Indigeneity, Law and Terrain:

The Bedouin Citizens of Israel

Emma Nyhan

Thesis submitted for assessment with a view to obtaining
the degree of Doctor of Laws of the European University Institute

Florence, 25 April 2018

European University Institute
Department of Law

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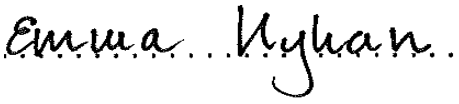

Abstract

This study constitutes a socio-legal inquiry into the practice of international human rights law. Specifically, the study unpacks the ways in which the concept and category of indigenous peoples is made active and given effect among the Bedouin in the Negev desert in Israel, since before the turn of the new millennium. Drawing contextualized insights from Bedouin localities, the case studies demonstrate the various layers of intermediaries and actors involved and the processes by which the Bedouin have appropriated the international concept and category to make it into a Bedouin vernacular. Grounded in law and society and legal anthropology, this research deploys socio-legal and historical analyses and is supported by rich empirical fieldwork, including extensive interviews and ethnographic observation. In the process of reconstructing how the international concept and category of indigenous peoples came to be invoked in this particular context, this research sheds critical light on how local and global discourses and understandings of internationally-defined status and rights interact and produce tensions, hybridities, and new subjectivities as well as legal and political dynamics at the domestic and international level.

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Introduction: The Interplay between International Human Rights Law and Context

International human rights law continues to evolve and fragment, and is highly inconsistent both chronologically and geographically. The mercurial nature of this law challenges academic and political understandings of how international human rights law works in everyday practice. By concentrating on a specific topic and a particular location,[1] it is possible to chart the ways in which aspects of international human rights law emerge and develop in practice. While the international status and rights of 'indigenous peoples'[2] only recently subscribed to the corpus of international human rights law,[3] the origins and the development of the concept and category of indigenous peoples is valuable in unpacking how an 'old' term generates 'new' interpretations and meanings.[4] Concepts and categories of international human rights law offer compelling, powerful, and often incisive insight into the practice of international human rights law.[5] For the purposes of this study, a *category* is a collection of instances that are treated as if they are in some way equivalent, while a *concept* refers to all the knowledge that one has about a category. The concept *indigenous peoples* refers to the preconceptions or latent representations of indigenous peoples. The category *indigenous peoples* is attributed to real examples (e.g., First Nations or Native Americans).

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[1] On spatial legal pluralism, see Sally Engle Merry, "International Law and Sociolegal Scholarship: Toward a Spatial Global Legal Pluralism," in *Negotiating State and Non-State Law: The Challenge of Global and Local Legal Pluralism*, ed. Michael A. Helfand (West Nyack, NY: Cambridge University Press, 2015), 59–80.

[2] I use the term *indigenous peoples* in quotation marks here in order to stress its questionable descriptive value and substantive content. For the remainder of the study, I refrain from using quotation marks for ease of reading the text, but continue to question the term. Also, one of the ways to question the concept and category is by capitalizing it, because written in lowercase carries an assessment of 'less than'. Many scholars capitalize Indigenous Peoples. For instance, Jane Anderson capitalizes Indigenous Peoples in her research and scholarship with and on Indigenous Peoples. Similar to the use of capitalization of Black, Asian and so forth, capitalizing Indigenous Peoples indicates its equal footing as a racial/ethnic category. See, for example, Linc Kesler, "Indigenous Peoples: Language Guidelines" (The University of British Columbia, 2016). I employ indigeneity when it concerns indigenous identity and indigenousness when discussing indigenous consciousness. For a discussion on terminology related to indigenous peoples, see Geoffrey Benjamin, "Indigenous Peoples: Indigeneity, Indigeny or Indigenism?," in *Routledge Handbook of Asian Law*, ed. Christoph Antons (Abingdon, Oxon: Routledge, 2015).

[3] Lillian Aponte Miranda, "Indigenous People as International Lawmakers," *University of Pennsylvania Journal of International Law* 32 (2011 2010): 203.

[4] Samuel Moyn argues that it was the decade after 1968 when human rights began to make sense to broad communities of people as the proper cause of justice. In terms of indigenous peoples' rights, it was during this period that the international order changed its position toward and treatment of indigenous peoples as groups worthy of rights and justice. For this reason, Moyn's thesis offers a useful insight to viewing subcategories of international human rights law, such as indigenous peoples' rights, and how they helped change and contextualize our understanding of indigenous peoples' rights, which were until then largely absent from the UN. Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA: Harvard University Press, 2012).

[5] Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice*, Chicago Series in Law and Society (Chicago: University of Chicago Press, 2006).

Important for this study, the concept and category of indigenous peoples shows how an internationally-created status and set of rights can be made active and given effect in domestic and local settings. Indigenous peoples themselves are important actors in the mobilization of indigenous peoples worldwide, the creation of transnational networks, international law-making efforts, and programmatic activities, all of which occur in parallel to rights-based movements and collective claim-making, and against the backdrop of decolonization and globalization processes.[6] Their increased international agency and involvement in international law-making activities have helped strengthened their legal status and rights as well as claims to justice.[7] Of particular note is how such global activity not only involves local indigenous communities but also transnational organizations, domestic civil society organizations (CSOs), grassroots activists, human rights advocates, jurists, academics, and UN officials.[8] Often taken up and mobilized in social justice movements across diverse regional, domestic, and local settings, the 'new' meanings of the internationally-defined status and rights of indigenous peoples are deployed to criticize and challenge practices—mainly those of the nation-state, which is often held responsible for human rights violations.[9]

For international human rights law to operate in context,[10] it must be appropriated and translated into settings, where local power and multiple meanings compete with one another. In her study on gender violence in the Asia and Pacific region, legal anthropologist Sally Engle

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[6] Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy," *The American Journal of International Law* 92, no. 3 (July 1998): 414. See also, S. James Anaya, "The Capacity of International Law to Advance Ethnic or Nationality Rights Claims," *Iowa Law Review* 75 (90 1989): 837.

[7] The international shift is clearly illustrated in indigenous peoples' increased international agency and involvement in international law-making activities, which has helped strengthened their legal status and rights as well as claims to justice. Justice is a complex idea and ideal. Often, rights translators have to wrestle with the relative merits of justice and law, specifically human rights law. I believe justice is as much as subjective as objective, as much individual as collective.

[8] Felipe Gómez Isa, "Indigenous Peoples: From Objects of Protection to Subjects of Rights," in *Expanding Human Rights: 21st Century Norms and Governance*, ed. Alison Brysk and Michael Stohl (Cheltenham: Edward Elgar Publishing, 2017), 55–74.

[9] Valerie Phillips, "Indigenous Peoples and the Role of the Nation-State," *Proceedings of the Annual Meeting (American Society of International Law)* 101 (2007): 319–23.

[10] According to McCann, context is often 'defined by the indeterminate understandings, expectations, and actions of other thinking beings in social relationships', is 'intersubjective as well as exogenous', and is 'an ongoing process across time and space.' Michael McCann, "Causal versus Constitutive Explanations (or, On the Difficulty of Being so Positive…)," *Law & Social Inquiry* 21, no. 2 (April 1, 1996): 462. Simply put, context is the circumstances that form the setting for an event, statement, or idea, and in terms of which it can be fully understood Oxford Dictionaries, "'Context'. Origin: Late Middle English (Denoting the Construction of a Text): From Latin Contextus, from Con- 'Together' + Texere 'to Weave'.," https://en-oxforddictionaries-com.ezproxy.eui.eu/definition/context. It is necessary to add a fundamental note: since we are dealing with the international sphere, law and society are not restricted to and contained within the nation-state *per se* but include contexts that can be—simultaneously or independently—international, global, transnational, and regional, as well as local.

Merry argues that for women's human rights to gain a foothold locally they must be 'remade in the vernacular'.[11] However, the ways in which human rights concepts and categories are vernacularized vary widely and are highly unpredictable, mainly because human rights concepts and categories are understood and articulated differently by a variety of actors in different times and places.[12] Furthermore, making human rights in the vernacular exposes the tensions, hybridities, and frictions of human rights in everyday practice,[13] which are particularly acute when they challenge the nation-state or impact state/group relations.[14] These general observations shape the research question that guides this study: *what are the ways in which the international concept and category of indigenous peoples has been made active and effective in the Israeli/Bedouin context*? Specifically, this research unpacks how the concept and category of indigenous peoples emerges in international human rights law and operates in lived realities, by locating the study in the context of Bedouin in the Negev desert, southern Israel, particularly the Bedouin villages of al-Araqib and al-Sira.

The question of what constitutes an indigenous peoples in theory and who is indigenous in context remains a contested and complex struggle, in which definition and terminology play a key role.[15] In order for human rights law to apply for a particular group it is necessary to determine who properly belongs to that group. Where those rights affect the state, conflict often arises, and definitions of the term *indigenous* are offered by domestic and international scholars, civil society organizations (CSOs), and the state. Definitional boundaries between indigenous and non-indigenous groups in international human rights law are still emerging, both in their construction and their maintenance. Hence, definitional boundary-drawing on the domestic level often determines group membership—which, it is worth stressing, evolves and changes over time and place. As most definitions of indigenous peoples refer to groups which pre-exist the modern state, the application of the definition is relatively straightforward in the

[11] Engle Merry, *Human Rights and Gender Violence*, 1.
[12] Mark Goodale and Sally Engle Merry, eds., *The Practice of Human Rights: Tracking Law between the Global and the Local*, Cambridge Studies in Law and Society (New York: Cambridge University Press, 2007).
[13] On the role of friction in general and in context of the Bedouin in Israeli see, Anna Lowenhaupt Tsing, *Friction: An Ethnography of Global Connection* (Princeton, NJ: Princeton University Press, 2005); Alexander Koensler, "Frictions as Opportunity: Mobilizing for Arab-Bedouin Ethnic Rights in Israel," *Ethnic and Racial Studies*, n.d., 1–21.
[14] Gudmundur Alfredsson, "The Rights of Indigenous Peoples with a Focus on the National Performance and Foreign Policies of the Nordic Countries," *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht* 59, no. 2 (1999): 529–542. See also, Richard Falk, "The Rights of Peoples (in Particular Indigenous Peoples)," in *The Rights of Peoples*, ed. James Crawford (Oxford: Clarendon Press, 1988).
[15] Jean E Jackson, "Rights to Indigenous Culture in Colombia," in *The Practice of Human Rights: Tracking Law Between the Global and the Local*, ed. Mark Goodale and Sally Engle Merry (New York: Cambridge University Press, 2007), 204–41.

so-called New World, which encompasses Australia, New Zealand, the United States and Canada. Applying those definitions of indigenous peoples outside of the New World is a more complicated and fraught exercise. For instance, Africa and Asia not only experienced flows of people but also nation-state processes that have been recent, complex, and often conflict-ridden in the aftermath of UN decolonization.[16] I argue that the application of international definitions of indigenous peoples faces a similar dilemma in the Middle East,[17] where newly-established nation-states are usually resistant to or ill-equipped to deal with the imposition of international law, including international human rights law.[18]

Situating these general observations of international human rights law in the context of the Bedouin in Israel takes me back to 31 May 2011, the first time I visited al-Araqib, an unrecognized Bedouin village in the Negev desert. The al-Araqib villagers had hoped CSO representatives would arrive in time to witness the destruction of the village by Israeli police forces with bulldozers, but our group was too late. Al-Araqib does not have tarmac roads but dirt tracks. It does not have houses with four walls and a roof, but tents and makeshift buildings. Al-Araqib does not fit the mold of a Western village, or even of most villages in Israel. While the environment and climate of the Negev desert are partly responsible for its novelty, the main factor is that al-Araqib is a demolished village—all that remains are remnants of what once was the village of al-Araqib. The demolition on 31 May 2011 was only the latest in a long series of destructions visited on the villagers. After we arrived, the female visitors joined the al-Araqib women and young children to share a drink of carbonated orange in plastic cups shielded from the afternoon sun with the help of black plastic. We sat in silence which was interspersed with cries of an old Bedouin woman and the frustration of younger Bedouin women, whose children had returned from school to see their homes no longer standing. The children did not know what to make of us visitors, also viewed as foreigners and intruders; for them anyone not Bedouin was responsible for the destruction of their village. The men, Bedouin and non-Bedouin, were off in the tent structure, the *shigg*, to drink Turkish coffee and discuss the demolition and related matters, most of which revolve around land. Leaving the

[16] Felix Mukwiza Ndahinda, *Indigenousness in Africa: A Contested Legal Framework for Empowerment of "Marginalized" Communities* (The Hague: Springer Science & Business Media, 2011). See also, Paul Tamuno, "New Human Rights Concept for Old African Problems: An Analysis of the Challenges of Introducing and Implementing Indigenous Rights in Africa," *Journal of African Law* 61, no. 3 (October 2017): 305–32.
[17] For a critique of the term Middle East see, Laura Nader, *Culture and Dignity: Dialogues Between the Middle East and the West*, 1 edition (Hoboken, New Jersey: Wiley-Blackwell, 2012), 221.
[18] Joshua Castellino and Kathleen A. Cavanaugh, *Minority Rights in the Middle East* (Oxford: Oxford University Press, 2013).

village later that day, there was a sense of distress intermingled with expectation, and a quiet, steady determination. The bulldozers had gone, we visitors were going, but the al-Araqib villagers remained. They have stayed put, as has their village, unrecognized but still present and visible to every pair of eyes, even those of the international community. Sitting with the villagers that day, international human rights felt extraordinarily close to home. My experience left me wondering whether these developments in al-Araqib were despite domestic law or because of international human rights law, or a bit of both.

Following this experience, I also reflected on whether the conflict between al-Araqib and the State of Israel is not only over land but also a struggle over history, religion, identity and so forth. Hence, I intentionally employ 'terrain' in the title of the study, and not 'territory' or 'lands' which are often associated with the nation-state (i.e. state territory) or indigenous peoples (i.e. indigenous peoples' lands). Terrain can be seen to be less political and polarizing. Moreover, the origins of the word 'terrain'[19] suggests activity and movement, which characterizes the Negev desert and the people living there.

What follows is an attempt to unravel international human rights law in domestic and local settings in order to understand how the international concept and category of indigenous peoples operates in places like al-Araqib. Charting the general human rights processes at work tells a story about international human rights law in the context of the Bedouin in southern Israel, and the ways in which an internationally-created status and rights, like those belonging to indigenous peoples, are produced in international human rights law and then re-produced in faraway places. The Bedouin in southern Israel are one of many examples[20] where international human rights law, specifically the concepts and categories, creates opportunities and spaces that are generated and shaped by both law and factors outside of law. However, these opportunities and spaces come with a price, since international human rights law promotes an

[19] Oxford Dictionaries, "Terrain. A Stretch of Land, Especially with Regard to Its Physical Features. Origin: Early 18th Century (Denoting Part of the Training Ground in a Riding School): From French, from a Popular Latin Variant of Latin Terrenum, Neuter of Terrenus (See Terrene).," n.d., https://en-oxforddictionaries-com.ezproxy.eui.eu/definition/terrain.

[20] Shannon Speed and Jane Fishburne Collier, "Limiting Indigenous Autonomy in Chiapas, Mexico: The State Government's Use of Human Rights," *Human Rights Quarterly* 22, no. 4 (November 1, 2000): 877–905; Mark Goodale, "Legal Ethnography in an Era of Globalization: The Arrival of Western Human Rights Discourse to Rural Bolivia," in *Practicing Ethnography in Law* (Palgrave Macmillan, New York, 2002), 50–71; Andrew Canessa, *Intimate Indigeneities: Race, Sex, and History in the Small Spaces of Andean Life* (Durham, NC: Duke University Press Books, 2012); Richard Price, *Rainforest Warriors: Human Rights on Trial* (Pennsylvania: University of Pennsylvania Press, 2012); Shane Greene, *Customizing Indigeneity: Paths to a Visionary Politics in Peru* (Stanford, CA: Stanford University Press, 2009).

internationally-defined status and set of rights that may, or may not, agree with the domestic legal order of the nation-state. Moreover, international human rights law may, or may not, align with local customs of the particular group, whose customs can be viewed as an assertion of law without the nation-state or international order. Hence, international human rights law frequently calls into question both domestic and local orders. This case study of the Bedouin in the domestic and local context as an example of international human rights law in practice shows how international law concepts and categories, like indigenous peoples, play out in a real time and place.

1. A Short Account of International Human Rights Law

While the relationship between the state and international human rights law in practice is often framed as being adversarial, it is also true that neither can exist without the other. Although international law challenges the state's authority over its citizens, it simultaneously serves to reinforce the state's authority and power.[21] Paradoxically, the nation-state is responsible for both the promotion and safeguard of human rights and is also responsible for human rights violations.[22] In the State of Israel, for instance, the Knesset, the Israeli legislature, enacted *The Basic Law: Human Dignity and Liberty* – 1992 for the purpose of promoting and safeguarding the human dignity and civil liberties of all Israeli citizens at a constitutional level. Despite these constitutional guarantees, UN treaty committees, the US State Department, and the European Neighborhood Partner (ENP) frequently report on human rights violations carried out against Israeli citizens and residents in the neighboring region.[23] While noting the paradoxical nature of the nation-state in protecting and violating human rights, there is global consensus that the nation-state is the principal agent for human rights reform and provides the framework for much human rights activism and mobilization.[24] What does this say about the relationship between the nation-state and international human rights law, as a body of

[21] Engle Merry, *Human Rights and Gender Violence*, 5. See also, Falk, "The Rights of Peoples (in Particular Indigenous Peoples)," 17.
[22] Falk, "The Rights of Peoples (in Particular Indigenous Peoples)," 27.
[23] UN Human Rights Committee, "Concluding Observations on the Fourth Periodic Report of Israel, UN Doc CCPR/C/ISR/CO/4," November 21, 2014; UN Committee on the Elimination of Racial Discrimination, "Concluding Observations of the Committee on the Elimination of Racial Discrimination, UN Doc CERD/C/ISR/CO/14-16," April 3, 2012; UN Committee on Economic, Social and Cultural Rights, "Concluding Observations of the Committee on Economic, Social and Cultural Rights, UN Doc E/C.12/ISR/CO/3," December 16, 2011; US Department of State, "2016 Country Reports on Human Rights Practices - Israel and the Occupied Territories," March 3, 2017.
[24] Akira Iriye, Petra Goedde, and William I. Hitchcock, *The Human Rights Revolution: An International History* (Oxford: New York: Oxford University Press, 2012), 14–15.

international law?[25] The nation-state, in my opinion, does not act as an impediment to the practice of international human rights law; rather, it serves as a context that defines the relationship between international law and the state, and also facilitates the construction of meanings of international human rights and possibilities of action.

