the nomads derive a bare existence from agriculture.”⁹⁵ Interestingly the census does give a figure for “land-owners” of 7,869 people and “tenants” as 2,508, but doesn’t note whether they are absentees, residents of Beersheba, or Bedouin.

In order to prove that the Bedouin owned the land Kram quotes Aref al-Aref, the British governor of the Beersheba sub-district. “Every inch of the land is owned by someone and everyone knows his own land.” She doesn’t quote the larger context of what Aref wrote because it clearly contradicts the part she chose; al-Aref wrote that the Bedouin “took the land for roaming and raiding and grazing. When the value of the land began to dawn on them they adopted a system of acquisition known as *Hajer*. This meant, simply, that a Bedawi chief would stand at a point and announce that he would take all the land within the boundaries fixed by a distant rise or tree.”⁹⁶ When the Turkish government called the sheikhs together “and told the government [that] action was directed at proving and protection of their title to the land, they [the Bedouin chiefs] pointed to their swords and rifles and said ‘here are our titles’ . . . to this day Beersheba land is not included in the register.”⁹⁷ Conveniently, Kram quotes the next sentence,

but the context of the quote is clearly relating to the Bedouin use of power to obtain land, not related to actual ownership or titles.

Further assertions about the Mandate relate to claims about non-existent documents. Kram argues that the Bedouin claim rights under “customary law” and that “they base their claims on tax payment documents for land they held during the British and Ottoman eras.”⁹⁸ The author provides no source for this claim, but notes that Bedouin “sold land to Zionist organizations before 1948” and that this “proves their rights over the Naqab lands.”⁹⁹ However this is contradicted by a note from the district commissioner of Gaza in 1945, he relates that, “Protests have been raised at attempted ploughing by Jews of land in Asluj to which they have extremely doubtful title . . . there are large areas in the Beersheba sub-district which the Jews claim to have bought . . . but which are not registered in the Land Registry.”¹⁰⁰ This is evidence that although outsiders “purchased” land in the Negev, that land could not be registered since land settlement of title was never carried out in the Negev, and for all intents and purposes they were sold land by people who did not have title to it. A document attributed to the Palestine Land Development Corporation from 1921 notes for example that “The Tayaha have no government ownership documents showing that this area [they live on] belongs to them” and also notes that “Throughout the area of the tribe the effendis of Gaza, Beersheba and Hebron own large estates”, which the authors note they took by force or through money-lending and foreclosure.¹⁰¹ The document illustrates the convoluted situation in which land was acquired by outsiders from Bedouin in cases where the Bedouin had no ownership because the outsiders were willing to go through proper legal channels to register it afterward.

Another interesting assertion is that “The Mandate government also issued certificates of registration for Jewish buyers of land. In these certificates, Bedouins are registered as the former owners of the land.”¹⁰² The author doesn’t quote which “Bedouin” are listed, since she and other researchers evidently do not know whether the Arab names on the certificates were Bedouin or Bedouin residents of Beersheba town, where land was registered, or Arabs from other districts, such as merchants from Gaza. In research I carried out on the sub-district with Ruth Kark, we located a deed executed in November 1933, in which Jurelia Eff. Abu el Hajj Rashid Shalum sold 2,298 dunams to a man named Joseph Mierowitz for 1250 L.P. (Palestinian Pounds). The land’s boundaries were described in a written statement detailing the borders since no block or parcel number could be provided without a survey.¹⁰³ This property was located near Beersheba. It is not noted if Mr. Shalum was a “Bedouin” on the deed.

Kram also repeats the claim of the other authors that the Israeli “court interpreted the concept of ‘settlement’ in a way that excluded many Bedouin forms of settlement (for example the use of tents) from the definition of ‘village’.”¹⁰⁴ The author provides no evidence that the British defined tents as a “village”; in fact they did not. As Sir Henry Gurney, last chief secretary of the Mandate administration, told the representative from Guatemala at a June 1947 meeting of the UN Special Committee on Palestine, “Q: So the Negeb [sic] is more or less deserted? A: Yes.”¹⁰⁵ Gurney also told the committee “The nomads are very difficult people to estimate accurately.”¹⁰⁶ Thus Gurney meant by “deserted”, not that there were no people, but no settlements. This is borne out by Mandatory maps and censuses, which did not recognize any Bedouin villages in the Negev.

Similarly, Kram disregards the fact that Israeli courts have relied on British aerial photos which clearly show the absence of settled villages. In research with Ruth Kark and Noam Levin on aerial photos of the Negev no “villages” were discovered, although numerous isolated houses did exist in the northern Negev, along with 9,080 tents.¹⁰⁷

The conclusion regarding the Mandate period is that the Bedouin did not register land holdings in the Negev. Whatever land the Bedouin did cultivate, they almost never paid taxes on it. No Bedouin villages or recognized permanent settlements were constructed. A variety of excuses are mustered for the Bedouin, including selective quotes from sources that appear to show Mandatory recognition of customary law or that the Mandate assumed the Bedouin might have land claims. However, the larger context of every document and law illustrates the weakness of the Bedouin

THE SETTLER STATE AND THE BEDOUIN

In Yiftachel’s conception the Bedouin exist “as a colonized indigenous people residing within a settler state.”¹⁰⁸ John Sheehan connects the state to other colonial regimes; “The property rights of indigenous peoples—such as the Bedouins of the Naqab (Negev) Desert—have always been a conundrum for countries whose land law is rooted in British common law . . . Israel became a common-law country in 1917.”¹⁰⁹ This shows a complete ignorance of the history; Palestine’s legal framework was not formulated until after 1920 and Israel’s land law was not borrowed from the common law.

Craemer and Abu-Saad argue that “The Zionist colonial project portrayed Palestine as a ‘land without a people for a people without a land’.”¹¹⁰

However this quote is actually attributed to Christian Zionists; many Zionists had contacts with Bedouin, including Pessah Bar-Adon and Zalman David Levontin.¹¹¹

Nevertheless, the creation of Israel resulted in the “expulsion of roughly 80–90%” of the Negev Bedouin, the imposition of a military government over those that remained, and “the near complete loss of individual freedoms and property rights.”¹¹² The authors argue that Israel “impinged on virtually every aspect of life” and yet “neglected them for the next twenty years.”¹¹³ They note that “the building of permanent structures was prohibited” in the Negev.¹¹⁴ Although Israel may have “prohibited” types of construction or movement to certain areas, it doesn’t necessarily mean that in practice Bedouin obeyed these laws.

Amara and Miller add some more information to the narrative. They claim, based on an article by H. Noach of the Negev Coexistence Forum, that “137,400 dunams were expropriated from Bedouin in the Naqab” as a result of the 1948 war. However this figure relates to land acquired by the state through the Land Acquisition Law of 1951,¹¹⁵ not land that was confiscated from individual Bedouin owners. The authors also relate how, in 1969 under the Land Rights Settlement Ordinance, the state allowed Bedouin to file land claims, of which 3,220 were filed to 778,856 dunams.¹¹⁶

The early planning authorities for the Negev did not envision an equal place for the Bedouin alongside the Jews who were moving there. Moshe Dayan is quoted as saying “We should transform the Bedouin into an urban proletariat . . . 83% of the Israeli population are not farmers; let the Bedouins be like them.”¹¹⁷ Planners such as Arie Sharon were busy transforming large numbers of Jewish immigrants into this “urban proletariat” in line with the current socialistic thinking. Abu-Saad and Craemer correctly note that “Both aims could have been achieved by planning small agricultural villages or cooperatives with a land base (such as the Jewish *moshavim* and *kibbutzim*) for the Bedouin.”¹¹⁸ The discrimination against the Bedouin by the planning authorities, however, dovetailed with the state’s overbearing discrimination against the other 83% of Israeli society that were supposed to be penned into peripheral urban centers. Rather than singling the Bedouin out, the Bedouin were simply one more group, alongside most of the Mizrahi Jewish immigrants, who were not given support to build agricultural settlements. The state’s discrimination against the Bedouin should be seen as part of its overall socialistic planned economy.¹¹⁹