The fundamental idea of international human rights is that there are basic rights belonging to all people.[26] And yet, international human rights law has been slow to recognize and adapt to local contexts. Modern international law originated somewhere in the middle of the 19th century,[27] with international human rights law arising in the mid-20th century as an international oversight mechanism. Beginning with civil and political rights followed by socioeconomic rights, international human rights advocates largely had to ignore or downplay context in order to establish universal principles.[28] Hence, international human rights have not been tailored to address specific political and social situations even if these situations might suggest different approaches to justice. Interventions are often framed within a particular vision of justice, one that privileges neoliberal choice rather than alternatives of justice based in communal, socialist, or religious conceptions.[29] Within the discrepancy between universal human rights and alternatives of justice, a struggle emerges between the generalizing strategies and the particularistic practices of international human rights.[30] How to negotiate the

[25] Harold Hongju Koh, "Why Do Nations Obey International Law?" *The Yale Law Journal* 106, no. 8 (1997): 2599–2659.
[26] Jack Donnelly, *Universal Human Rights in Theory and Practice* (Ithaca: Cornell University Press, 2003), 1. For a discussion human rights law as an overarching legal system for the international community, historically known as the community of nations, see Emer de Vattel, *The Law of Nations* (Indianapolis, IN: Liberty Fund, 2008).
[27] It is a challenge to specify an exact date of the emergence of modern international law, which is why the question is open to debate and contestation. See, Randall Lesaffer, "The End of the Cold War: A Epochal Event in the History of International Law?," in *International Law 1989-2010: A Performance Appraisal: Cambridge, 2-4 September 2010, Select Proceedings of the European Society of International Law*, ed. James Crawford and Sarah Nouwen (Oxford: Hart Publishing, 2012), 45–59; David Kennedy, "International Law and the Nineteenth Century: History of an Illusion," *QLR* 17 (1998 1997): 99; Matthew Craven, Malgosia Fitzmaurice, and Maria Vogiatzi, eds., *Time, History and International Law* (Leiden; Boston: Martinus Nijhoff Publishers, 2006); Alexander Orakhelashvili, *Research Handbook on the Theory and History of International Law* (Cheltenham: Edward Elgar Publishing, 2013); Martti Koskenniemi, "The Legacy of the Nineteenth Century," in *Routledge Handbook of International Law*, ed. David Armstrong et al. (Abingdon, Oxon: Routledge, 2008), 141–53; Nina Keller-Kemmerer and Elisabetta Fiocchi Malaspina, "International Law and Translation in the 19th Century," *Rechtsgeschichte - Legal History*, 2014, 214–226; Bardo Fassbender and Anne Peters, *The Oxford Handbook of the History of International Law*, 1 edition (Oxford: Oxford University Press, 2013); Jeremy Sarkin, "The Historical Origins, Convergence and Interrelationship of International Human Rights Law, International Humanitarian Law, International Criminal Law and Public International Law and Their Application since the Nineteenth Century," *Human Rights & International Legal Discourse* 1 (2007): 125.
[28] Donnelly, *Universal Human Rights in Theory and Practice*.
[29] Engle Merry, *Human Rights and Gender Violence*, 103.
[30] Neil Walker, "Universalism and Particularism in Human Rights," in *Human Rights: The Hard Questions*, ed. Cindy Holder and David Reidy (New York, NY: Cambridge University Press, 2013), 39–58.

universal/particular—or the global/local—schism is a challenge for international human rights, especially since human rights standards are so powerful given their resolute commitment to norms that transcend particular situations.[31]

The task of formulating international human rights has not been easy for international lawmakers, nor have these rights statuses and sets of rights easily moved from one setting to another.[32] The divergence between the production and practice of international human rights is clearest in the local context, where local power and meanings are generated.[33] Internationally-produced statuses and rights do not readily translate to the local setting in part because the local setting is first encircled by the structure of the nation-state, and also because the local setting is embedded within its own cultural assumptions and norms.[34] It can be difficult for international human rights to become part of the local psyche of ordinary people, due to the gap between the international settings (primarily UN sites) where human rights are formulated, and the specific context in which rights statuses and sets of rights are deployed and mobilized under local conditions. Although some local actors are active in international settings, where a bricolage of ideas and issues are assembled, often local actors are preoccupied with the individual situation and the local context.

International human rights law is framed in a certain vocabulary that grants it legitimacy—but in order for the international human rights law to be understood, it must be translated into local languages of particular groups.[35] If international lawyers are trained in and responsible for formulating international human rights, then who is responsible for making legal meaning move across time and space, and how in fact can the movement of internationally-defined status and rights be facilitated from the international to the local setting? Intermediaries—such as grassroots CSOs, law centers, and occasionally academic commentators—play a crucial role

[31] Goodale and Engle Merry, *The Practice of Human Rights*.
[32] Luis Eslava, *Local Space, Global Life: The Everyday Operation of International Law and Development* (Cambridge, United Kingdom: Cambridge University Press, 2015).
[33] Jane K. Cowan, Marie-Bénédicte Dembour, and Richard A. Wilson, "Introduction," in *Culture and Rights: Anthropological Perspectives*, ed. Jane K. Cowan, Marie-Bénédicte Dembour, and Richard A. Wilson (Cambridge: Cambridge University Press, 2001); Richard A. Wilson, "Human Rights, Culture and Context: An Introduction," in *Human Rights, Culture and Context: Anthropological Perspectives* (London; Sterling, VA: Pluto Press, 1997).
[34] Engle Merry, *Human Rights and Gender Violence*, 3. See also, Tobias Kelly, *Law, Violence and Sovereignty Among West Bank Palestinians* (Cambridge: Cambridge University Press, 2007), 28.
[35] Abdullahi Ahmed An-Na'im, "State Responsibility under International Human Rights Law to Change Religious and Customary Laws," in *Human Rights of Women: National and International Perspectives*, ed. Rebecca Cook (Philadelphia, PA: University of Pennsylvania Press, 1994), 167–88.

in interpreting the world of international human rights for local communities and help connect the international and local settings.[36] In order to perform this function, these intermediaries are responsible for appropriating, translating, and remaking international human rights law into the vernacular. It is these groups that navigate the divide between the local and the global, translating global approaches into domestic and local terms and seeking to give local communities a voice and platform. Furthermore, these intermediaries also frame and translate *up* local narratives into international languages and familiar narratives for an international audience.[37]

The concept and category of indigenous peoples offers an example of how ideas generated in international human rights law are subject to uncertainty, contradiction and competition in context.[38] CSOs working at the intersection of the global and local typically recognize the contested and shifting nature of the internationally-created status and rights of indigenous peoples, but rarely discuss the definition of 'indigenous peoples', specifically the lack of a clear legal definition, as an obstacle.[39] Actors seeking to redefine the Bedouin as indigenous under international conditions also encounter a challenge in that it is difficult to translate and construct indigenous peoples as a concept and category in the Bedouin vernacular. Hence, the internationally-created concept and category of indigenous peoples can be seen as denying alternative conceptions and categorizations of human rights and obscuring local definitions of the Bedouin, which may not be necessarily grounded in international human rights law.[40]

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[36] Sally Engle Merry, "Transnational Human Rights and Local Activism: Mapping the Middle," *American Anthropologist* 108, no. 1 (March 1, 2006): 38–51.
[37] Engle Merry, *Human Rights and Gender Violence*, x.
[38] Emma Nyhan, "International Law in Transit: The Concept of 'Indigenous Peoples' and Its Transitions in International, National and Local Realms-the Example of the Bedouin in the Negev," in *International Law and...: Select Proceedings of the European Society of International Law*, ed. August Reinisch, Mary E. Footer, and Christina Binder (Hart Publishing, 2016), 289–308. See also, Emma Nyhan, "A Window Apart," *European Journal of International Law*, Roaming Charges, 28, no. 3 (November 13, 2017): 895–98.
[39] Engle Merry, *Human Rights and Gender Violence*, 104.
[40] On 'normative repertoires' derived from Islam (*shari'a*), custom (*sulh*) and citizenship (*muwatana*) in the context of the Palestinians in the West Bank, see Kelly, *Law, Violence and Sovereignty Among West Bank Palestinians*, 16. For instance, one study comparing three Islamist groups found that these groups developed a local Islamist ideology, rather than a global Islamist ideology, in order to mobilize supporters. See, Kathleen Collins, "Ideas, Networks, and Islamist Movements: Evidence from Central Asia and the Caucasus," *World Politics* 60, no. 1 (October 2007): 64–96. Another example is the study of international labor rights in Saudi Arabia, Malaysia and Iran in which international labor rights were translated from international labor rights into Islamic terms to include conciliation (*sulh*) and the right to arbitration (*takhim*) which aided workers' in their struggles for labor rights. See, Kamal Halili Hassan and Mostafa Seraji, "Addressing Workers' Freedom of Association and Its Dispute Resolution in the Context of the Shari'ah," *Human Rights Review* 14, no. 2 (June 1, 2013): 89–105.

If the internationally-defined status and rights of indigenous peoples reveals the intricacies of international human rights law in practice, then the Bedouin in Israel, who recently turned to the internationally-defined status and rights of indigenous peoples,[41] provide an ideal site for studying these intricacies. Moreover, studying the Bedouin's international indigenization raises a very interesting question about what it means for a state when part of its population adopts an ideology which challenges it by means of a claim to international human rights law. It is the tension between claims to indigenous peoples' rights and threats to the nation-state that runs through this study and offers an important insight into the implications of activism for indigenous peoples' human rights and human rights in general. Hence, this study provides valuable insight about this enduring tension between state/minority relations.

2. The State Reassembled

While culture plays a key role in remaking human rights in context,[42] the preoccupation here lies with the nation-state as a complex matrix where the practical challenges and controversies of international human rights law arise. Opponents argue that international indigenous peoples' rights law is not useful and resist making changes to improve the situation of the claim-makers, invoking state legality and the preservation of state sovereignty, territory, and national essence. Arguments about preserving statehood and nationhood become the basis for negating indigenous peoples' claims to rights and justice. Proponents of indigenous peoples' status and rights have little patience for such arguments and therefore turn to international human rights law, sites, and audiences.[43] In the context of this study, then, is it possible to find a space that upholds Israeli state sovereignty while at the same time protecting and promoting indigenous peoples' rights claimed by the Bedouin? These appear to be opposite goals. State principles and values often permit and encourage state hegemony, and even state violence,[44] but to institutionalize the international status and rights of indigenous peoples would require substantial shifts in the concepts of sovereignty, territory, and national essence, as well as changes in state institutions and policies that regulate the individuals and collectives claiming international human rights. Nonetheless, as implied earlier, if one considers the nation-state as

[41] Nyhan, "International Law in Transit: The Concept of 'Indigenous Peoples' and Its Transitions in International, National and Local Realms-the Example of the Bedouin in the Negev."
[42] Engle Merry, *Human Rights and Gender Violence*.
[43] Engle Merry, 25.
[44] Kelly, *Law, Violence and Sovereignty Among West Bank Palestinians*.

a *context* that is changeable, adaptable and unsettled, it might be possible to view the nation-state as a structure and resource for change.

As this brief discussion reflects, traditional concepts of the state—namely sovereignty, national essence, and territorial integrity and continuity—are recurrent themes in these discussions on international human rights. While state and sovereignty are closely linked and the state is often used as a synonym for the sovereign, statehood and sovereignty are not clearly defined.[45] In short, I understand *sovereignty* as the supreme authority in a territory that can be characterized by the state's ability to both decide all internal policies and domestic law and to deal externally with other states as it deems fit. The international legal order of human rights operates within a structure of sovereign states,[46] and yet the international human rights system is premised on the necessity for international intervention to transcend sovereignty.[47] The notion of the state grounded in national essence or identity—the nation-state with ethnic or cultural unity as a goal—came much later. Today's modern nation-building projects involve controlling membership in and exclusion from the nation.[48] The nation, according to Homi K. Bhabha, is

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[45] In Draft Declaration on the Rights and Duties of States, the United Kingdom and India deemed it necessary to define the state. However, the International Law Commission (ILC) concluded: 'that no useful purpose would be served by an effort to define the term "State" … In the Commission's draft, the term … is used in the sense commonly accepted in international practice. Nor did the Commission think that it was called upon to set forth … the qualifications to be possessed by a community in order that it may become a State.' Quoted in James Crawford, *The Creation of States in International Law* (Oxford: Oxford University Press, 2006), 31.

[46] In the international law arena, sovereignty amounts to a system of allocation of power, where the level of governance is decided upon by each state. Through a system of state consent, each state makes (horizontal) agreements with similar sovereign entities, or makes (vertical) agreements within the state (e.g., in a federal state system). Some argue that the traditional notion of sovereignty described above can no longer be achieved in international law, and the debate over the role of sovereignty in international law is far from settled. See, for example, Friedl Weiss, Erik M.G. Denters, and Paul J.I.M. de Waar, eds., *International Economic Law with a Human Face* (The Hague: Springer, 1998), 46–47. See also, Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester: Manchester University Press, 2000), 23–25.

[47] International human rights law has very little power to coerce individual sovereign states, with no international mechanisms for punishing states for non-compliance with their human rights commitments. States, and coalitions of states, can pressure other states but a country's vulnerability to this pressure depends greatly on its economic and political power and its capacity to mobilize allies. International human rights law's power lies in exposure and shaming. To understand why a state would choose to join the international system and be subject to monitoring and periodic reviews, some scholars have pointed to the economic and political benefits in terms of foreign aid, foreign investment, and trade relations. See, Rosemary Foot, *Rights beyond Borders: The Global Community and the Struggle over Human Rights in China*, 1 edition (Oxford; New York: Oxford University Press, 2001). Others point out that the monitoring procedure is not strict and has limited domestic outcomes. Anne F. Bayefsky, *United Nations Human Rights Treaty System: Universality at the Crossroads* (Leiden, Netherlands: Martinus Nijhoff Publishers, 2001), 7. Some point to the expressive elements of human rights treaty ratification. Oona A. Hathaway, "Do Human Rights Treaties Make a Difference?," *The Yale Law Journal* 111, no. 8 (2002): 1935–2042.

[48] Kenneth Coates, *A Global History of Indigenous Peoples: Struggle and Survival* (Basingstoke, Hampshire; New York, NY: Palgrave Macmillan, 2004), 200-202. See, for comparison, Joel S. Kahn, *Modernity and Exclusion* (London: SAGE, 2001).) The nation has been described by Benedict Anderson as an "imagined community'. It is an imagined community in the sense that the material conditions exist for imagining extended and shared connections. Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*

an ambivalent construction that lies between an object and concept given both its own geography and the mental image of nation.[49] National essence is a fundamental building block for both state sovereignty and ethnonationalism, the latter defining the nation in terms of ethnicity.[50] If the state is thought about in terms of national essence, it can provide governments with an excuse not to intervene more energetically to uphold international human rights law since governments can defend their resistance to foreign rights as the protection of national essence, or national identity. Finally, the state has a definite territory on which it exercises political authority. Territorial integrity and continuity, which refers to the territorial 'wholeness' or 'oneness' of the state, is a cardinal principle of international law and protects the territorial framework of the independent state.[51]

Insofar as the international legal order is composed of an almost fixed number of states, the current international order does not take advantage of the potential of states to change. My understanding of the nation-state is more fluid and flexible than the concepts described above,[52] taking into account the unsettled, contested nature of the state. In other words, states are made not only of principles and values but also of domestic practices, institutional arrangements, political structures, and laws that are subject to change and reform. Hence, states can potentially be seen as the paths to change, rather than the barriers to (human rights) reform. When the state is solely conceived as a fixed and unchanging entity, then by extension international human rights law is grounded and practiced in such a fixed and unchanging

(London: Verso Books, 1993). Paul James defines the nation as an "abstract community" in the sense that it is objectively impersonal, even if each individual in the nation experiences him or herself as subjectively part of an embodied unity with others. Paul W. James, *Nation Formation: Towards a Theory of Abstract Community* (London: SAGE Publications, 1996).

[49] Homi K. Bhabha, ed., *Nation and Narration* (London: Routledge, 1990).

[50] Ethnonationalism may seem like a recent addition, but Smith argues that it has a longer past and that nations have direct lines of continuity with ethnic communities. Anthony D. Smith, *The Ethnic Origins of Nations* (Malden, MA: Blackwell, 1986).

[51] Samuel K.N. Blay, "Territorial Integrity and Political Independence," Oxford Public International Law, http://opil.ouplaw.com.ezproxy.eui.eu/view/10.1093/law:epil/9780199231690/law-9780199231690-e1116. According to the *Helsinki Final Act* of 1975, the UN, the International Court of Justice (the 'ICJ'), and international law experts, there is no contradiction between the principles of self-determination and territorial integrity, with the latter taking precedence. However, in a number of instances, colonialism and its legacy complicated the relationship between state and territory. UN General Assembly Resolution 1514(XV) is used by some states to argue for the right to territories allegedly removed as a result of colonialism (based on Para. 6), and by other states to reject such claims to colonized territory (based on Para. 2); these arguments hinge on whether the right to self-determination can be used to justify territorial claims. UN General Assembly, "Declaration on the Granting of Independence to Colonial Countries and Peoples Adopted by General Assembly Resolution 1514 (XV) of 14 December 1960," n.d., accessed January 26, 2018.

[52] Fekri Hassan, "The Lie of History: Nation-States and the Contradictions of Complex Societies," in *Integrated History and Future of People on Earth (IHOPE)*, ed. Robert Costanza, Lisa J. Graumlich, and Will Steffen (Cambridge, MA: MIT Press, 2006).

container of the state. But, if the state goes beyond sovereignty, national essence, and territory, and is something also shaped by the context of history, practices, and meanings, then it is malleability and embedded in context. Such a concept of the 'unsettled' state does not eliminate the tensions between international human rights and the state, nor does it resolve the complexities of the state and the role of different contexts, be they local, domestic, transnational, or international. This conceptualization does focus attention on the capacity of the state to promote and safeguard human rights. In the practice of international human rights law, therefore, it is impossible to ignore the complex and dynamic nature of the state.