The state eventually decided to build towns for the Bedouin, termed “townships” by the authors to compare them to “Black townships” in South Africa, which accommodated the majority of the Bedouin population in

the 1970s and 1980s. The Bedouin towns have been severely neglected and are not on public transportation routes. The main issue that the researchers are interested in is not the planned towns and how to make them successful, but rather the land claims of the unrecognized villages. All of the selective and faulty evidence marshaled about the Mandate and Ottomans is designed to underpin rights for the minority of Bedouin who reside illegally on state land, not to provide rights to the other urbanized Bedouin. In discussing these unrecognized villages the authors claim that their population is 84,000 people who “typically live in tents or makeshift wooden or metal shacks.” The source for this is the Regional Council of Unrecognized Villages, hardly an unbiased observer; in fact most of them do not live in tents.¹²⁰ According to the narrative, the presence in these villages represents “Bedouin Arab resistance to the urbanization program.”¹²¹ This presents the choice to squat on state land not as an act of trespassing, but as an informed act of “resistance”.

Even though the presence of the unrecognized villages is part political resistance, Rashida Manjoo’s claims that “The Israeli state . . . has created or failed to remedy intolerable living conditions created by policies of forced evictions, home demolitions, and forced urbanization.”¹²² It is interesting here that urbanization is juxtaposed with intolerable living conditions. The Bedouin in the unrecognized villages have chosen over the years to live in those circumstances that according to the authors reflect their culture, with women segregated and discriminated against, with flocks of animals, and large estates. According to Marianne Jordan, “Many Bedouin today have moved back to ‘unrecognized villages,’ yet formally keep their township addresses in order to enjoy the limited privileges that these localities provide.”¹²³ Manjoo leaves the state with no options, except to provide land for large mansions for each Bedouin family, even while the rest of the populace of Israel, the world, and of the Bedouin in the rest of the Middle East, have become urban dwellers.

EQUALITY? BEDOUIN POPULATION AND LAND OWNERSHIP

Kram disingenuously claims that “Bedouins constitute approximately 25% of the Naqab population; their land claims constitute about 5.4% of the Naqab.”¹²⁴ This presents a false rationale whereby one’s percentage in the population necessarily equals how much land you should own. Jews constitute 75% of the Negev and only own around 1% of it.¹²⁵ Jewish

communities manage an estimated further 6% in their built-up areas. If anything, the Negev Bedouin seek ownership over a disproportionate amount of the Negev. Similarly, Amara and Miller delve into the issue of planning. They note that “The municipalities of Bedouin townships have jurisdiction over a mere 1.9% of land in the northern Naqab region, although Bedouin make up 25.2% of the population in the area.”¹²⁶ In fact, Beersheba, with a population of 200,000 Jews has only 50,000 dunams while Bedouin Rahat has a population of 53,000 and 20,000 dunams. Ninety percent of the Negev is occupied by military bases and national parks, not Jewish municipalities.

The Bedouin unrecognized villages, if their land claims were approved, would occupy 800,000 dunams with 80,000 people, making them the largest per capita land owners in Israel, hardly a discriminated or marginalized group. Stavenhagen quotes in his conclusion the UN Human Rights Committee as noting that Bedouin “should be given equality of treatment with Jewish settlements.”¹²⁷ However equality with Jewish settlements would mean that just as 200,000 Jews are crammed into 100 sq. meter apartments in the 50,000 dunams of Beersheba, likewise 80,000 Bedouin would be crammed into 20,000 dunams, not the 240,000 that their municipalities currently control.

CULTURAL NEEDS

Many of these scholars claim that the Bedouin must receive state-supported housing that matches their culture. The authors note that after Israel constructed planned towns for the Bedouin, “The small houses were unsuitable for large families with an average of eight to nine children and the high density of the town itself conflicted with the Bedouins’ traditionally dispersed settlements.”¹²⁸ Manjoo claims “Housing plots in the towns have been smaller and closer together than those in traditional Bedouin villages, different families have been forced to live in greater proximity to one another.”¹²⁹ Therefore the Bedouin, because they once lived a nomadic life, must always possess huge amounts of land and large mansions simply because supposedly their culture demands it? Yet Ethiopian Jews came from villages and Israel has not built them identical villages in Israel, rather they have ended up living in cramped apartments. There is some notion that the Negev Bedouin, alone among the world’s population, should be immune from the laws of economics and social transition to urban living. In other Arab states Bedouin have adjusted successfully to urban living.

The statistics for the Jewish sector are presented as if the Bedouin and the Jews are the only groups in Israel. However, the real comparison for the Bedouin, who are a sub-set of the Arab population, should be a sub-set of the Jewish sector that has a high birth rate, such as the ultra-Orthodox, and figures for household size for these communities are almost identical, as are resulting poverty rates.¹³⁰

Manjoo argues that Israel's "policy of imposing mixed-gender schools that fail to account for cultural restrictions discriminate against Bedouin girls by effectively depriving them of their right to education."¹³¹ This places the onus on the state for enforcing discrimination against women.

POST-SCHOLARSHIP AND THE BEDOUIN

Proponents of the Negev Bedouin advance several theories regarding their rights: They are indigenous and arrived in the Negev in the fifth century; the Ottomans did not interfere with their customary law; Bedouin cultivated two million dunams; the British respected their customary law; Bedouin did not register land because a Western legal system was imposed on them; the Mewat Land Ordinance deprived them of rights; most Bedouin villages existed before 1948; Israeli courts have narrowly interpreted *mewat*; the Bedouin must receive land and housing related to their cultural needs.

As has been shown, all of these claims are disingenuous or based on a faulty reading of the historical sources. This doesn't mean that the state cannot find an equitable solution to the land claims of the Bedouin through recognizing their tenure as adverse possession, consider learning from Arab states¹³² or learning from how European countries deal with the Roma, with whom the Bedouin share some characteristics. However, every claim that seeks to show that their rights derive from the law or from concepts of indigeneity do not correspond to the current situation in the Negev.

The Negev Bedouin represent one of the fastest growing populations in the world. Their land claims and the argument of their supporters that they must be provided with land that is in line with their "cultural needs" means that not only do they claim 800,000 dunams for 80,000 residents today, but given population growth, in 20 years they will require another two million dunams, and so forth. In every neighboring Arab country the majority of the Bedouin have successfully transitioned to a modern urban or suburban life. As Daes writes, "Indigenous peoples themselves cannot be frozen in time. Indigenous communities and societies change and evolve like all other societies."¹³³

The land claims are based on assertions that the Bedouin cultivated up to 2m dunams prior to 1948. However 80% of the pre-1948 population left the country. Even if the remaining 20% were provided with rights to the percentage of dunams they might have used for cultivation, it would only be 200,000 dunams. The land claims today relate to land the Bedouin have moved to recently.

The authors of this volume seek to discharge the time element and communal ownership of the lands from the definition of indigenous peoples because it doesn't fit their model. This dovetails with the entire volume, which uses deceptive figures, selective quotes, unsubstantiated assertions and widespread use of secondary sources, and the discarding of any source that is not in line with the argument. This volume contributes no new evidence to the current debate. It provides no paradigm under which the land claims might be solved, illustrating how little this book contributes to helping alleviate the actual suffering in the unrecognized villages.

NOTES

1. Ahmad Amara, Ismael Abu-Saad, and Oren Yiftachel, eds., *Indigenous (In)justice: Human Rights Law and Bedouin Arabs in the Naqab/Negev* (Cambridge, MA, 2013).

2. Eugene Rogan and Avi Shlaim, eds., *The War for Palestine: Rewriting the History of 1948* (Cambridge, 2001).

3. Amara, Abu-Saad, and Yiftachel, *Indigenous*, 331.

4. Only once in the volume is contrary research mentioned, but its author is castigated as “a recent US immigrant”; Oren Yiftachel, “Naqab/Negev Bedouins and the (internal) Colonial paradigm,” in Amara, et al., *Indigenous*, 321.

5. This is the number generally used in the book, although estimates range as high as 200,000.

6. “Bedouins in the State of Israel,” *The Knesset* (2010), accessed 3 February 2012. http://www.knesset.gov.il/lexicon/eng/bedouim_eng.htm.