3. Vernacularizing Indigenous Peoples' Rights in the Israeli/Bedouin Context

International human rights law operates across time and space, and the 'vernacularization of human rights'[53] model offers grounded insight into international human rights law and local encounters that can generate transformative[54] and jurisgenerative[55] change in context. Moreover, this model unveils what is at stake when an internationally-generated status and set of rights are taken up and mobilized in the context of the nation-state.

Since legal anthropologist Sally Engle Merry originated the vernacularization of human rights, my appraisal of the process of rights in practice in the Israeli/Bedouin context necessitates unpacking her model, which she applies in her work on gender violence in the Asia/Pacific region. In particular, the vernacularization of human rights is established on and shaped by three cultural flows, which are key to the transnational circulation of people and ideas.[56]

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[53] Theory on transnational law is related to the topic of this study but not directly relevant to the findings or discussion, and therefore is not discussed. For more on legal transnationalism, see Terence C. Halliday and Gregory Shaffer, eds., *Transnational Legal Orders* (New York, NY: Cambridge University Press, 2015). See also, Peer Zumbansen, "Comparative, Global and Transnational Constitutionalism: The Emergence of a Transnational Legal-Pluralist Order," *Global Constitutionalism* 1, no. 1 (2012): 16–52. See also, Neil MacCormick, "Four Quadrants of Jurisprudence," in *Prescriptive Formality and Normative Rationality in Modern Legal Systems*, ed. Werner Krawietz, Georg Henrik von Wright, and Neil MacCormick (Berlin: Duncker & Humblot, 1994), 56.

[54] In the US context, the 'transformation perspective' has been championed by Felsteiner, Abel, and Sarat, who remark that it 'directs our attention to individuals as the creators of opportunities for law and legal activity: people make their own law.' However, they also add, 'but they do not make it just as they please.' William L.F. Felstiner, Richard L. Abel, and Austin Sarat, "The Emergence and Transformation of Disputes: Naming, Blaming, Claiming...," *Law & Society Review* 15, no. 3/4 (1980): 633.

[55] 'A jurisgenerative moment', as described by Kristen Carpenter and Angela Riley, amounts to 'a moment when both the concept and practice of human rights have the potential to become more capacious and reflect the ways that individuals and peoples around the globe live, and want to live, today.' Acknowledging the significance of jurisgenerative moments, I argue they capture the ongoing processes and highlight the potential for further transformations and developments. Kristen A. Carpenter and Angela R. Riley, "Indigenous Peoples and the Jurisgenerative Moment in Human Rights," *California Law Review* 102 (2014): 173.

[56] Merry says 'Understanding the global-local interface requires attention to transnational cultural flows and their relationship to local cultural spaces'. Engle Merry, *Human Rights and Gender Violence*, 19. See also, Ulf

Wealthier countries can often send larger delegations to international conferences and can participate in more deliberations, while smaller or less wealthy countries may not send any national representatives to UN meetings. These global inequalities of power shape the kinds of cultural flows that take place even for indigenous efforts to acquire recognition and rights as an indigenous peoples.[57] This study uses Merry's cultural flows to examine and unpack the three processes, or cultural flows, underlying human rights in a particular local context:[58] the creation of indigenous peoples' status and rights on the international level; the transplant of that status and rights through human rights activities and knowledge production and scholarship; and the emergence of the status and rights in the vernacular among the Bedouin in their localities.

To expand a little, Merry's first cultural flow concerns *transnational consensus-building*, which is basically the production of documents and resolutions that define international human rights and social justice. In the document-production stage there is already a disjuncture between the global and local: in human-rights-making, 'local context is ignored in order to establish global principles'.[59] Examples of documents include major treaty conventions, policy documents resulting from global conferences, and resolutions and declarations of the UN Generally Assembly. In this process, state delegates and civil society representatives negotiate across differences in ideology, politics, and cultural practices. This consensus-building process requires protracted and often excruciating negotiations about the wording and sentence structure, but the result is a document legitimized by its unified transnational support.[60] Debate circles around word choice rather than social science evidence. (Chapter 4 of this thesis examines how the concept and category of indigenous peoples developed in terms of

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Hannerz, *Cultural Complexity: Studies in the Social Organization of Meaning* (New York: Columbia University Press, 1991); Saskia Sassen, *Cities in a World Economy* (Thousand Oaks, CA: Sage Publications, 2011); Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization* (New York: Columbia University Press, 1996); Saskia Sassen, *Globalization and Its Discontents* (New York, NY: New Press, The, 1999); Arjun Appadurai, *Modernity At Large: Cultural Dimensions of Globalization* (Minneapolis, MN: University of Minnesota Press, 1996); Arjun Appadurai, ed., *Globalization* (Durham, NC: Duke University Press Books, 2001); Akhil Gupta and James Ferguson, eds., *Culture, Power, Place: Explorations in Critical Anthropology* (Durham, NC: Duke University Press Books, 1997); Aihwa Ong, *Flexible Citizenship: The Cultural Logics of Transnationality* (Durham; London: Duke University Press, 1999), www.dukeupress.edu/flexible-citizenship.

[57] Engle Merry, *Human Rights and Gender Violence*, 20.

[58] Engle Merry, 20.

[59] Merry asserts, 'To negotiate this divide [between global law and local justice] is a key human rights problem.' Engle Merry, 103.

[60] Merry details the process of creating human rights and the significance of reaching a consensus on contentious issues surrounding power imbalance, language barriers, and so forth. What is interesting in this stage is the role and participation of CSOs, which are marked by ambivalence and tension with the states. Here, also, the issue of legitimacy becomes significant and Merry argues that international consensus-building is critical to the legitimacy of the human rights system as a whole. Engle Merry, 38–48.

internationally-produced documents and resolutions defining the rights of an indigenous peoples, by looking at the theoretical approaches and practice-oriented definitions of International Governmental Organizations (IGOs) as they evolved over time.)

The second cultural flow is *transnational program transplants*, which concerns legal innovations and social service programs that are created in one society and then transplanted to another society.[61] Critical in the program-transplant process, according to Merry, are 'intermediaries who translate global ideas into local situations and re-translate local ideas into global frameworks', acting as the link between grassroots and global actors.[62] The case studies in this thesis illustrate the deployment of the international framework of indigenous peoples in human rights advocacy work, including media outreach, public events, CSO reports, as well as legal advocacy before the Israeli domestic courts. It is also important to stress that some local Bedouin actively engaged in their own struggle through human rights advocacy and court activism. (Chapters 3 and 5 unpack the roles of these intermediaries who are rights translators: civil society actors in involved in the grassroots, legal, UN, transnational, and international realms, as well as actors engaged in the academic and judicial realms. Chapter 6 also examines a specific kind of intermediary: the Bedouin intermediary.)

The third cultural flow is the *localization of transnational knowledge*, which involves the emergence of a particular status and rights in the vernacular, through domestic and local actors who have participated in transnational events and actions and bring what they learn back home.[63] These actors are situated between transnational actors and grassroots activists and include, *inter alia*: CSO representatives, government officials, movement leaders, and scholars. They often attend the CSO sessions around major UN conferences, commission meetings, and other international events. On these occasions, these actors have the opportunity to exchange information, learn and acquire new skills, and network. While the events occur in international settings, the focus of these events is to provide knowledge from one local place to another. The

[61] In the transplant stage, the actual appropriation process and intermediaries play a key role. The success or failure depends on how the international rights framework is appropriated from the international to the local and on the intermediaries who are involved in blending international, national and local elements. Engle Merry, 134.
[62] Engle Merry, 134. In this transplant process, Engle Merry makes a distinction between appropriation and translation. Simply put, *appropriation* entails 'taking the program interventions and ideas developed by activists in one setting and replicating them in another" and *translation* entails 'adjusting the rhetoric and structure of these programs or intervention to local circumstances.' Engle Merry, 135–37.
[63] Merry argues, 'The rights framework does not displace other frameworks but adds a new dimension to the way individuals think about problems.' Engle Merry, *Human Rights and Gender Violence*, 180.

actors who move in and through these settings relay transnational knowledge to activists in the local and domestic setting as well as contribute local and domestic knowledge to transnational settings. They are key players in localizing human rights in context.[64] (Chapter 6 explores the localization of knowledge of indigenous peoples' status and rights among the Bedouin, focusing on the ways in which the Bedouin take on indigenous rights' ideas, and on the role of local actors in translating indigenous peoples' status and rights in the vernacular.)

It is clear that the vernacularization of rights amounts to a tangible schema to demonstrate how globally-made rights status and sets of rights, once formulated at the international level, go on to be re-made in the vernacular. Moreover, this model helps to track additional layers of law that can be deployed in order to undermine, or run alongside, the state hegemony.[65] The multiple global cultural flows at work limit the imposition of Western cultural forms and legalities and accrue agency to the actors, who can be non-state as well as non-Western.[66] The vernacularization process, therefore, highlights the impact of the international production of human rights and how these rights are localized and mobilized by individuals or groups. This model also facilitates an understanding of how internationally-created statuses and rights create tensions, hybridities, and frictions as well as generate new subjectivities and political and legal dynamics at the domestic and local levels. In particular, employing this model captures how the concept and category of indigenous peoples is socio-legally constructed and constituted in the context of the Bedouin in Israel.

4. An International Lawyer Doing Legal Anthropology and Ethnography

This study examines familiar human rights problems in unfamiliar ways; it can be described as a hybrid of law and society generally, and law and anthropology in particular. Taking a legal-anthropological approach to how the concept and category of indigenous peoples is made active and effective in the Israel/Bedouin context facilitates an understanding of how international human rights law works in everyday practice.[67] Legal anthropology in the study of international human rights law at work allows me to look closely at a small space, to listen

[64] Engle Merry, 20.
[65] Sally Engle Merry, "Anthropology and International Law," *Annual Review of Anthropology* 35, no. 1 (2006): 99–116.
[66] Engle Merry.
[67] Sally Engle Merry, "Anthropology and International Law," *Annual Review of Anthropology* 35, no. 1 (2006): 99–116. See also, Miia Halme-Tuomisaari, "Toward a Lasting Anthropology of International Law/Governance," *European Journal of International Law* 27, no. 1 (February 1, 2016): 235–43.

to the language, to pay attention to the social links and information exchanges, to take note of power relations—in general, to pay attention to the constructions of international human rights law in everyday interactions and local practices.

The study of international human rights law's practice is a challenge for international jurists: to study legal phenomena in context and find the interstices between international human rights law and the particular sites in which tensions arise. It is worth remembering that the distinctive contribution of international lawyers has always been their focus on the law, more or less analyzed, through legal units and the legal interpretations that constitute them. How can international lawyers, whose focus lies largely on legal texts, comprehend rights-based processes in which the local and the global are inextricably intertwined? Where can we find these legal texts as we examine the new configurations produced by the contexts of power, globalization, capital, and culture that transcend the boundaries of the nation-state? Ultimately, is this legalistic model or approach appropriate for understanding how international human rights law operates in faraway places? One answer is to locate sites where global and local processes are revealed in the operational field of international human rights law.

In my efforts to study international human rights processes, I rely on George Marcus's proposal that the ethnographer engage in a multi-sited ethnography.[68] Although this term suggests a comparison between sites, it has been pointed out that Marcus's model is one not of discrete comparisons but an ethnographic engagement with the fragments of a larger system, recognizing that the system is neither coherent nor comprehensible. Merry prefers to use the term 'deterritorialized ethnography',[69] which comes closer to the notion of a disembodied space of social life which exists in various spaces but is not grounded in any one of them. In this inquiry, I use the term *realms of activity*,[70] which situates my study among multi-sited and

[68] George E. Marcus, *Ethnography through Thick and Thin* (Princeton, NJ: Princeton University Press, 1998), 79–104.
[69] Engle Merry, *Human Rights and Gender Violence*, 29.
[70] Unlike Merry's three cultural flows (discussed above) that have a vertical order in terms of understanding the process, the realms of rights activity have no order and are like a snow-globe, in which snow particles represent rights activities in action. Irrespective of this small difference, these processes are key to understanding the global production and local appropriation of international human rights in context. Engle Merry, 19–21. Legal philosopher Neil McCormick presents a way of thinking that 'Law in everyday life is activity on the grand scale—a bewildering plurality of activities'. For him, law is 'spiky, episodic, transitory', but its fragmentary and episodic nature is situated within a coherent framework. McCormick presents a fuzzy picture of law that is simultaneously an activity, a phenomenon, and a lived experience. This notion of law in its raw form is supplemented by other legal frames, including doctrinal law (law-as-science), law in social science, and fundamental values and principles. MacCormick, "Four Quadrants of Jurisprudence," 54–55.

deterrritoralized sites. The focus of this study is on a social world whose locations are diverse but whose words and practices look similar, whether in Geneva or New York, Copenhagen or London, or Be'er Sheva city or the unrecognized villages of al-Sira and al-Araqib.

As I embarked on my legal-anthropological inquiry, my first strategy was to focus on a single topic: indigenous peoples' rights in the context of the Bedouin in Israel. In making this choice, I followed the lead of most law centers that focus on a specific topic, issue, or population. The international human rights law of indigenous peoples is considered a growing collection of legal frameworks and bodies, especially at the UN. While I did not incorporate the UN as an ethnographic site, I decided to foreground the UN as the main IGO in my analysis of the IGO definitions of indigenous peoples. I also interviewed the first UN Special Rapporteur on Rights of Indigenous Peoples to gain direct insights on his perceptions and interaction with the Bedouin in his UN and other roles. While there was a great deal of ground to cover in my research, I had already worked in my civil society capacity in Israel between 2009 and 2011, so I began with a working knowledge of Arab minority issues in Israel, including the specific issues related to the Bedouin. Having experience as a civil society 'insider', I was familiar with CSO terms, missions, and activities, as well as achievements and setbacks. I was well-acquainted with the different registers of legal frameworks—minority rights and indigenous peoples' rights—operating simultaneously when talking about different sub-groups in the Arab minority in Israel. However, the exposure to knowledge and theory on these issues compelled me to revisit the different legal frameworks deployed, underscoring that the use of terminology and framing of an issue mattered a great deal in the practice of human rights in this specific setting. My exposure to and interaction with the human rights community in Israeli civil society provided a solid basis for the practice and knowledge, but also introduced me to the key actors involved. To a certain extent, this is a small community with repeat actors,[71] shared discourses and networks, and shared commitments to a vision of social justice. Specific to the Bedouin community, I was able to rely on assistance from acquaintances among the Bedouin from my undergraduate law studies in Germany and my time in Israel to make contacts and provide me with background information on the situation of the Bedouin from a local perspective. I had done background reading over the three and half years prior to my fieldwork,

[71] On repeat players, see Marc Galanter, "Why the 'Haves' Come out Ahead: Speculations on the Limits of Legal Change," *Law & Society Review* 9, no. 1 (1974): 95–160.

including the perusal of the extensive 'gray' or para-academic literature produced by domestic and international CSOs.

Legal anthropological research, which involves ethnographic study with fieldwork and direct involvement of the researcher in the activities, events, and people in the field, constitutes a unique approach to legal-anthropological inquiry, especially when it comes to the study of human rights in everyday interactions and local practices. First, the personal ties, friendships, and social obligations that the researcher develops over the course of the fieldwork create a stronger sense of the ethical priorities and implications of the study (than usually develops in more distant environments, e.g., doctrinal research conducted in a library). Moreover, questions of self-positioning become salient, inevitable, and immediate. Ethnographic inquiry is also unique in the sense that is an open-ended approach and is often misunderstood as other forms of social science inquiry start off with a detailed hypothesis or a tightly defined research objective. Ethnography, by definition, follows the flow of events, ideas, and peoples as they appear. Ethnography aims to overturn initial expectations and considerations; probably not many other forms of inquiry are projected so thoroughly toward the unexpected, the hidden, and the undefined.[72]

The sites of ethnography in this study included unrecognized Bedouin villages, also referred to as 'illegal clusters'.[73] The micro-study of Bedouin localities helps situate the Bedouin in local

[72] Alexander Koensler, *Israeli-Palestinian Activism: Shifting Paradigms* (Farnham, Surrey: Burlington, VT: Routledge, 2015), 3.

[73] There are two settlement arrangements for the Bedouin in the Negev: towns and villages. Bedouin towns were established by the Israeli government and are, therefore, often called government-planned towns. Bedouin villages are subdivided into recognized villages and unrecognized villages, which derives from their legal or illegal status. The largest Bedouin government-planned town in Israel is Rahat city, which was established in 1971. Other planned-towns include Tel Sheva (Tel as-Sabi), which was established in 1969, Segev Shalom (Shaqib al-Salam) which was established in 1979, Ar'ara BaNegev (Ar'arat an-Naqab) and Kuseife which were established in 1982, Lakiya in 1985 and Hura in 1989. Covering some 76,800 dunams, they were established by the state with the intention and hope that the Bedouin would relocate to these towns, where they would have access to state services and amenities. In towns, they would be able to trade their Bedouin way of life for a modern way of life. A condition of residency in these towns is to give up any claims to the land. The government-planned towns are quite known because there are only seven of them and their ranking in the socio-economic index receives attention. Frequently ranked at the bottom of the index, they often appear in the ten poorest municipalities in Israel. Consequent to their impoverishment and over-crowdedness, many Bedouin argue against relocation to these towns as the living conditions in the towns and unrecognized villages do not differ significantly. Since 2000 Israeli authorities have recognized a number of villages spread across 58,600 dunams. However, it is important to underscore that village recognition does not amount to recognition of their land claims. After village recognition, the land is viewed as state lands and the Bedouin living on them are granted leases. This is the standard practice of land ownership in Israel, where the State owns 93% of all lands within its territorial borders. Despite the State's recognition, these villages are subject to the same government policies carried out in unrecognized villages. In the majority of recognized villages, there is no planning which prevents the residents from obtaining permits for authorized building. Hence, the policy of house demolition continues to counteract

context while also acknowledging the contemporary contingencies embedded in domestic and international contexts. In this way, the micro-study of Bedouin localities attempts to tell a bigger story about human rights law. The case studies of al-Sira and al-Araqib can be seen as simultaneously exceptional and unexceptional. Like other Bedouin localities in the Negev desert, they have experienced marginalization and a shared history, and collectively encounter similar problems, constraints, and opportunities within the Israeli nation-state. Al-Sira's novelty lies with its legal success in getting the District Court to cancel the village demolitions. Al-Araqib's novelty lies in its interactions with the state authorities which manifest as repeated home demolitions, often referred to village demolitions, coupled with the village's penetration of international human rights law that is actively operating, and to a certain extent effectively operating,[74] in these spaces (if not quite places). The internationalization and indigenization of the villages sets them apart from rest of the Bedouin localities in Israel, which is why they are the main focus of this present study.