7. Amara et al., *Indigenous*, 125. The Sharon quote is also shown in full on p. 146.

8. Amara and Miller, “Unsettling Settlements: Law, Land, and Planning in the Naqab” in Amara, et al., *Indigenous*, 96. Developments are ongoing; in January 2013, after the volume’s publication, the cabinet approved the Praver plan for legalizing new Bedouin settlements in the Negev.

9. Amara et al., *Indigenous*, 197.

10. Sheehan, “Applying an Australian Native Title Framework to Bedouin Property” in Amara et al., *Indigenous*, 238.

11. Seth J. Frantzman, Havatzelet Yahel, and Ruth Kark, "Contested Indigeneity: The Development of an Indigenous Discourse on the Bedouin of the Negev, Israel," *Israel Studies* 17.1 (2012): 78–104; Oren Yiftachel, "Bedouin-Arabs and the Israeli Settler State: Land Policies and Indigenous Resistance," in *The Future of Indigenous Peoples: Strategies and Survival*, ed. Duane Champagne and Ismail Abu-Saad (Los Angeles, 2003), 21–47; Alexander (Sandy) Kedar, "On the Legal Geography of Ethnocratic Settler States, notes towards a research agenda," in *Law and Geography*, ed. Jane Holder and Carolyn Harrison (Oxford, 2006), 401–41; Mansour Nasasra, "The Ongoing Judaization of the Naqab and the Struggle for Recognizing the Indigenous Rights of the Arab Bedouin People," *Settler Colonial Studies* 2.1 (2012): 59–80.
12. Amara, et al., *Indigenous*, xi.
13. *Ibid.*, 2.
14. *Ibid.*, 2–3.
15. Noa Kram, "The Naqab Bedouins: Legal Struggles for Land Ownership Rights in Israel," in Amara et al., *Indigenous*, 127.
16. Rudolfo Stavenhagen and Ahmed Amara, "International Law of Indigenous peoples and the Naqab Bedouin Arabs," in Amara et al., *Indigenous*, 172.
17. *Ibid.*
18. Erica-Irene A. Daes, Special Rapporteur, Commission on Human Rights, *Human Right of Indigenous Peoples: Indigenous People and their Relationship to Land*, Second Progress Report, U.N. Doc. E/CN.4/Sub.2/1999/18 (1999), <http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/154d71ebbbdc126a802567c4003502bf?>
19. "Background to the Formation of WCIP," Canada (April 1980) <http://cwis.org/fwdp/International/wcipinfo.txt>.
20. Ismael Abu-Saad and Cosette Craemer, "Socio-Political Upheaval and Current Conditions of the Naqab Bedouin Arabs," in Amara et al., *Indigenous*, 21.
21. Clinton Bailey, "Dating the Arrival of the Bedouin to the Negev," *Journal of Economics and Social History* XXVIII (1985).
22. Stavenhagen and Amara, "International Law," in Amara et al., *Indigenous*, 165.
23. Amara et al., *Indigenous*, 4.
24. Stavenhagen and Amara, "International Law," in Amara et al., *Indigenous*, 159, 177.
25. Pima Native-Americans would be less "indigenous" than Apache simply because they were sedentary.
26. Amara et al., *Indigenous*, 322.
27. *Ibid.*
28. Yiftachel, "Naqab/Negev Bedouins and the (Internal) Colonial Paradigm," in Amara et al., *Indigenous*, 297.
29. Cindy Yurth, "Census: Native Count Jumps by 27 percent," *Navajo Times*, 26 January 2012.

30. Amara et al., *Indigenous*, 5.
31. Abu-Saad and Craemer, "Socio-Political Upheaval," in Amara et al., *Indigenous*, 20.
32. *Ibid.*, 21.
33. Kram, "The Naqab Bedouins," in Amara et al., *Indigenous*, 134.
34. Stavenhagen and Amara, "International Law," in Amara et al., *Indigenous*, 164.
35. Clinton Bailey, "Whose Really Taking over the Negev," *Ha'aretz* 6 February 2013; Shlomo Swirski and Yael Hasson, "Invisible Citizens: Executive Summary," ADVA February 2006, 7.
36. "Report to the General Assembly," vol. 1 Supplement 11, UNSCOP, 1947.
37. Survey of Palestine, Jaffa, 1937, 1:1,000,000, "cultivation zones".
38. Government of Palestine, Survey of Palestine (Jerusalem, 1946), 370.
39. *Village Statistics 1945* (Jerusalem: Government of Palestine, 1945).
40. Warwick P.N. Tyler, *State Lands and Rural Development in Mandatory Palestine 1920–1945* (Brighton, 2001), 166; Robert Nathan, Oscar Grass, and Daniel Creamer, *Palestine: Problem and Promise* (Washington, DC, 1946), 615.
41. H.V. Muhsam, "Enumerating the Bedouin of Palestine," in *Bedouin of the Negev: Eight Demographic Studies* (Jerusalem, 1966), 21.
42. *Ibid.*, 21; Seth Frantzman, Noam Levin, and Ruth Kark, "Counting Nomads: British Census Attempts and Tent Counts of the Negev Bedouin 1917–1948," submitted to *Population, Space and Place*.
43. Duane Champagne, "'Indigenous, Citizens', and Human Rights: The Bedouins of the Naqab," in Amara et al., *Indigenous*, 259.
44. Y. Aharoni, "The Land of Gerar," *Israel Exploration Journal* 6.1 (1956): 26.
45. Mauros Reinkowski, "Late Ottoman rule over Palestine: Its evaluation in Arab, Turkish and Israeli histories 1970–90." *Middle East Studies* 35 (1999): 66–97, 79.
46. Abu-Saad and Craemer, "Socio-Political Upheaval," in Amara et al., *Indigenous*, 22.
47. Amara et al., *Indigenous*, 322.
48. Yasemin Avci, "The Application of Tanzimat in the Desert: The Bedouins and the Creation of a New Town in Southern Palestine (1860–1914)," *Middle Eastern Studies* 45.6 (2009): 971.
49. Başbakanlık Osmanlı Arşivi, *Sadaret Mektubi Mühimme Kalemi*, 1/89, 28 Zilkade 1261/28 November 1845 [Turkish]; Avci, "The Application," 973.
50. Roy S. Fischel and Ruth Kark, "Sultan Abdülhamid II and Palestine: Private Lands and Imperial Policy," *New Perspectives on Turkey* 39 (2008): 12966.
51. G. R. Warburg, "The Sinai Peninsula Borders 1906–47," *Journal of Contemporary History* 14.4 (1979): 677–92.
52. Dan Gazit, "Sedentary Processes in the Besor Region in the Era of Abdülhamid II," in *Jerusalem and Eretz Israel*, ed. Joshua Schwartz, Zohar Amar, and Irit Ziffer (Tel-Aviv, 2000) [Hebrew].