5. Layout of the Thesis

Chapter 1, 'Global Moments of Indigeneity in the Israeli/Bedouin Context', consists of sound-bites and snap-shots in the story of the Bedouin's indigenous turn in the sphere of international human rights law and context. Firstly, the chapter introduces key events illustrating the emergence of the concept and category of indigenous peoples in the Israeli/Bedouin setting. This description of key events sets the backdrop for a brief introduction to the three key interlocutors who have shaped the production of the indigenous peoples' status and rights in the Israeli/Bedouin context. The last and longest section grounds the concept and category of indigenous peoples in Bedouin localities. Two of the 45 unrecognized Bedouin villages are interrogated, for they offer compelling and powerful insight into international human rights law in practice.

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illegal building. Some 45 unrecognized villages, or illegal clusters, do not feature on official maps of Israel due to their illegal status under Israeli law. As a result, the residents of these villages are denied basic services, and face home demolitions, evictions, and re-location to government-planned settlements

[74] I struggle with any attempt to measure the 'effectiveness' of international human rights law. The tendency to unite activity and effectiveness is a mainstream way to deal with and consider international human rights law. Indeed, effectiveness, in the Western sense, requires an outcome or a change; alongside that understanding, I also consider ongoing activity as a worthy kind of success.

The sketches of these global 21st-century moments naturally raise questions about what was happening prior to these moments and how the Bedouin were previously discussed. Chapter 2 surveys the literature on the Bedouin in the Negev and examines how they were written about prior to the latest knowledge production, including knowledge production on their potential status as an indigenous peoples and any rights thereof. A literature review of the Bedouin is crucial in order to relay the current state of the debate and to examine who the Bedouin are being claimed for, how they are claimed, and why they are claimed—particularly as these historical influences are found to linger in contemporary dialogue and judicial rulings for the case studies examined here. The literature survey also underscores the significance of actors and their vocabularies, ideologies, and agendas, as well as the ways spatiotemporal scales have influenced and shaped opinions and literature about the Bedouin.

Chapter 3 returns to the global knowledge production of the concept and category of indigenous peoples in context, focusing on 'Who's Who' in the indigenization of the Bedouin, which includes civil society actors and the UN Special Rapporteur on the Rights of Indigenous Peoples. Among the constellation of actors involved in the vernacularization of human rights, the rights translator emerges as influential through the appropriation and translation of the internationally-defined status and rights of indigenous peoples.[75] CSOs in particular, specifically those working on human rights issues, are key because their members are intermediaries who transplant and translate this status and rights from the international setting to the domestic and local setting. One focus of this chapter is the role of domestic CSOs in the Israeli/Bedouin context in making the category and concept of indigenous peoples active and effective. Second, it focuses on the UN Special Rapporteurs on the Rights of Indigenous Peoples and in particular their involvement in the international recognition of the Bedouin as an indigenous peoples under UN law.

With this grounding in the specific Bedouin context, Chapter 4 looks more broadly at the concept and category of indigenous peoples in theory and international human rights law. Opening with the origins and development of the concept and category, the chapter then explores how 'indigenous peoples' has been defined by Intergovernmental Organizations (IGOs)—namely the UN, the International Labor Organization (ILO), and the World Bank. In order to highlight the schism between the definition on paper and the definition in practice, the

[75] Engle Merry, *Human Rights and Gender Violence*, 134.

next section examines two specific criteria of the international definition as inherently contradictory and contested in practice.

Linking this general chapter with the particularities of the Israeli/Bedouin context, Chapter 5 focuses on 'Who's Who' in the knowledge production and judicial lawmaking of the Bedouin's indigenous peoples' status and rights. To shed light on academic and court involvement in the story of the Bedouin's indigenous turn, this chapter focuses on the *al-Uqbi* case as notable for the inclusion in a Bedouin claimant's petition filed in Israeli domestic courts of a claim based on indigenous peoples' rights in international law.

The final chapter considers the concept and category of indigenous peoples in the vernacular, focusing on the local traffic of indigenous peoples' rights in Bedouin localities in the Negev, in southern Israel. In particular, I consider whether the concept and category has been domesticated and vernacularized by the Bedouin majority. This chapter attempts to show the Bedouin's interpretation of and the meanings they have given to the concept and category of indigenous peoples as it relates to them. I close by considering these findings on the local appropriation, translation, and circulation of the concept and category of indigenous peoples, and the implications for deeper understanding of this concept and category in the context of the Bedouin in Israel.

> There were several roads near by, but it did not take Dorothy long to find the one paved with yellow bricks. Within a short time she was walking briskly toward the Emerald City; her Silver Shoes tinkling merrily on the hard, yellow road-bed.
>
> L. Frank Baum, *The Wonderful Wizard of Oz*

I. Global Moments of Indigeneity in the Israeli/Bedouin Context

On one level, international human rights law can be viewed as codified, positive law that is written into text. IGOs, aided by the deliberative input of state delegations and the participation of civil society, draft the text of international human rights law instruments. On another level, international courts and tribunals can be seen as global adjudicators that endorse, enforce (loosely defined), and set international precedents. Challenging such formalities and immunity to context, international human rights law when practiced tells unscripted narratives involving a panoply of actors, and encounters spatiotemporal contingencies and realities of power. To fully grasp how the concept and category of indigenous peoples has evolved and circulated in practice, it is worthwhile to examine the Bedouin's indigenization, or their becoming indigenous at critical moments.[76]

Lingering on the empirical, this chapter presents global moments of indigenous peoples' rights in the Israeli/Bedouin setting in some detail, in order to show the ways in which the concept and category of indigenous peoples is made active and given effect in context. In the first section, I present an overview of key events in the indigenous turn of the Bedouin in the Negev and then introduce three types of actors in that indigenization, namely grassroots, international organizations, and academics. I then explore how those events and actors played out for two particular places and spaces in the Israeli/Bedouin context: the unrecognized villages of al-Sira and al-Araqib. The goal of this chapter is to examine how the concept and category of indigenous peoples is working particular in modern contexts, to set the stage for the next chapter's presentation of historical representations of the Bedouin and their indigenousness or lack thereof.

[76] On the notion of *becoming* indigenous in anthropology, see James Clifford, *Returns: Becoming Indigenous in the Twenty-First Century* (Cambridge, MA: Harvard University Press, 2013).

1. Making Introductions: Events and Actors

Pinpointing key events and actors is an essential exercise for understanding the Bedouin's indigenous turn—whether *gradually*, *increasingly, erroneously,* or otherwise—in the sphere of international law and local context. In this section, I explore how the Bedouin's indigenization in context has several factors that act like moving parts; these parts converge at meeting points or interstitial spaces (revolving around questions of where), transcend time (addressing questions of when), and are shaped by actors with agency and diverse roles (concerning questions of who). Far from an intense and unrelenting politico-legal drama, characteristic of the Israeli/Palestinian conflict and the Israeli/Bedouin land dispute, what follows consists of unobtrusive sound-bites and snapshots revealing critical moments that triggered the deployment and mobilization of the concept and category of indigenous peoples in the context of the Bedouin in Israel.

a. Indigenous Events in the Israeli/Bedouin Context

In a sequence of events that unfolded in quick succession or chronologically overlapped, the turn of the millennium saw the concept and category of indigenous peoples migrate from an international definition at the UN to the local lexicon in the Negev desert. Although it is difficult to pinpoint with accuracy the exact date of the concept and category's migration, a series of events that unfolded between 2003 and 2006 stand out. Somewhere around 2003, the term indigenous cropped up in conversation between a UN official (called Jane Davies in this study[77]) and a grassroots representative from the Negev (Haia Noach, discussed below). Not long after, it seems the international definition had not simply penetrated the grassroots consciousness and rights rhetoric but also permanently fixed itself, and later permeated and proliferated. Around the time when the UN official first introduced the term to the grassroots organization in Be'er Sheva, the International Work Group for Indigenous Affairs (IWGIA), an international human rights organization located in Copenhagen and staffed by specialists and advisers on indigenous affairs and, published its online edition of *The Indigenous World*.[78]

[77] A partial pseudonym. Informant Haia Noach (described in 'Grassroots Appropriation and Translation of International Indigenous Peoples' Rights' below, interview details in Chapter 3) described how she and other Bedouin activists met a UN representative named Jane in Ramallah in 2003. Noach does not recall the last name, but Jane was the one who connected them to the indigenous peoples' issue urged them to reach out to international organizations.

[78] According to the website, 'Every year, IWGIA produces a global report on the rights of indigenous peoples, The Indigenous World. The Indigenous World provides an update of the current situation for indigenous peoples worldwide and a comprehensive overview of the main global trends and developments affecting indigenous

For the first time, the IWGIA mentioned 'The Bedouin of Israel' as a category of indigenous peoples in its annual report.[79]

In December 2004, Dr. Kedar, a lecturer at the law department of Haifa University, was busy drafting a contribution for the monthly newsletter of Adalah: The Legal Center for Arab Minority Rights in Israel (the 'Adalah'). In my judgment, this scholarly inquiry geared toward the general public interested in human rights, especially minority rights, epitomizes domestic knowledge production of the concept and category of indigenous peoples in the Israeli/Bedouin setting. Published in English, Hebrew, and Arabic, Kedar's intervention on 'Land Settlement in the Negev in International Law Perspective' appeared in the 2004 December edition of the newsletter.[80] Kedar explicitly asked the question: 'Are the Arab Bedouin an indigenous people?' Pursuing an international law agenda that drew on the UN working definition of indigenous peoples from 1986 and the four principles of the UN Working Group on Indigenous Populations from 1995, Kedar answered positively. In other words, following his legal assessment and analysis of the international human rights law of indigenous peoples, Kedar concluded that the Bedouin of Israel fulfill the criteria and constitute an indigenous peoples under international law conditions. In accordance with such indigenous recognition, Kedar argued, the Bedouin were entitled to exercise indigenous peoples' rights in international human rights law. Kedar is a professor who teaches law at Haifa University, Adalah is registered as a non-profit Israeli CSO that carries out its legal work in downtown Haifa, and the Bedouin are citizens of Israel with half living in designated areas and the other half living in unrecognized/illegal villages.

July 2005 brought another tell-tale sign of the indigenizing trend in this setting, from the Negev Coexistence Forum for Civil Equality (NCF), the grassroots organization in Be'er Sheva city that met with Jane Davies, the UN official mentioned above. The NCF presented a report to

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peoples. We have published the report every year for over 30 years.' IWGIA, "Resources," n.d., https://www.iwgia.org/en/resources.

[79] According to 'about the contributors' section, the information about the Bedouin was compiled and partly drafted by Diana Vinding, IWGIA Program Coordinator; Devorah Brous, the founder and director of Bustan L'Shalom, which is a grassroots social/environmental justice organization; and Adam Keller, an Israeli peace activist and the spokesperson of Gush Shalom (Peace Bloc), which is a grassroots peace movement founded in 1992 that advocates Israeli–Palestinian peace. Diana Vinding, "The Indigenous World 2002-2003" (IWGIA, 2003), 18, http://www.iwgia.org/iwgia_files_publications_files/IW_2003.pdf.

[80] This text is a summary of remarks delivered at Adalah's conference, 'Planning, Control and the Law in the Naqab', where Dr. Kedar spoke on a panel entitled 'Between Politics, Law, and Society.' Alexandre (Sandy) Kedar, "Land Settlement in the Negev in International Law Perspective" (Planning, Control and the Law in the Naqab, Beer el-Sabe/Be'er Sheva: Adalah, 2004).

the 23rd session of the UN Working Group on Indigenous Populations (UNWGIP) in Geneva, 'The Indigenous Bedouin of the Negev Desert in Israel,' prepared in collaboration with academics and activists in Israel. Ferial Abu Nadi, a Bedouin woman from the Negev, presented the report to the UNWGIP. The declared purpose was for 'raising awareness about and putting the Bedouins (in Israel) on the international agenda signify (sic) a step forward in our struggle.'[81] The NCF report was loosely comparative and stated that 'as with other indigenous minorities, the Bedouin are struggling for equality, recognition and preservation of their culture and life.'[82] This was the first time for the Bedouin to formally present themselves as an indigenous peoples before a UN body. Retrospectively, the CSO report and the Bedouin participation at the UN can be seen as symbolic of a growing idea and discourse that views the Bedouin as an indigenous peoples under international law conditions.[83] Notably, this is only one episode in the story of the Bedouin's indigenization in the sphere of international law and context.

Of all the events that seemed to crystallize and strengthen the activity and effectiveness of the concept and category of indigenous peoples in the Israeli/Bedouin context, Fall 2006 is striking. Villagers of al-Sira, an unrecognized village deemed illegal under Israeli law, learned of an imminent threat of home demolitions and decided to take action internationally. In September 2006, al-Sira residents and the NCF prepared a joint communication[84] with the subject line: 'Urgent Appeal: To halt the intention of the Israeli government to destroy an entire indigenous Bedouin village in the Negev (Southern Israel)'. The term indigenous was mentioned several times in the main body of the text. In the section on the 'Identity of the persons concerned', the drafters expressly stated: 'The village of A-Sira is home to 350 *indigenous* Arab-Bedouins. […] The residents have lived in this area for generations, throughout the Ottoman and British mandates. Seven different wells and cisterns, as well as documents of land acquisition during the Ottoman rule, prove their connection to the place'

[81] See, Elana Boteach, "The Bedouins in the Negev as an Indigenous Population—A Report Submitted to the UN Working Group on Indigenous Populations" (The Negev Coexistence Forum Newsletter, October 2005). Elana Boteach was a Social Justice Fellow of the New Israeli Fund (NIF).
[82] Elana Boteach, "The Indigenous Bedouin of the Negev Desert in Israel" (The Negev Coexistence Forum, July 2005), 5.
[83] 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, no. 1 (April 2012): 78–79.
[84] Communications sent by the Special Rapporteur, in general, are of two types: urgent appeals, in cases of imminent danger of violations of the rights of indigenous individuals and communities; and allegation letters, in situations in which violations have already occurred or the situation is of a less urgent character. See, United Nations Human Rights - Office of the High Commissioner, "Communications," http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/Communications.aspx.

(emphasis added).[85] Both the Village Committee of al-Sira—represented by Mr. Khalil Alamour and Mr. Ahmad al Nasasra—and the NCF undersigned the urgent communication. In it, they described the alleged violations and the domestic measures taken by the villagers to find a solution, which included several meetings with government officials.[86] Despite their best efforts to solve the matter, they indicated that: 'All of these meetings [with the government bodies] made it clear to the residents of A-Sira that the State of Israel has no real housing solution for them. The attempt to destroy the village and to expel the residents from their ancestral lands clearly violates the right to housing, land ownership and the indigenous rights of the villagers'.[87]

The appeal was sent to two UN Special Rapporteurs: Professor Rodolfo Stavenhagen, then Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People,[88] and Mr. Miloon Kothari, then Special Rapporteur on Adequate Housing. Given the respective mandate of each Special Rapporteur, violations of indigenous peoples' rights were addressed to Stavenhagen, while housing rights violations were directed at Kothari. As a result of the appeal, Stavenhagen included the situation of al-Sira in his annual report to the UN Human Rights Council (UNHRC). The report highlighted the action taken by the Special Rapporteurs on receipt of the communication. Stavenhagen reports that 'On 19 October 2006, the Special Rapporteur […] drew the attention of the [Israeli] Government to information received concerning the alleged intention of destroying the village of al-Sira, an *indigenous Bedouin village* in the Negev (Southern Israel)' (emphasis added).[89] This episode tells the UN part of the Bedouin's indigenous story, which alerts the state about UN knowledge of the situation in al-Sira but does not invite the government to respond.

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[85] NCF, "Urgent Appeal: To Halt the Intention of the Israeli Government to Destroy an Entire Indigenous Bedouin Village in the Negev (Southern Israel)," September 27, 2007, http://www.dukium.org/urgent-appeal-to-halt-the-intention-of-the-israeli-government-to-destroy-an-ent/.

[86] Between 4 June 2006 and 7 July 2006, meetings were held with the commander of the air force base next to the village, the Ministry of Interior for the southern region, and the Bedouin Authority. NCF.

[87] NCF.

[88] NCF. The Human Rights Council changed the title of the mandate to "Special Rapporteur on the Rights of Indigenous Peoples" in September 2010. See, UN Human Rights Council, "Resolution Adopted by the Human Rights Council* 15/14 Human Rights and Indigenous Peoples: Mandate of the Special Rapporteur on the Rights of Indigenous Peoples A/HRC/RES/15/14," October 6, 2010, http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.RES.15.14_En.pdf.

[89] Rodolfo Stavenhagen, "Implementation of General Assembly Resolution 60/251 of 15 March 2006 Entitled 'Human Rights Council': Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen: Addendum Summary of Cases Transmitted to Governments and Replies Received A/HRC/4/32/Add.1," March 19, 2007, para. 262.

Attention given to the Bedouin in *The Indigenous World*, the IWGIA annual report, also indicates how the Bedouin are treated as an indigenous peoples by a transnational indigenous peoples' organization. As mentioned above, the first mention came in 2003. Fast-forward to 2005, when an array of grassroots, UN, and scholarly activities were unfolding in the Negev, New York, and Haifa—several pages were devoted to the Bedouin in the Negev, granting them more space than many other groups in the report.[90] Inclusion in the IWGIA reports drew the Bedouin into the fold of the transnational movement and network of indigenous peoples. It would not take long for the Minority Rights Group (MRG; somewhat of a misnomer because it also works on behalf of indigenous peoples[91]) to write about the Bedouin in their reports. In 2007, MRG wrote about the Bedouin in their *State of the World's Minorities and Indigenous Peoples,* and the Bedouin have been added as 'a subset of Israeli Arabs' to their online World Directory of Minorities and Indigenous Peoples,[92] thereby reinforcing the transnational side of the Bedouin's indigenous story.

These events that transpired between 2003 and 2006 illustrate the textual and discursive growth of knowledge and assumptions about the status and rights of indigenous peoples in the Israeli/Bedouin context.[93] This sketch that outlines the sequence of events and the actors involved in the indigenous turn of the Bedouin, all of which draw on the internationally-defined concept and category, and also hints at the influence of dynamics that lie beyond law. In the next section, the role of spaces, specifically Bedouin spaces in the Negev, is important for the contextualization of the concept and category of indigenous peoples and its remaking in a Bedouin vernacular.