53. Aref al-Aref, *Jurisprudence among the Bedouin (Kitab al-Qada Byan-a al-Badw)* (Jerusalem, 1933), 12 [Arabic].
54. Amara and Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab," in Amara et al., *Indigenous*, 81.
55. Abu-Saad and Craemer, "Socio-Political Upheaval," in Amara et al., *Indigenous*, 23.
56. Amara and Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab," in Amara et al., *Indigenous*, 82.
57. Ruth Kark, "Changing Patterns of Landownership in Nineteenth-century Palestine: The European Influence," *Journal of Historical Geography* 10.4 (1984): 357–84.
58. Amara and Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab," in Amara et al., *Indigenous*, 83.
59. Kram, "The Naqab Bedouins," in Amara et al., *Indigenous*, 128.
60. Clinton Bailey, "Time to Settle Bedouin Claims," *Ha'aretz* 8 April 2011. <http://www.haaretz.com/print-edition/opinion/time-to-settle-bedouin-claims-1.354755>
61. "The term 'informal justice' refers to a social phenomenon widespread throughout the West Bank and Gaza Strip, comprising the settlement of disputes between citizens outside the framework of regular or formal courts . . . *urf, sulh* is one method used to settle disputes. . . . informal justices includes tribal law" (Birzeit, 2006), 14.
62. "Informal Justice: Rule of Law and Dispute Resolution in Palestine: National Report on Field Research Results" (Birzeit, 2006), 31. <http://lawcenter.birzeit.edu/iol/en/project/outputfile/5/a391785614.pdf>
63. Kram, "The Naqab Bedouins," in Amara et al., *Indigenous*, 144.
64. *Ibid.*
65. Old Testament Beersheba is not a Christian holy site.
66. Amara and Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab," in Amara et al., *Indigenous*, 90.
67. *Ibid.*, 87.
68. R.C. Tute, *The Ottoman Land Laws with Commentary*, Note 1, Art. 1., 2.
69. *Ibid.*, Note 2, Art. 6., 16.
70. Kram, "The Naqab Bedouins," in Amara et al., *Indigenous*, 141.
71. Robert H. Eisenman, *Islamic Law in Palestine and Israel* (Leiden, 1978), 53.
72. Kram, "The Naqab Bedouins," in Amara et al., *Indigenous*, 141.
73. Frederic M. Goadby and Moses J. Doukhan, *The Land Law of Palestine* (Tel Aviv, 1935), 46.
74. Aref el-Aref, *Jurisprudence among the Bedouin* (Jerusalem, 1924), 235; also *Bedouin Love, Law and Legend* (Jerusalem, 1944), 179–80.
75. Amara and Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab," in Amara et al., *Indigenous*, 84.
76. Order-in-Council, Article 45, Government of Palestine.

77. Amara and Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab," in Amara et al., *Indigenous*, 84.

78. Official Gazette, No. 719, 16 September 1937, 2nd Annex, 699 (a) 841. See also Birzeit Field Research and Aharon Layish, *Legal Documents From the Judean Desert: The Impact of the Sharia on Bedouin Customary Law* (Leiden, 2011), 37.

79. "Informal Justice: Rule of Law and Dispute Resolution in Palestine: National Report on Field Research Results."

80. Amara and Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab," in Amara et al., *Indigenous*, 84.

81. "State Domains, 1945," 1:250,000 State Domains Palestine Map, Government of Palestine, ISA, map 296.

82. Kram, "The Naqab Bedouins," in Amara et al., *Indigenous*, 135.

83. *Ibid.*

84. Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill, NC, 2006), 34.

85. Kram, "The Naqab Bedouins," in Amara et al., *Indigenous*, 129.

86. Issachar Rosen-Zvi, *Taking Space Seriously: Law, Space and Society in Contemporary Israel* (Aldershot, UK, 2004), 47.

87. "Mewat Land Ordinance," amendment to article 103 of Ottoman Land Code, Herbert Samuel, 16 December 1921, Jerusalem.

88. *Ibid.*, 88.

89. Kram, "The Naqab Bedouins," in Amara et al., *Indigenous*, 139.

90. Hussein Abu Hussein and Fiona McKay, *Access Denied: Palestinian Land Rights in Israel* (New York, 2003), 122.

91. Stavenhagen and Amara, "International Law," in Amara et al., *Indigenous*, 164.

92. Report of His Majesty's Government to the League of Nations, on Palestine and Transjordan, 1930. [http://unispal.un.org/unispal.nsf/d091f77d9bbf14852574050052b8d6/c2feff7b90a24815052565e6004e5630?OpenDocument&Highlight=0, Mewat](http://unispal.un.org/unispal.nsf/d091f77d9bbf14852574050052b8d6/c2feff7b90a24815052565e6004e5630?OpenDocument&Highlight=0,Mewat)

93. Tyler, *State Lands*, 22.

94. E. Mills, *Census of Palestine*, vol. 1 (Jerusalem, 1931), 330.

95. *Ibid.*, 335.

96. el-Aref, *Bedouin Love*, 179–80.

97. *Ibid.*

98. Kram, "The Naqab Bedouins," in Amara et al., *Indigenous*, 129.

99. *Ibid.*, 130.