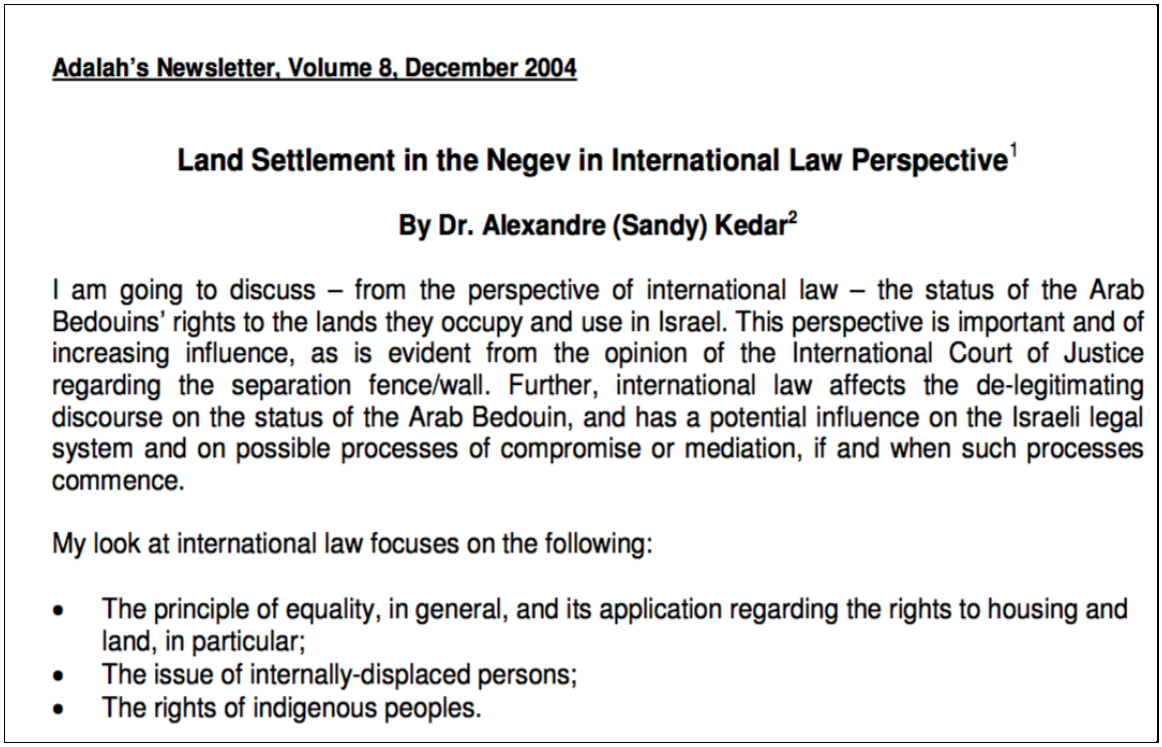
[90] IWGIA, "The Indigenous World 2005" (Copenhagen: IWGIA, 2005), 412–20, http://www.iwgia.org/iwgia_files_publications_files/IW_2005.pdf. Disappearing from the 2008 edition, the Bedouin would re-appear in the 2009 edition, only to disappear in 2016 and re-appear in the 2017 edition.
[91] According to the website, 'Minority Rights Group International campaigns worldwide with around 130 partners in over 60 countries to ensure that disadvantaged minorities and indigenous peoples, often the poorest of the poor, can make their voices heard.' MRG, "About Us," http://www.minorityrights.org/575/about-us/about-us.html.
[92] MRG, "Directory - Israel," http://minorityrights.org/country/israel/.
[93] Frantzman, Yahel, and Kark, "Contested Indigeneity."

Global Indigenous Moments in the Israeli/Bedouin Context

Dates	Sequence of Events	Actors	Location	Purpose and/or Result
2003	Grassroots/UN meet: UN official suggests international law of indigenous peoples	Noach (NCF) & UN official	Negev, Israel	Introduction of term to grassroots lexicon
2003	Inclusion of the Bedouin in annual report on indigenous peoples by transnational organization	IWGIA	Copenhagen; Denmark	Bedouin included as an indigenous peoples in their annual report on the situation of indigenous peoples worldwide
Dec-04	Academic contribution to NGO Newsletter: 'International Law of Indigenous Peoples and the Bedouin'	Kedar & Adalah	Haifa, Israel	International law scholar asks the question: 'Are the Arab Bedouin an indigenous people?' and answers positively
Jul -05	NCF and a Bedouin one-woman delegation attend UNWGIP	NCF, Ferial Abu Nadi, UNWGIP	New York, USA	Presentation of NCF report, with activist and academic input, by Bedouin woman delegate
Sep-06	Communication to Special Rapporteurs (SRs)	al-Sira residents, NCF, UN	Geneva, Switzerland	'Urgent Appeal: To halt the intention of the Israeli government to destroy an entire indigenous villager in the Negev' raised the issue among UN experts
Oct-06	Special Rapporteur includes al-Sira in his report to the UNHRC	Professor Stavenhagen	Geneva, Switzerland	Response to the communication and measures taken by the SRs to address the issue by sending communication to the government of Israel

Indigeneity and the Bedouin in Research, Grassroots Activism, and at the UN

1. Dr. Kedar's Contribution to Adalah's Newsletter, December 2004



Adalah's Newsletter, Volume 8, December 2004

Land Settlement in the Negev in International Law Perspective[1]

By Dr. Alexandre (Sandy) Kedar[2]

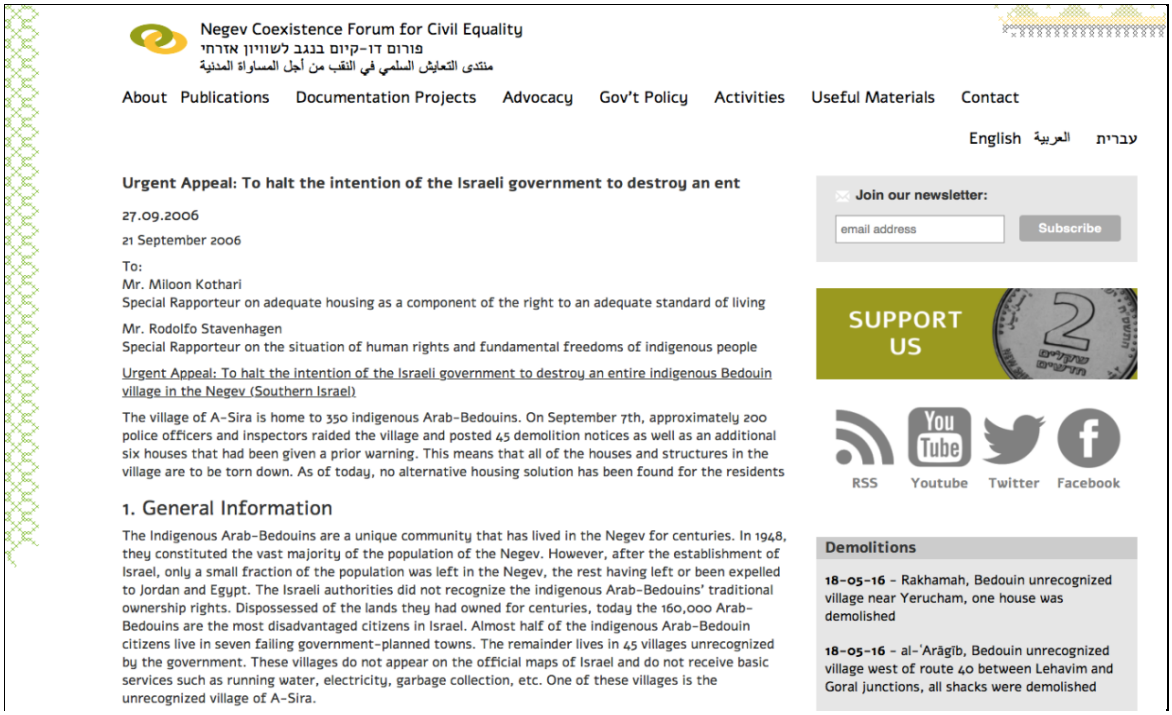
I am going to discuss – from the perspective of international law – the status of the Arab Bedouins' rights to the lands they occupy and use in Israel. This perspective is important and of increasing influence, as is evident from the opinion of the International Court of Justice regarding the separation fence/wall. Further, international law affects the de-legitimating discourse on the status of the Arab Bedouin, and has a potential influence on the Israeli legal system and on possible processes of compromise or mediation, if and when such processes commence.

My look at international law focuses on the following:

- The principle of equality, in general, and its application regarding the rights to housing and land, in particular;
- The issue of internally-displaced persons;
- The rights of indigenous peoples.

Source: Haifa University Website

2. The NCF's Urgent Appeal to the Special Rapporteurs, September 2006



Negev Coexistence Forum for Civil Equality
פורום דו-קיום בנגב לשוויון אזרחי
منتدى التعايش السلمي في النقب من أجل المساواة المدنية

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Urgent Appeal: To halt the intention of the Israeli government to destroy an ent

27.09.2006

21 September 2006

To:
Mr. Miloon Kothari
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

Mr. Rodolfo Stavenhagen
Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people

Urgent Appeal: To halt the intention of the Israeli government to destroy an entire indigenous Bedouin village in the Negev (Southern Israel)

The village of A-Sira is home to 350 indigenous Arab-Bedouins. On September 7th, approximately 200 police officers and inspectors raided the village and posted 45 demolition notices as well as an additional six houses that had been given a prior warning. This means that all of the houses and structures in the village are to be torn down. As of today, no alternative housing solution has been found for the residents

1. General Information

The Indigenous Arab-Bedouins are a unique community that has lived in the Negev for centuries. In 1948, they constituted the vast majority of the population of the Negev. However, after the establishment of Israel, only a small fraction of the population was left in the Negev, the rest having left or been expelled to Jordan and Egypt. The Israeli authorities did not recognize the indigenous Arab-Bedouins' traditional ownership rights. Dispossessed of the lands they had owned for centuries, today the 160,000 Arab-Bedouins are the most disadvantaged citizens in Israel. Almost half of the indigenous Arab-Bedouin citizens live in seven failing government-planned towns. The remainder lives in 45 villages unrecognized by the government. These villages do not appear on the official maps of Israel and do not receive basic services such as running water, electricity, garbage collection, etc. One of these villages is the unrecognized village of A-Sira.

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Demolitions

18-05-16 - Rakhamah, Bedouin unrecognized village near Yerucham, one house was demolished

18-05-16 - al-'Arāgīb, Bedouin unrecognized village west of route 40 between Lehavim and Goral junctions, all shacks were demolished

Source: Negev Coexistence Forum's Website

3. The Report of the UN Special Rapporteur on the Rights of Indigenous Peoples to the UNHRC, October 2006

A/HRC/4/32/Add.1
page 56

268. It was further alleged that the Israeli Government hoped to resettle the indigenous community in the townships by demolishing their houses, considered as illegal, in the unrecognized villages, and by not providing any avenues for alternative legal construction within the village. Reportedly, the Minister of Interior announced at the Parliament, on 30 May 2006, that during the past three years, Israeli authorities demolished 560 houses in the unrecognized villages. It was alleged that those demolitions had resulted in rendering thousands of people homeless. It was reported that evicted persons were living in overcrowded conditions with their relatives, while some had build shacks from scrap materials.

269. It was alleged that, most often, demolitions took place in the early hours of the morning by squads of local police and Israel Land Administration officials. Reportedly, these authorities drove families out of their homes under police order, and destroyed the houses with bulldozers. Reports were also received that police had behaved violently, causing civilian injuries.

270. The Special Rapporteur drew the attention of the Government to article 8, paragraph 2 (b), of the Declaration on the Rights of Indigenous Peoples adopted by Human Rights Council in resolution 1/2, which establishes that States "shall provide effective mechanisms for prevention of, and redress for…[a]ny action which has the aim of dispossessing [indigenous peoples] of their lands, territories and resources." The Special Rapporteurs further noted that they had repeatedly drawn the attention of the Commission on Human Rights and of the Human Rights Council to the worrying practice of forced evictions worldwide, in many cases connected to the lack of formal recognition of indigenous peoples' traditional land tenure. Forced evictions constitute prima facie violations of a wide range of internationally recognized human rights, and large-scale evictions can only be carried out under exceptional circumstances and in full accordance with international human rights law.

Observations

271. The Special Rapporteur regrets not having received a reply to his communication sent on **19 October 2006** at the date the report was finalized.

Source: UN Special Rapporteur's Website

b. A Grassroots, UN, and Academic 'Troika' and the Bedouin's Indigenization

As briefly outlined in the previous section, the onset of the new millennium saw a 'troika' of interlocutors help the migration of the concept and category of indigenous peoples in the Negev setting. All Jewish, mainly Israeli, with a pro-Bedouin bent, they created a conversation between a legal scholar (representative of knowledge), domestic CSO (civil society), and the Bedouin (local context). The three individuals are Ms. Haia Noach from the NCF, Dr. Alexandre (Sandy) Kedar from Haifa University, and Professor Rodolfo Stavenhagen, then Special Rapporteur on the Rights of Indigenous Peoples and former professor at El Colegio de

México. This section provides a sense of who these actors are and what role they played in the appropriation and translation of indigenous peoples' status and rights for the Bedouin in the Negev. A brief look at Noach, Kedar, and Stavenhagen makes us acutely aware that their involvement shapes and fleshes out the concept and category in the setting. The actors, briefly introduced here, represent (legal) knowledge, civil society, and local context, and are examples of common features in the Bedouin's international indigenization.

Without Haia Noach, the account of the Bedouin's becoming indigenous might have looked quite different or even led down a different path, offering a gentle reminder of the level of unpredictability in 'the curious grapevine of rights.'[94] Noach is the co-founder and executive director of the NCF and is known to be 'a vocal Israeli human rights activist and author' who has been advocating for Bedouin rights for decades.[95] Noach grew up in Omer,[96] a suburb of Be'er Sheva city, first founded as a kibbutz called Hevrona in 1949, re-built as a cooperative village called Eilata in 1951, and finally established as a communal moshav called Omer in 1953. According to the socio-economic index, Omer currently ranks as one of the richest municipalities in Israel.[97] Noach's involvement in Bedouin issues was sparked by the forced relocation of Bedouin neighbors from their homes and villages. After this initial exposure and before engaging in full-time grassroots activism, Noach wrote her Master's thesis on the Bedouin land question in the Department of Geography at Ben Gurion University of the Negev (BGU).[98] Her thesis supervisor was Professor Oren Yiftachel, who is a political geographer and a key figure in the constellation of academic actors discussed in a later chapter.

[94] The oft-repeated curious grapevine metaphor is associated with Eleanor Roosevelt, the chief architect of the United Nation's Declaration of Human Rights (UDHR), and her description of the role of NGOs in transmitting human rights. This notion resonates as much today as it did then. Israeli NGOs, for example, play a key role in translating and transmitting human rights. W. Korey, *NGO's and the Universal Declaration of Human Rights: A Curious Grapevine* (New York: Palgrave Macmillan, 2004), 48.
[95] NCF, "About Us," n.d., http://www.dukium.org/about-us/.
[96] Chertok describes: 'Omer is an up-scale suburb of Beersheba [Be'er Sheva]. Its residents—overwhelmingly Ashkenazi and secular—are mainly professionals, many of them employed at the nearby Ben-Gurion University. In general elections, a high proportion vote for the left-leaning Meretz Party, which proclaims itself particularly concerned with the civil rights of Israel citizens.' Haim Chertok, "Between Rahat and a Hard Place," in *Israeli Preoccupations: Dualities of a Confessional Citizen* (New York: Fordham University Press, 1994), 34.
[97] Israel Central Bureau of Statistics, "Local Authorities in Israel 2005, Publication #1295 - Municipality Profiles - Omer," 2005, http://www.cbs.gov.il/publications/local_authorities2005/pdf/578_0666.pdf.
[98] Haia Noach, *The Existent and the Non-Existent Villages: The Unrecognized Bedouin Villages in the Negev* (Haifa: Pardes Press, 2009).

Having engaged in civil society peace activism for several years,[99] in December 1997 Noach established the NCF, which is the only Negev-based grassroots organization whose mission is to 'achieve full and equal rights for the Bedouin citizens.'[100] To this end, activities and projects are implemented through Arab–Jewish cooperation. NCF members include 'leaders and academics from the Negev Arab community',[101] but because of its local involvement and direct, ongoing engagement in Bedouin villages, the NCF is also considered a community-based organization. The NCF's work focuses directly on the Bedouin because Noach and the NCF believe that the Bedouin represent a distinct society facing specific challenges in Israel. Noach's work, specifically advocacy for and with the Bedouin, can be characterized by her ingenuity and drive on the one hand, and her multiplicity of roles that traverse local, national, transnational, and international realms of activity on the other. Extending her work beyond the NCF, Noach has also been involved in establishing the Recognition Forum, a coalition of CSOs fighting for recognition of Bedouin villages in the Negev. Among certain circles Noach has earned awe and respect for her commitment, hard work, and perseverance in the Bedouin land struggle. Others take a different view of her Bedouin-related activities. As she is a frequent demonstrator at protests against village demolitions in Bedouin localities, law enforcement officials have on occasion arrested, detained, and charged Noach for her participation.[102]

Another key figure in the constellation of actors generating the Bedouin's indigenous peoples' status and rights under international conditions is Professor Rodolfo Stavenhagen, a social scientist, professor emeritus at El Colegio de México, and 'public intellectual'.[103] Born in Frankfurt, Germany, he moved to Mexico with his family as a young child, fleeing Nazi persecution.[104] Stavenhagen grew up in Mexico, and received his basic education and lived

[99] Prior to establishing the NCF, Noach was the secretary general of Peace Now, which has received academic attention along with other peace movements in Israel. See, for example, David Newman and Tamar Hermann, "A Comparative Study of Gush Emunim and Peace Now," *Middle Eastern Studies* 28, no. 3 (July 1, 1992): 509–30; Richard Rogers and Anat Ben-David, "The Palestinian—Israeli Peace Process and Transnational Issue Networks: The Complicated Place of the Israeli NGO," *New Media & Society* 10, no. 3 (June 1, 2008): 497–528; Michael M. Laskier, "Israeli Activism American-Style: Civil Liberties, Environmental and Peace Organization as Pressure Groups for Social Change, 1970s-1990s," *Israel Studies* 5, no. 1 (May 1, 2000): 128–52.
[100] NCF, "About Us."
[101] NCF.
[102] For example, Noach was arrested, detained, and charged in the case of protests relating to al-Araqib village. Adalah, "Representing Resident of Al-Araqib and Human Rights Activists on 10 Criminal Indictments Related to Protest Activities Concerning the Repeated Demolition of the Village Al-Araqib in the Naqab," n.d., https://www.adalah.org/en/content/view/6592.
[103] Rodolfo Stavenhagen, "Rights of Indigenous Peoples: A Personal Retrospective of Rodolfo Stavenhagen," in *Pioneer on Indigenous Rights*, Springer Briefs on Pioneers in Science and Practice (Berlin; Heidelberg: Springer, 2013), 8.
[104] Stavenhagen, 3.

there for most of his life. Stavenhagen gained prominence as a Mexican sociologist, specializing in the field of anthropology. His research interests lie in social development, agrarian problems, ethnic conflicts, indigenous peoples, and human rights, and he demonstrates expert knowledge of the situation of indigenous peoples in South/Latin America and questions on indigenous peoples' identity and lands.[105] In addition to his impressive civil society record, his association with the UN has a long history. Prior to his appointment as Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People in 2001, he served as deputy director of the United Nations Educational, Scientific and Cultural Organisation (UNESCO). On receipt of the urgent appeal in September 2006 (described above), as Special Rapporteur he was made aware of the situation in al-Sira, which struck a chord with the UN official. Stavenhagen's interest in and work with the Bedouin in the Negev continued after his Special Rapporteur mandate ended in 2008. Like several others involved in making the concept and category of indigenous peoples active and effective in the Israeli/Bedouin context, Stavenhagen reveals an ability to play multiple roles in international law and society. Chapter 3 presents the story of how Stavenhagen, in his UN, civil society, and academic capacities, came to the conclusion that the Bedouin are an indigenous peoples in accordance with the international definition of the term.

Although his involvement was less public and more sporadic, Dr. Alexandre (Sandy) Kedar plays a significant role in the legal debates on the indigenous status and rights of the Bedouin in the Negev for two reasons: firstly, he is a domestic scholar, tenured at an Israeli university, which lends him authority and influence in Israeli universities; and secondly, indigenous peoples' rights in international law are central to his inquiry on the Bedouin's legal status. Kedar's research can be considered an intellectual transplant of an internationally-generated concept and category in domestic knowledge production and scholarship. Born in Paris, Kedar currently lectures at the Law School at the University of Haifa. Having first studied in Tel Aviv University, Kedar holds a Doctorate in Law (SJD) from Harvard Law School and is regularly a visiting professor and scholar at the University of Michigan. His research interests span legal geography, legal history, law and society, and land regimes in settler societies and in Israel. His research agenda pursues interdisciplinary and comparative approaches. In

[105] His books include: Claire Charters and Rodolfo Stavenhagen, eds., *Making the Declaration Work: The United Nations Declaration on the Rights of Indigenous Peoples* (Copenhagen: New Brunswick, NJ: International Work Group for Indigenous Affairs, 2010); Rodolfo Stavenhagen, *Ethnic Conflicts and the Nation-State* (New York: Palgrave Macmillan, 1996); Rodolfo Stavenhagen, *Derecho indígena y derechos humanos en América Latina* (México: Colegio de México, 1988).

addition to his academic position, his civil society engagement involves him in public interest struggles over distributive justice in relation to land in Israel. In 2003, Kedar co-founded and directs the Israeli NGO Association for Distributive Justice.[106] Kedar applied indigenous peoples' rights to the Bedouin, which facilitated understanding the concept and category in the Israeli/Bedouin context from a juristic perspective, and thus Kedar broke ground through his theoretical analysis of the concept and category and his application of that concept and category to the Bedouin in southern Israel.

No event can be isolated and no actor stands alone: collectively, these events and actors (with many others) have been remaking the concept and the category of indigenous peoples in the Israeli/Bedouin context. Noach in Be'er Sheva, Stavenhagen in Geneva, and Kedar in Haifa, together with the IWGIA in Copenhagen and the Bedouin residents in al-Sira village, stirred something—these initial stirrings would be quick to produce results. Put differently, for the concept and category of indigenous peoples to be initially activated in the Israeli/Bedouin context, a grassroots organization, Bedouin representatives, a domestic scholar, transnational organizations, and UN officials were all necessary. The NCF started the conversation. The Special Rapporteur's intervention upon receipt of the urgent appeal marked a UN watershed. Kedar's academic intervention transplanted or superimposed the concept and category of indigenous peoples onto the Bedouin, an instance that encapsulates knowledge production of the concept and category domestically. But these are only the first of several steps in making the concept and category active, and it is important to remember that even though the internationally-created status and rights and context were put into a loose conversation between a legal scholar, a CSO (Adalah), and the Bedouin, this part of the story is framed by domestic borders that belong to the nation-state.

2. Introducing Indigeneity to Places and Spaces in the Israeli/Bedouin Context

Bedouin localities reveal that indigenous peoples' status and rights in international human rights law is not an abstract body of law, which looks out and downwards, but is also a concrete container for local actors to operate in, and one where their local stories find a form and language that can be relayed to international audiences. Two Bedouin villages in the Negev

[106] Prof Alexander Kedar Property, History of Law, "Faculty of Law, University of Haifa: Law in a Changing World," http://weblaw.haifa.ac.il/en/Faculty/Kedar/Pages/home.aspx. See also, "The Association for Distributive Justice (ADJ)," http://www.adj.org.il/.

were selected for this study to illustrate the international indigenization of the Bedouin in situ because in these places, the concept and category of indigenous peoples acquired a local foothold and anchored itself. The remainder of this chapter tells informal stories of two Bedouin localities and thus unfurls the ways in which the internationally-created concept and the category is transformed. Firstly, the unrecognized village of al-Sira highlights the foundational jurisgenerative moment critical for introducing the concept and the category to a local site of action. Secondly, the unrecognized village of al-Araqib shows how the concept and category's accumulation and circulation penetrate the fabric of international human rights law from below. The processes of international law-making and knowledge production of the concept and category take on a distinctly local character in these two Bedouin villages. In essence, the sketches that follow can be seen as the physical coordinates of the concept and category that emerge in a global and grounded context simultaneously.

a. Indigeneity's First Encounter with the Israeli/Bedouin Context: The Unrecognized Village of al-Sira in the Negev

Despite their undersigning the urgent appeal to the Special Rapporteurs and the Bedouin woman's participation at the UNWGIP in Geneva, at first blush it would seem that the Bedouin are inconspicuous, almost invisible, in the process of their international indigenization. And yet, when examining the production, accumulation, and circulation processes of the concept and category of indigenous peoples in the context of the Bedouin in southern Israel, it is natural to ask whether the Bedouin played a role in these processes. Further, does locally-grounded insight help gain a realistic understanding of what constitutes the internationally-defined status and rights of indigenous peoples, and better comprehension of the opportunities and risks of activating that status and rights in concrete situations? To answer these questions, the village of al-Sira offers useful insights, as (among other reasons) it is the home of the two Bedouin men who sent the urgent appeal to the UN. The communication sent by the two residents of al-Sira and their NCF allies left an imprint on the two UN Special Rapporteurs that launched, if not quite privileged, al-Sira and its residents in UN circles.

A brief presentation of the unrecognized village of al-Sira, focusing on the events and actors that resulted in the appeal to the UN, illuminates their success story of staving off home demolitions by domestic authorities through an international channel. Furthermore, the case

of al-Sira also offers important insight into domestic Israeli law, in which the courts offer a separate track for village residents, who are Israeli citizens, to file a complaint and seek judicial relief. Al-Sira is an unrecognized village located near the Nevatim Air Force base and is about ten kilometers southwest of the 'development city' of Arad, a settlement built in the 1950s to provide housing to the influx of Jewish migrants arriving to the newly-established State of Israel. What sets al-Sira apart from many unrecognized villages is that it was never uprooted or relocated from its original place—in other words, al-Sira villagers, who mostly belong to the al-Nasasra Bedouin family, have not experienced internal displacement or any interruption in the occupancy of the land since the Ottoman period. The establishment of the State of Israel in 1948, and the events shortly before and after, did not affect al-Sira's location because it was already situated in the *siyag*, the area Israel designated for Bedouin to live.[107] The *siyag* is a fenced-off area in the northern Negev, located between Be'er Sheva, Arad, and Dimona that covers about ten percent of the land formerly inhabited by the Bedouin. Israeli military authorities concentrated the Bedouin in the *siyag* (i.e., forced Bedouin to move from their traditional lands to the *siyag*) when they imposed military rule on the Bedouin (and the other Arab inhabitants) of former Mandatory Palestine from 1951 until 1966.[108] Since al-Sira was already located in the area set aside as the *siyag*, its Bedouin residents did not experience displacement.

The establishment of al-Sira can be traced back to the Ottoman Empire (1517–1917), and current village inhabitants who can trace back the last seven generations or more are currently residing in al-Sira. Historical artifacts like stone buildings, olive trees, water-wells, and cisterns are physical markers of the village's historical presence. Furthermore, in the 1920s during the British Mandate in historic Palestine, al-Sira residents purchased the lands that comprise the village. Families continue to hold the original purchase deeds, which they consider to be written proof that British officials recognized the villagers' claim to the land.[109] After the Israeli legislation enacted the *Settlement of Land Rights Ordinance* (*Consolidated Text*) *5729* in 1969, which established a settlement process for Israeli citizens to submit land

[107] Steve Dinero calls the *siyag* 'a reservation-like region', comparing it to lands in North America where indigenous peoples were forced to live. See, Steven C. Dinero, "Image Is Everything: The Development of the Negev Bedouin as a Tourist Attraction," *Nomadic Peoples* 6, no. 1 (2002): 93.
[108] The Knesset, "Bedouins in the State of Israel," http://knesset.gov.il/lexicon/eng/bedouim_eng.htm.
[109] Based on archival research in the Central Zionist Archives, Noa Kram discusses the issuance of registration certificates to Jewish buyers during the British Mandate, with the Bedouin being registered as the former land-owners. Noa Kram, "Clashes over Recognition: The Struggle of Indigenous Bedouins for Land Ownership Rights under Israeli Law" (California Institute of Integral Studies, 2013), 138.

registration applications, the Bedouin villagers from al-Sira submitted an application.[110] However, similar to other Bedouin applicants, these claims remain pending before the courts (discussed briefly in this chapter and investigated further in Chapter 5). State authorities maintain that the village lands were expropriated under *The Negev Land Acquisition (Peace Treaty with Egypt) Law – 1980* that allowed for the construction of the Nevatim Air Force base, Kidmat Negev.[111] The official position is that although the village is located outside the area of the military base, the village lands were declared a military zone. According to al-Sira residents, they were never informed of the decision and did not give consent to the land expropriation.[112]

Village accounts and the official version of the land-ownership situation clash. In June 2006, several homes received warning notices of intended demolitions. In September 2006, three months after the initial warning notices, police officers and officials from the Ministry of Interior handed notice of some 50 demolition orders to the village residents.[113] On receipt of the demolition notices, the residents contacted the state authorities to negotiate a solution. Despite multiple meetings with government officials, no alternative solution was forthcoming and none of the local proposals put forward by the villagers were accepted. Even though many scholars view power as absolute over passive subjects, 'the al-Sira residents present an alternate narrative of conscious engagement with the judiciary, including with the resulting ramifications'.[114] While they may have lacked the ability, or strength, to influence the domestic system as a whole, the al-Sira residents (like other minority groups) have then attempted to use

[110] A study on Bedouin land and property claims classified the property and land into three major categories, which are: (1) those claiming ownership over lands they historically possessed; (2) those with origins in the *siyag*—or previously displaced to the *siyag*—who seek to remain and obtain legal status and development for their land, houses, and villages; and (3) those displaced in the 1950s or thereafter who want to resettle upon ancestral land from which they were displaced, or to resettle upon alternative equivalent land. Furthermore, such claimants have two cross-cutting categories of claims: requesting government services and development in their respectively desired areas, and effective participation and equal treatment in policies affecting them. See, Ahmad Amara, "The Goldberg Committee: Legal and Extra-Legal Means of Solving the Naqab Bedouin Case," *HAGAR: Studies in Culture, Polity & Identities* 8, no. 2 (November 2008): 231–32.

[111] Havatzelet Yahel and Ruth Kark, "Reasoning from History: Israel's 'Peace Law' and Resettlement of the Tel Malhata Bedouin," *Israel Studies* 21, no. 2 (April 2, 2016): 102–32.

[112] Human Rights Watch (HRW) engaged in an exchange with government officials in May 2007, which resulted in the Ministry of Justice indicated the justification were based on the expansion of the air-base and military needs which contradicted conversations between Alamour and the base commander at the air-base. Human Rights Watch, *Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages*, vol. 20, No. 5(E), 2008, 151.

[113] About six warnings were distributed in June 2006 by planning authorities, and on 7 September 2006, planning authorities distributed six judicial demolition orders for the houses that had previously received warnings, as well as warnings for all the other structures in the village. Then, in July 2007, authorities distributed demolition orders to all the homes that previously had warnings. Human Rights Watch, 20, No. 5(E):59.

[114] Ahmad Amara, "Moving Towards Full-Scale Judicial Boycott in the Naqab," no. 13 (May 2012): 3.

the legal apparatus to full effect. In this way, similar to governments, minority groups use courts not solely for legal ends but also as a platform for mobilization and publicity.[115]

In addition to the urgent appeal sent by al-Sira villagers and the NCF to the UN Special Rapporteurs, with Adalah's help they filed a petition in 2007 on behalf of al-Sira residents to cancel the demolition orders. The petition's arguments were based on Israeli constitutional law and jurisprudence. In an unprecedented move, the Kiryat Gat Magistrates' Court ruled in favor of the Bedouin petitioners and cancelled the demolition orders in December 2011. Judge Israel Pablo Axelrod, who accepted the motion on its merits, held the demolition orders to be 'disproportionate'.[116] The judge added that if it was in the public's interest to raze unauthorized buildings, it was then necessary to weigh this public interest against the specific circumstances of the villagers.[117] Following the ruling, the state appealed the decision of the Magistrates' Court to the District Court. In May 2014, the Be'er Sheva District Court denied the state's appeal and cancelled the demolition orders.[118]

While this domestic ruling does not amount to official recognition of the (still) unrecognized village of al-Sira, this judicial move to cancel the demolition orders is viewed, and even praised, by legal practitioners and advocates of Bedouin rights as a first in Israeli legal history. In response to the court decision, Suhad Bishara, the lawyer who represented the petitioners in the proceedings and Adalah's land and planning attorney, commented: 'We [at Adalah] hope that the Government will refrain from destroying all of the villages in the Naqab (Negev), and will initiate an honest dialogue with the residents of unrecognized villages to resolve the status of their villages, most of which have existed for decades.'[119] Although the domestic courts ruled in their favor, al-Sira residents continue to maintain strong relations with international

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[115] Amara, 3. Litigation has also been joined by the efforts of international advocacy that have made the Naqab (Negev) and its Palestinian history a familiar case to various UN bodies. Ahmad Amara, "Colonialism, Cause Advocacy, and the Naqab Case," in *The Naqab Bedouin and Colonialism: New Perspectives*, ed. Mansour Nasasra et al. (Abingdon, Oxon: New York, NY: Routledge, 2014), 181.

[116] Beer Sheva Magistrates' Court Different Motions 2137/09, Mousa Nasasra v. State of Israel (December 6, 2011).

[117] Jerusalem Post, "Court Saves Unrecognised Bedouin Village," December 6, 2011, http://www.jpost.com/National-News/Court-saves-unrecognized-Beduin-village.

[118] Adalah, "Israeli Court Issues Precedent-Setting Decision to Cancel Home Demolition Orders against Entire Arab Bedouin Unrecognized Village," December 6, 2011, http://www.adalah.org/en/content/view/7568. Be'er Sheva District Court, Different Criminal Appeals 62341/01/12, The State of Israel v. Odeh Mousa Nasasra (May 1, 2014).

[119] Adalah, "Israeli Court Issues Precedent-Setting Decision to Cancel Home Demolition Orders against Entire Arab Bedouin Unrecognized Village."

actors and are still active in international forums. International human rights law, specifically that of indigenous peoples, matters to al-Sira.

Irrespective of the village location, the international activities, and the domestic court decision, all of which set al-Sira apart from other unrecognized villages, another factor singles out this village—the dedication and conviction of one al-Sira resident helps explain how the threat of demolition was overcome through domestic and international channels. With undergraduate and graduate degrees in mathematics and education, Khalil Alamour currently lives in al-Sira and works part time as a mathematics teacher at the secondary school in Kseife, a government-planned Bedouin town about five kilometers east of al-Sira. Alamour also actively works toward improving the lives and educational prospects of Bedouin youth, which inspired him to study community leadership and to introduce after-school programs in Kseife. Alamour is involved in NCF's grassroots activities, was a former member of the Regional Council for the Unrecognized Villages (RCUV),[120] worked as a field researcher and legal intern for Adalah in the Negev and Haifa, and served as a member of Adalah's board of directors. He qualified as an Israeli lawyer in late 2015.

I spoke with Alamour in November 2015 at his al-Sira home. On the 25-minute drive from Be'er Sheva city to al-Sira, my local driver, needed to find unrecognized villages like al-Sira that are off the maps and difficult for a stranger to the area to find, informed me that Alamour is 'an international man'.[121] Not someone to leave an alliance idle, Alamour's enthusiasm and commitment to preventing the demolition of al-Sira has heralded him a village hero. During our first conversation at his unrecognized home that has a well-tended garden, a complex home-built water system, Wi-Fi connection, and a brood of chickens, Alamour described his involvement in a range of human rights activities. Over a hearty breakfast with homemade bread, olive oil, and fresh eggs, he talked about his participation in the Sixth Session of the UN Expert Mechanism on the Rights of Indigenous Peoples in Geneva in July 2013, where he gave a statement on the situation of the Bedouin in the Negev.[122] Commending the work of the Special Rapporteur on the Rights of Indigenous Peoples, Alamour recalled a personal meeting

[120] Established in 1997, the RCUV is a community movement (grassroots representation) for Bedouin equality in the Negev and represents the Bedouin living in the unrecognized villages in the Negev.
[121] Khalil Alamour, Interview, November 19, 2015.
[122] NCF, "NCF Representative Turns the Attention of the UN and the Int'l Community towards the Prawer-Begin Bill," July 13, 2013, http://www.dukium.org/press-release-ncf-representative-turns-the-attention-of-the-un-and-the-intl-community-towards-the-prawer-begin-bill/.

with Professor S. James Anaya at his office in Geneva. Besides his UN participation and interaction with foreign audiences,[123] Alamour mentioned that he receives international groups, delegations, and visitors at his home on a weekly basis, pointing to a stack of white plastic chairs for seating groups on the terrace. Although the international activities and actors are significant, Alamour recognizes the role of the Israeli judiciary that cancelled the demolition orders, which stresses the link between the domestic courts and the Bedouin locality.