100. *Political Diaries of the Arab World—Palestine and Jordan, 1945–1946*, Vol. 8 (Reading, UK, 2001), 228; [http://www.plands.org/articles/013.html#note tar 05](http://www.plands.org/articles/013.html#note%20tar%2005).

101. No author, Palestine Land Development Company (?), Central Zionist Archives L/2/6289 old number L/18/127/2, Tayaha sections 3 and 5.

102. Kram, "The Naqab Bedouins," in Amara et al., *Indigenous*, 138.

103. ISA, RG23/3865M, 30 November 1935.

104. Kram, "The Naqab Bedouins," in Amara et al., *Indigenous*, 143.
105. 16 June 1947, UNSCOP, verbatim record.
106. UNSCOP 16 June 1947.
107. Frantzman, Levin, and Kark, "Counting Nomads".
108. Yiftachel, "Naqab/Negev Bedouins", 292.
109. John Sheehan, "Applying an Australian Native Title Framework to Bedouin Property," in Amara et al., *Indigenous*, 229, 238.
110. Abu-Saad and Craemer, "Socio-Political Upheaval," in Amara et al., *Indigenous*, 23.
111. Shmuel Katz, *The Aaronsohn Saga* (Jerusalem, 2007).
112. Abu-Saad and Craemer, "Socio-Political Upheaval," in Amara et al., *Indigenous*, 26. Some argue it was 17,000 in 1950, Havatzelet Yahel and Ruth Kark, "The Negev Bedouin during the 1948 War: Departure and Return," Presentation, Association of Israel Studies, Haifa, 2012.
113. *Ibid.*, 27.
114. *Ibid.*
115. Jews only owned about 1.7 million dunams in Palestine in 1948, 6.59% of the country. A Mandate map titled "Progress of Land Settlement" from 31 December 1945, shows that 4,808,500 dunams had been "settled", about 18% of Palestine.
116. Amara and Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab", in Amara et al., *Indigenous*, 78.
117. Abu-Saad and Craemer, "Socio-Political Upheaval," in Amara et al., *Indigenous*, 30.
118. *Ibid.*
119. See for instance S. Ilan Troen and Noah Lucas (eds.), *Israel: The First Decade of Independence* (New York, 1995).
120. Author's observation and field research 2008–2011.
121. Amara and Miller also mention the "option of resistance", in Amara et al., *Indigenous*, 38.
122. Rashida Manjoo, "Continuum of Injustice: Women, Violence and Housing Rights," in Amara et al., *Indigenous*, 196, 207–8.
123. Marianna Jordan, "A Minority Within a Minority: Palestinian Arab Bedouin of the Negev," information brief, The Jerusalem Fund, 2009. <http://www.the.jerusalemfund.org/ht/a/GetDocumentAction/i/31120>.
124. Kram, in Amara et al., *Indigenous*, 148.
125. Author's estimate based on dunams of Jewish municipalities and farms.
126. Amara and Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab," in Amara et al., *Indigenous*, 95.
127. *Ibid.*
128. Abu-Saad and Craemer, "Socio-Political Upheaval," in Amara et al., *Indigenous*, 32.
129. *Ibid.*
130. Sarit Rosenbaum, "Over 25 percent of Children Overweight," 1 January

2013. The Health Ministry study showed that “Ultra-Orthodox and Bedouin, Israel’s poorest populations,” also have unhealthy children. <http://www.ynetnews.com/articles/0,7340,L-4328372,00.html>

131. *Ibid.*, 216.

132. Ruth Kark and Seth J. Frantzman, “Empire, State and the Bedouin of the Middle East, Past and Present: A Comparative Study of Land and Settlement Policies,” *Middle Eastern Studies* 48.4 (2012): 487–510.

133. Erica-Irene A. Daes, Special Rapporteur, Commission on Human Rights, *Human Right of Indigenous Peoples: Indigenous People and their Relationship to Land*, Second Progress Report, U.N. Doc. E/CN.4/Sub.2/1999/18 (1999), <http://www.unhcr.ch/Huridocda/Huridoca.nsf/TestFrame/154d71ebbbdc126a802567c4003502bf?>