These multifaceted fragments of al-Sira's story narrated by the village leader, who wore a pristine white t-shirt with 'please don't demolish my house' in Hebrew, are compelling and powerful. Alamour's account underscores the kaleidoscopic nature of activities in different realms of activity and how the realms interface: international human rights and human rights allies helped save the village by transforming it into a UN concern, and domestic courts *de facto* and *de jure* prevented the village from demolition. Throughout our exchange, Alamour readily drew on international human rights law, and when probed about the application of indigenous peoples' rights in international law, Alamour responded that these rights speak to al-Sira residents. For Alamour, all the Bedouin are indigenous to the Negev and the British Mandate document amounts to proof. With a general fluency in rights rhetoric despite his broken English, Alamour readily borrows from international rights language to talk about the Bedouin's predicament. He compared the Bedouin in southern Israel to the Aborigines in Australia and remarked how the Israeli and Australian governments treat their indigenous peoples differently. While acknowledging the ongoing daily problems facing the Aborigines in Australia, Alamour believes the Aborigines are faring better because of the privileged status granted to them by the Australian government, which is not the case for the Bedouin in Israel.

A second visit to the village two weeks later saw a celebratory air reign. Alamour had received news that he had passed the Israeli bar exams, opening up career opportunities in the domestic legal system. Congratulating him over a cup of sugary tea, sweets, and mandarins and recalling our previous exchange (which happened to be the morning of the Israeli Bar oral exam), I quizzed Alamour about his future plans, half-expecting they would involve litigation for the Bedouin. He indicated otherwise: Alamour had submitted an application for the UN

[123] For example, Alamour presented at the ICAHD UK's annual spring conference on 30 May 2015. See, The Israeli Committee Against House Demolitions (ICAHD), "Judaizing Palestine" (Amnesty International Human Rights Action Centre, Shoreditch, London, June 30, 2015), https://www.youtube.com/watch?v=4yPM4Omag2E.

Indigenous Fellowship Programme (IFP)[124] and was thinking about applying for a Master's program at a US university. In this moment, his future plans seemed to be far away from the village where he was born and raised, and which he worked relentlessly to save from demolition. As we sat on the terrace of his home, which demolition authorities have registered as Number 67 in their records, and speaking of his UN plans and US academic dream, the UN felt extraordinarily close to Alamour and his village. This encounter presents individual dimensions as to what it means to be internationally-defined as indigenous in the Israeli/Bedouin setting.

Location, encompassing place and space, not only links the village of al-Sira and the UN but also hints at the fault-lines of the concept and category of indigenous peoples when it plays out in practice. In the Israeli/Bedouin context, where the territorial state and the Bedouin and their ancestral lands are in a competition for a single terrain, location matters. Under indigenous peoples' rights in international law, arguably location makes some villages more indigenous than others, as discussed below.[125] Although al-Sira is an unrecognized village, international human rights law, including indigenous peoples' rights, has succeeded in making al-Sira residents internationally recognized—or at least recognizable—and arguably situates them within the sphere of legality, and legibility, in international human rights law.[126]

Similar to my visit to al-Araqib in summer 2011, my investigation left me wondering whether this development occurred despite domestic law or because of international law, or both. Exploring another Bedouin locality would add depth to the developing understanding of how the concept and category of indigenous peoples is re-produced in Bedouin localities, where it is re-made in a Bedouin vernacular.

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[124] Indigenous Fellowship Programme provides 'is to enhance the knowledge of indigenous peoples on existing international human rights instruments and mechanisms, so they can use them to more effectively advocate for the rights of their communities and raise their concerns at the international level.' See, United Nations Human Rights - Office of the High Commissioner, "Indigenous Fellowship Programme," http://www.lan.ohchr.org/EN/Issues/IPeoples/Pages/IFP.aspx.

[125] This echoes the observation that 'some people are more indigenous than others.' Arguing against this, Nasasra points out that 'Even those [Bedouin] who had to move to towns still practice their culture. They are not fully integrated into the Israeli population and they still behave as indigenous people in a variety of ways.' Nasasra points out the intra-tribal cohesion as a point in case. Mansour Nasasra, "The Ongoing Judaisation of the Naqab and the Struggle for Recognising the Indigenous Rights of the Arab Bedouin People," *Settler Colonial Studies* 2, no. 1 (March 19, 2012): 87–88.

[126] Legibility is borrowed from James Scott. In my judgment, seeing like a state and its domestic legibility differs to seeing like a globe and its international legibility; the former is bounded by the nation-state while the latter is not necessarily and is, therefore, unbounded. James C. Scott, *Seeing like a State: How Certain Schemes to Improve the Human Condition Have Failed* (New Haven, CT: Yale University Press, 1999), 2.

b. Accumulation and Circulation of Indigeneity in Realms of Activity in the Israeli/Bedouin Context: The Unrecognized Village of Al-Araqib in the Negev

As discussed in 'The Vernacularization of Human Rights' above, this study relates Merry's three cultural flows to three realms of rights activity—(legal) knowledge, civil society, and local context—necessary to understand international human rights in practice. Some 20-25 kilometers from al-Sira, the unrecognized village of al-Araqib exemplifies the global generation of the concept and category of indigenous peoples in another Bedouin locality, and specifically highlights routines of accumulation and circulation of the concept and category. The knowledge production and legal practices of the concept and category cut across a range of realms of activity, as the unrecognized village of al-Araqib illustrates.

i. Al-Araqib's Background and Current Context

Al-Araqib is located about eight kilometers north of Be'er Sheva city and west of Route 40, between the Lehavim and Goral junctions.[127] Local accounts say that al-Araqib lands originally belong to the al-Uqbi, al-Turi, Abu-Medeghem, Abu-Freih, and Abu-Zayed families,[128] who pursued a traditional livelihood there for more than two centuries. At its highest point, the population reached between 400 and 500 inhabitants and maintained until the late 1990s,[129] but it has steadily declined since, falling to around a dozen inhabitants since 2010 who have vowed to stay on the lands no matter what. In 1951, three years after the establishment of the State of Israel, the Israeli military "temporarily" removed the villagers from their lands under the pretext that the lands were required for military purposes. The village residents, along with 18 Bedouin tribes, were confined to the *siyag*.[130] Military authorities indicated to the village leaders that they would be allowed to return after six months,[131] but instead the state appropriated the land under the *Land Acquisition Law (Actions and Compensation)* of 1953, declaring it to be state land. During military rule, which was lifted in 1966, al-Araqib villagers

[127] Route 40 is a north–south route that crosses Israel, and is the main highway heading through the center of the Negev, linking Be'er Sheva, Mitzpe Ramon, and Eilat.
[128] Nadia Ben-Youssef, Suhad Bishara, and Rina Rosenberg, "From Al-Araqib to Susiya. Forced Displacement of Palestinians on Both Sides of the Green Line." (Adalah: The Legal Center for Arab Minority Rights in Israel, May 2013), 2.
[129] NCF calculates the population of al-Araqib at 400, while scholar Nasasra Mansour discusses 500 al-Araqib villagers. See, Nasasra, "The Ongoing Judaisation of the Naqab and the Struggle for Recognising the Indigenous Rights of the Arab Bedouin People," 101.
[130] Ben-Youssef, Bishara, and Rosenberg, "From Al-Araqib to Susiya. Forced Displacement of Palestinians on Both Sides of the Green Line.," 2.
[131] Ben-Youssef, Bishara, and Rosenberg, 2.

attempted unsuccessfully to return to the lands.[132] All the while, some of the villagers lived in the vicinity of al-Araqib, while others chose to move "temporarily" to Rahat,[133] a government-designated town six kilometers away, in order to lead a normal life, raise children, and pursue their education, hoping that they would in the future be able to establish an agricultural village on the al-Araqib lands.[134]

After the *Settlement of Land Rights Ordinance* (*Consolidated Text*) *5729* in 1969, the residents of al-Araqib submitted an application in order to claim their lands and made a concerted, though unsuccessful, attempt to return to the land.[135] Like other Bedouin applicants, their claims have not been considered and remain pending in the courts.[136] It is generally agreed that relatively little activity occurred in the two decades after 1969, and the villagers were left alone to a greater extent. Sometime in the mid-1990s, either the JNF or the Israel Land Administration (ILA) made an effort to start cultivating the land, but when the al-Araqib villagers intervened, those efforts ended.[137]

In 1998, the Jewish National Fund (JNF, a non-profit organization with quasi-state powers that receives donations from around the world) showed an interest in al-Araqib for the purpose of JNF afforestation,[138] the villagers were afraid they would lose the family's lands permanently and sought to defend them by reestablishing the village.[139] The JNF afforestation plans, which

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[132] In 1960, for example, the al-Uqbi family sent a formal letter, signed by family representatives, to the Prime Minister and other government offices requesting to be allowed to return to their land. Mansour Nasasra, "The Politics of Non-Cooperation and Lobbying: The Naqab Bedouin and Israeli Military Rule, 1948-67," in *The Naqab Bedouin and Colonialism: New Perspectives*, ed. Mansour Nasasra et al. (Abingdon, Oxon: New York, NY: Routledge, 2014), 139.

[133] Chertok, "Between Rahat and a Hard Place."

[134] NCF, "Al Arakib: A Background Paper about the Summer of Demolitions" (Be'er Sheva, October 25, 2010), http://www.palis-d.de/archive/isr/Al%20Arakib101025.pdf.

[135] Nasasra, "The Ongoing Judaisation of the Naqab and the Struggle for Recognising the Indigenous Rights of the Arab Bedouin People," 101.

[136] Ben-Youssef, Bishara, and Rosenberg, "From Al-Araqib to Susiya. Forced Displacement of Palestinians on Both Sides of the Green Line," 2.

[137] It is difficult to precisely determine the events between 1969 and 1998. There are multiple accounts (and a lot of silence) on what exactly happened during this period. This summary was constructed from an Adalah press release, see Adalah, "Court Eases Conditions of Al-Araqib Activist House Arrest'," March 27, 2011, https://www.adalah.org/en/content/view/7650), an NCF account, see NCF, "On the Map: The Arab Bedouin Villages in the Negev-Naqab: Al-ʿArāgīb (Al-Araqib)," n.d., http://www.dukium.org/village/al-arakib/.

[138] Keren Kayemeth LeIsrael - Jewish National Fund, "KKL-JNF Development and the Bedouin in the Negev: A Summary of the Issues," n.d., http://www.kkl-jnf.org/about-kkl-jnf/kkl-jnf-in-public-discourse/kkl-jnf-conferences/kkl-jnf-european-leadership-conference/negev-development-bedouin-summary/.

[139] Ben-Youssef, Bishara, and Rosenberg, "From Al-Araqib to Susiya. Forced Displacement of Palestinians on Both Sides of the Green Line.," 2. JNF's afforestation ambitions included "Ambassador Forest" in the south part of al-Araqib lands, ostensibly to honor the world's diplomatic corps for their assistance to Israel, and "God-TV Forest" in the west part of al-Araqib, named for and planted by a global evangelical television network.

include planting conifer trees on al-Araqib lands, are part of a larger effort to green the image of the Negev in order to attract Jewish immigrants to the south of the country;[140] for example, the JNF's 'Negev Blueprint' campaign was introduced in 2005 to boost the desirability of the Negev desert for new immigrants.[141] Sheikh Sayyah al-Turi, with his children and their families, returned to al-Araqib and commenced an active struggle for official state recognition of the contested land.[142] Beginning in 2000, the villagers began to cultivate the lands and sow the fields with wheat and barley. In 2003 and 2004, the ILA responded by spraying the fields with the toxic herbicide Roundup,[143] which killed all of the villagers' plantings. In 2006, the JNF held a ceremony for diplomats and announced the start of their 'Ambassadors Forest' in the southern part of al-Araqib, funded by the US wing of the JNF.[144] In 2007, Adalah filed a petition against crop destruction using Roundup, and the Supreme Court of Israel held the practice to be illegal.[145] Since that court decision, state authorities have ceased using the toxic chemical and have instead resorted to plowing up the crops. In 2009, the JNF joined forces with God-TV, a Christian evangelical television network, to start planting one million trees in the western part of al-Araqib. On 27 July 2010, further steps for JNF afforestation resulted in a large-scale village demolition carried out by the ILA inspectors and around one thousand police officers. The villagers obtained a temporary injunction in January 2011 to halt JNF afforestation plans; however, the courts denied their appeal to extend the temporary order, and awarded the JNF 10,000 NIS in legal costs. The court did recommend that the JNF cease planting trees until a solution was reached between them and the villages, but the JNF continued planting trees and also resorted to other methods to remove the villagers from al-Araqib.

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[140] On the pine and olive tree in the Israeli/Palestinian conflict, see Irus Braverman, *Planted Flags: Trees, Land, and Law in Israel/Palestine* (Cambridge: Cambridge University Press, 2009).. For 'A Genealogy of Tree Bureaucracy', including the role of the JNF, and 'the Zionist tree project', see Braverman, 29-58 and 59-114.

[141] JNF, "Community Building - Our Blueprint Negev Strategy: Revitalizing Southern Israel," https://www.jnf.org/menu-2/our-work/community-building/community-building---our-blueprint-negev-strategy.

[142] Ben-Youssef, Bishara, and Rosenberg, "From Al-Araqib to Susiya. Forced Displacement of Palestinians on Both Sides of the Green Line.," 2.

[143] Elizabeth Grossman, "What Do We Really Know About Roundup Weed Killer?," National Geographic News, April 23, 2015, https://news.nationalgeographic.com/2015/04/150422-glyphosate-roundup-herbicide-weeds/.

[144] Gary Fields, *Enclosure: Palestinian Landscapes in a Historical Mirror* (University of California Press: University of California Press, 2017), 279–82.

[145] HCJ 2887/04, Saleem Abu Medeghem and others v. The Israel Land Administration and others (April 14, 2007). See also, Arab Association for Human Rights (HRA), "By All Means Possible: Destruction by the State of Crops of Bedouin Citizens in the Naqab (Negev) by Aerial Spraying with Chemicals," July 12, 2004, http://www.caiaweb.org/old-site/files/aahra-negev.pdf.

Since that first village demolition in July 2010, al-Araqib has been demolished and rebuilt scores of time, which has generated worldwide condemnation from human rights and peace organizations.[146] Al-Araqib villagers have responded by organizing themselves through local acts of resistance, including staying on al-Araqib lands, re-building village structures after each demolition, and organizing a weekly protest.[147] Every July, Bedouin residents and activists from around the world gather in solidarity and participate in commemorative events organized by the NCF.[148] Since each demolition is different in frequency and use of force, they serve as a rallying point for CSO advocacy and awareness-raising in international settings. Furthermore, scholars interested in the Bedouin or domestic land issues increasingly employ al-Araqib to describe the current situation of the Bedouin. The domestic courts have also had contact with the al-Araqib villagers, who filed a petition demanding that the village be recognized. The petition includes a claim for recognition of the petitioners' land rights as indigenous peoples, making the international claim a test case for the Bedouin in the domestic courts.

Based on this short description of al-Araqib, it is a timely and useful exercise to illuminate how al-Araqib's presence has emerged across a broad spectrum of realms of activity. In these realms, the concept and category of indigenous peoples is in common parlance among the actors, who appropriate and translate in order to talk about the situation in al-Araqib and the experiences and hardships of the village residents. What follows demonstrates how al-Araqib inhabitants have, intentionally and collaboratively, sought civil society help at the local, international, and transnational level and have drawn on indigenous peoples' rights in their land struggle. While al-Araqib's indigenous peoples' rights are gaining ground in certain settings, we encounter a twist in al-Araqib's indigenization in the domestic setting when the al-Araqib villagers go before the domestic courts.

[146] Amnesty International and Human Rights Watch (HRW), Association of Civil Rights in Israel (ACRI), Coalition of Women for Peace, Gush Shalom (Peace Now), New Israel Fund (NIF), New Profile, Rabbis for Human Rights (RHR) and Ta'ayush ('coexistence' or 'life in common').
[147] Nasasra, "The Ongoing Judaisation of the Naqab and the Struggle for Recognising the Indigenous Rights of the Arab Bedouin People."
[148] For a description of the NCF's commemoration in July 2013, see, NCF, "Annual Report 2013 - Negev Coexistence Forum for Civil Equality" (Be'er Sheva), 21–22, http://www.dukium.org/wp-content/uploads/2014/05/NCF_Activity_Report_2013.pdf.

ii. Al-Araqib in the Realms of Civil Society—Local, International, and Transnational

The local realm of civil society, in which al-Araqib is physically situated, sees grassroots activities and legal mobilization on the rise. The Bedouin in the Negev were quick to recognize the significance of civil society in the land dispute.[149] As early as 1974, Nuri el-Ukbi, an al-Araqib resident and activist, worked with other Bedouin to establish the Association for the Support and Defence of Bedouin Rights (ASDBR). Prominent in the 1980s and 1990s, the ASDBR was the first organization to wage a struggle on the land issue, focusing on unrecognized villages in the Negev, and submitted alternatives for planning Bedouin villages.[150] Since the early 1990s, several community organizations from the Galilee (e.g., The Association of Forty) have come to work in the Negev, and a number of advocacy and grassroots groups have formed and grown in the Negev (e.g., the RCUV and the NCF), supported by funding from a variety of external sources.[151] Today, al-Araqib villagers and the NCF have a strong relationship and work closely together to achieve village recognition. The NCF often employs the narrative of al-Araqib to raise public and international awareness about the issue of unrecognized villages in the Negev.

In one of its latest projects, the NCF has initiated a documentary project called 'On the Map: The Arab Bedouin Villages in the Negev-Naqab' to create a virtual map of unrecognized Bedouin villages in the Negev. The stated objective is to collect accurate information about the villages, and the documentary is produced by the village committees in cooperation with the NCF. Al-Araqib, written as al-'Arāgīb, is included on the virtual map. By clicking on the webpage, the online visitor is invited to read, watch, and learn basic facts about the village,

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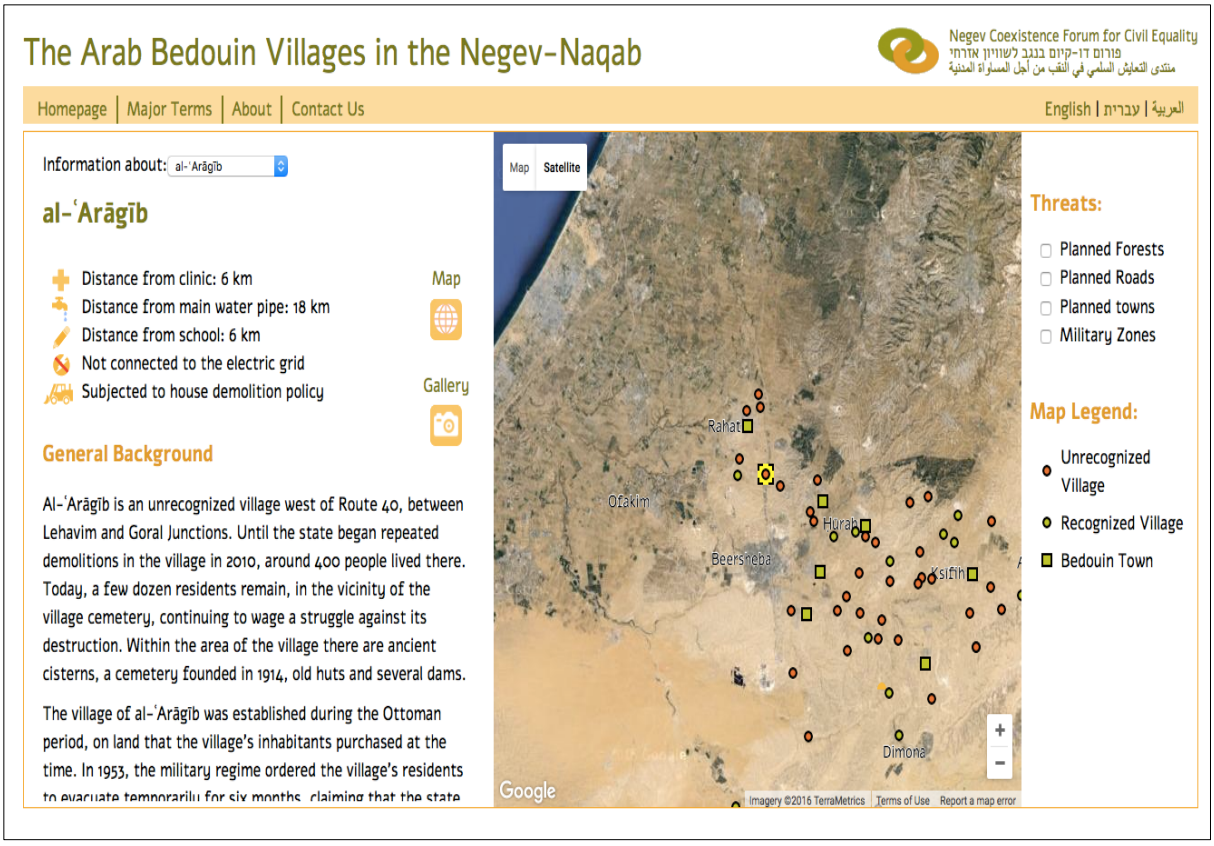
[149] Toward the end of the 1970s, Israeli society witnessed the development of a large number of associations representing various interests, including minority ethnic and religious groups. During the 1980s and 1990s, as Arab civil society mushroomed in Israel, Bedouin women also set up their own groups. Elisabeth Marteu, "Some Reflections on How Bedouin Women of the Negev Relate to Politics," *Bulletin Du Centre de Recherche Français À Jérusalem*, No. 16 (November 30, 2005), 282. See also, Itay Greenspan, "Mediating Bedouin Futures: The Roles of Advocacy NGOs in Land and Planning Conflicts between the State of Israel and the Negev Bedouins" (York University, 2005); Nadera Shalhoub-Kevorkian et al., "NO Funding Pain: Bedouin Women and Political Economy in the Naqab/Negev," *Feminist Economics* 20, no. 4 (October 2, 2014): 164–86; Richard Ratcliffe, "Bedouin Rights, Bedouin Representations: Dynamics of Representation in the Naqab Bedouin Advocacy Industry," *Journal of Holy Land and Palestine Studies* Volume 15, no. Issue 1 (2016): 97–124.

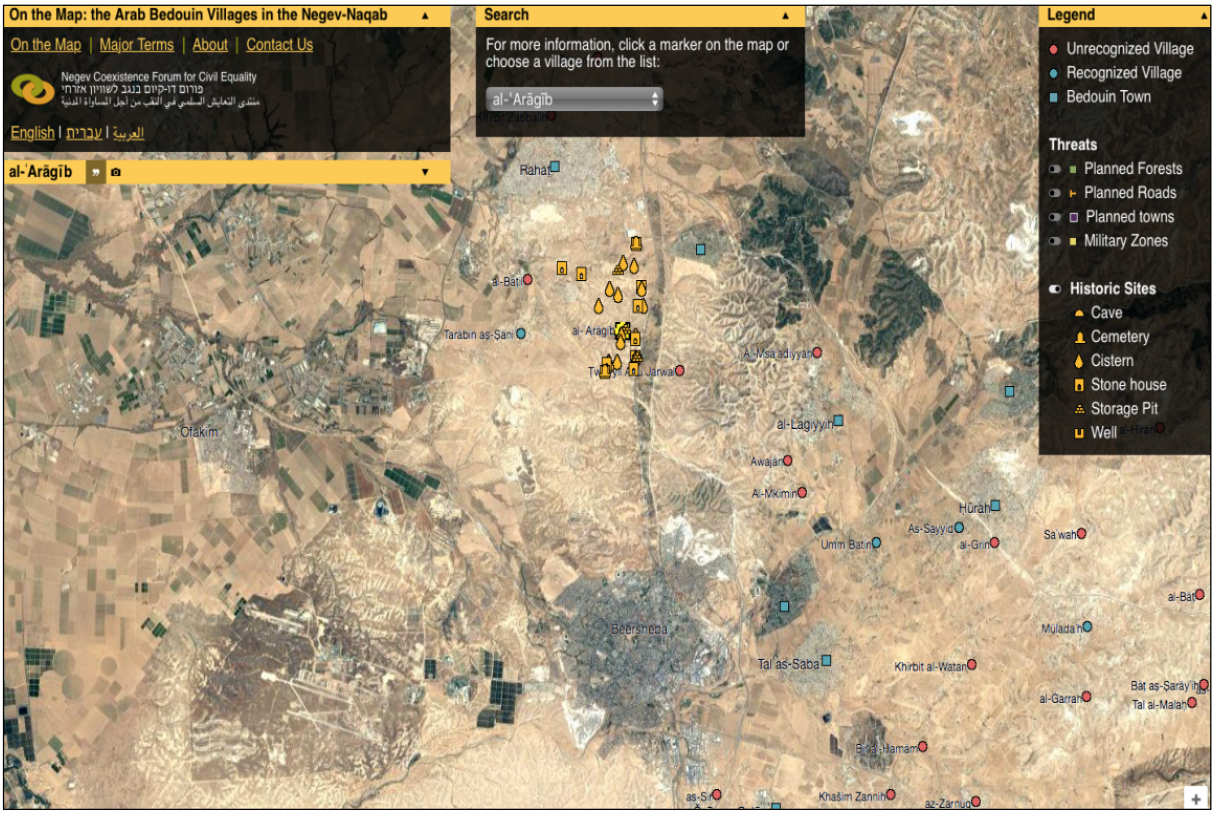
[150] Amara notes, 'For many years the Association for the Support of the Bedouin (established in 1974) was almost the only organization present in the Naqab, to initiate and assist in litigation. According to Meir, three other voluntary organizations were established in the 1970s, another four in the 1980s, and thirteen more in the early 1990s (Meir 1999: 28).' Amara, "The Naqab Bedouin and Colonialism," 167.

[151] Ratcliffe, "Bedouin Rights, Bedouin Representations: Dynamics of Representation in the Naqab Bedouin Advocacy Industry," 102.

including background, information on the infrastructure and services available, and current threats, like demolitions. This project helps solidify al-Araqib's online presence, which contrasts to its absence on the official maps of Israel.[152] Additionally, the 'Recognized Project' distributes audio-visual aids, mainly video cameras, and trains volunteers living in unrecognized villages to document rights violations. Sabah Abu Mdigim, a Bedouin woman from al-Araqib, filmed a short video-clip of the 96th demolition in September 2015.[153] In these online activities, al-Araqib enjoys an increased virtual presence.

[152] NCF, "On the Map: The Arab Bedouin Villages in the Negev-Naqab: Al-ʿArāgīb (Al-Araqib)."
[153] NCF, *The 96 Demolition of the Village of Al-Araqib - 05.04.2016*, https://www.youtube.com/watch?v=bnYFlkpSEgw.

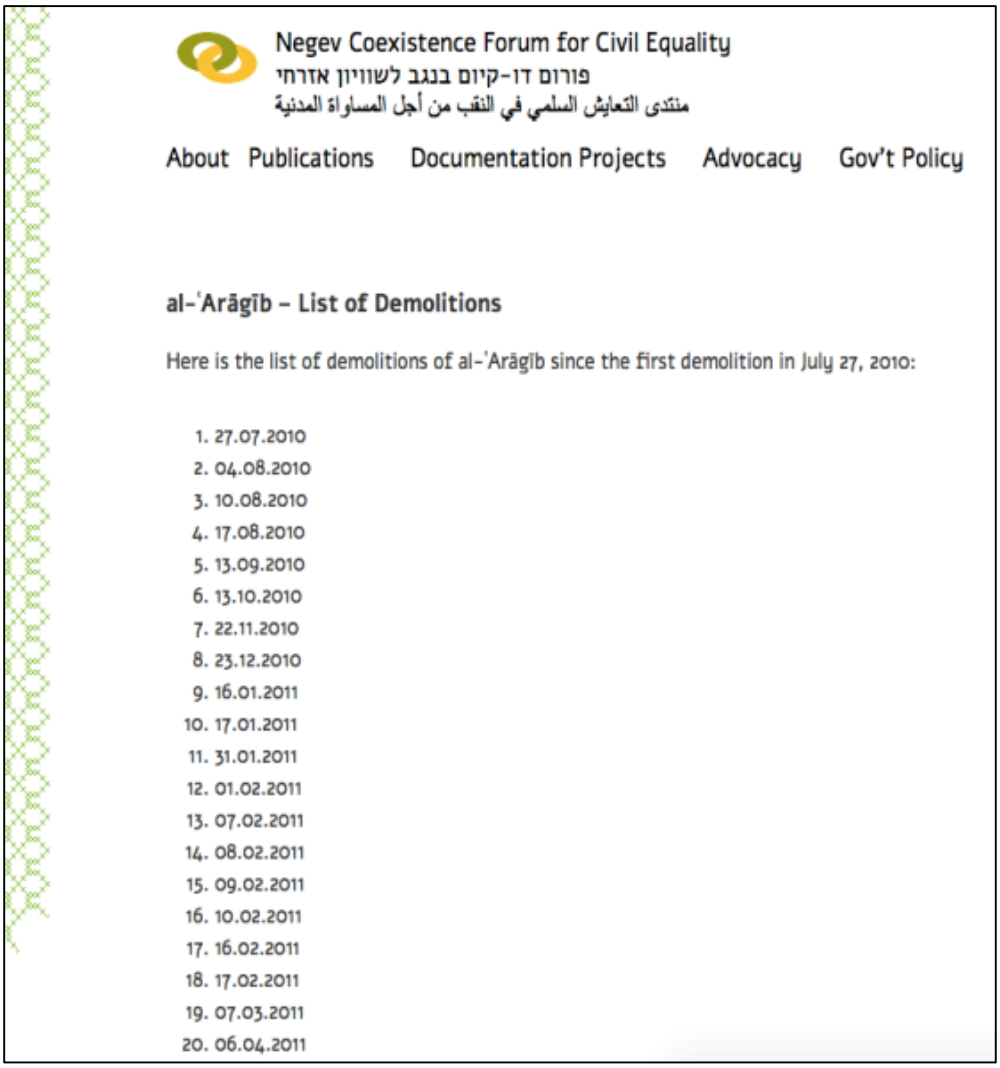




Source: NCF website November 2015 and 2016.

Al-Araqib appears often in NCF publications, including online press releases and reports, which are available in English, Hebrew, and Arabic for a global audience. The issue of village demolitions has become a priority concern, and the NCF website displays a list of demolitions of al-Araqib, with demolition dates and a running tally of demolitions.[154]

NCF's Documentation of Demolitions of al-Araqib



Source: NCF website

Moreover, public outreach and engagement include demonstrations and solidarity visits to al-Araqib and other demolished villages.[155] The public is invited to attend 'the weekly Sunday afternoon protest on the main highway into Be'er Sheva to draw attention to the plight of Al

[154] NCF, "Al-ʿArāgīb – List of Demolitions Since 2010," http://www.dukium.org/al-arakib-list-of-demolitions/.
[155] NFC's 'solidarity visits' to al-Araqib, and other similar villages, are for activists to demonstrate solidarity with Bedouin villages which have recently suffered home demolitions or where inhabitants have been victims of human rights violations or arrest. NCF, "Annual Report 2013 - Negev Coexistence Forum for Civil Equality," 15.

Arakib residents.'[156] NCF and Adalah solidarity activities often incorporate international participation.[157] The NCF 'Negev Tours' facilitate visitors in gaining a first-hand account of what is happening on the ground, including in al-Araqib.[158] Tour participants range from journalists to members of the public, and students as well as diplomats; for example, in 2012, the Ambassadors to Israel from the UK and Switzerland visited al-Araqib and met with village representatives.[159] Similar to the NCF, Adalah's Naqab office in Be'er Sheva conducts tours of the Negev, which include visits to al-Araqib; however, these tours tend to be exclusively with high-level diplomats and UN officials.[160] While Adalah's land and planning unit[161] has not represented al-Araqib villagers in their lawsuit,[162] its civil and political unit has provided legal representation to al-Araqib residents and supporters, particularly since the demolitions in July 2010.[163]

Al-Araqib's success in penetrating the international setting amounts to a remarkable feat for the unrecognized village. Although al-Araqib residents usually do not leave the Negev,[164] the al-Araqib village nonetheless enters international sites, such as the UN and the European Parliament.[165] For example, the NCF has been engaged with the UN Permanent Forum on Indigenous Issues (UNPFII, formerly the UN Working Group on Indigenous Populations or UNWGIP) events in which Bedouin representatives have participated, but al-Araqib villagers have not attended these events.[166] CSOs are adept at employing a human rights-based discourse when presenting the Bedouin situation in international fora, and Adalah and the NCF are

[156] NCF, "Work Plan for 2014," http://www.dukium.org/work-plans/.
[157] For example, in April 2013, 'Cycling for Recognition' involved Belgian nationals actively participating in a five-day cycling tour, with al-Araqib being the final destination. NCF, "Annual Report 2013 - Negev Coexistence Forum for Civil Equality," 19–20.
[158] NCF, "Join the Alternative Naqab Tours," http://www.dukium.org/tout-the-negev-with-ncf/.
[159] NCF, "British Ambassador Learns about NCF, Visits Al Arakib," May 18, 2012, http://www.dukium.org/update-from-negev-coexistence-forum-4/.
[160] Adalah, "Adalah Leads Foreign Diplomat Tour of Arab Bedouin Unrecognized Villages in the Naqab, as Part of 'Stop Prawer' Campaign," October 30, 2012, https://www.adalah.org/en/content/view/7859.
[161] Adalah's legal department focuses on mainly socio-economic rights, including education, healthcare, and access to water. See Amara, "The Naqab Bedouin and Colonialism," 174–76.
[162] The land and planning department of Adalah currently represents Atir-Umm al-Hieran, a twin unrecognized village that is planned to be removed and replaced by a Jewish town called Hiran. On Adalah's public campaign, see Adalah, "#Save_UmAlHiran," May 14, 2015, https://www.adalah.org/en/content/view/8550.
[163] Beer Sheva Magistrates' Court, Criminal Case 12879-08/10, State of Israel v. Sayyah al-Touri (Pending).
[164] See for example, NCF, "NCF Participates in Conference in Sweden," June 28, 2012, http://www.dukium.org/update-from-negev-coexistence-forum-6/.
[165] European Parliament, "European Parliament Resolution of 5 July 2012 on EU Policy on the West Bank and East Jerusalem 2012/2694 (RSP)" (2012), http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0298+0+DOC+XML+V0//EN&language=EN.
[166] NCF, "International Lobby - UN Permanent Forum on Indigenous Issues," n.d., http://www.dukium.org/un-permanent-forum-indigenous-issues/.

exemplary in internationalizing al-Araqib and transforming it into a global concern. Since both Adalah and the NCF are in special consultative status with the UN Economic and Social Council (ECOSOC) since 2005 and 2013 respectively,[167] they effectively advocate internationally on, *inter alia*, the threat of forced displacement in al-Araqib.[168] Adalah focuses its work on the UN Treaty bodies, providing information on the human rights situation of the Arab minority in Israel in its briefing papers and CSO shadow reports, and frequently referencing the situation of al-Araqib.[169] These reports are increasingly written as a coalition effort; for example, Adalah and the NCF submitted a joint report to the UNHRC, which addressed the issue of forced displacement of al-Araqib.[170]

The link between al-Araqib and the UN Special Rapporteurs is unique. These UN officials often physically enter al-Araqib to witness and listen to local first-hand accounts and to dialog directly with al-Araqib villagers. The former Special Rapporteur on the Rights of Indigenous Peoples, S. James Anaya, examined the Bedouin's situation and wrote about al-Araqib in his report despite the official invitation for a fact-finding country visit being withheld.[171] Addressing the Government of Israel, Anaya explicitly referred to al-Araqib three times: firstly with regard to village destruction,[172] secondly on the question of consultation and prior consent

[167] Consultative Status to the UNECOSOC is the highest status granted by the UN to NGOs, which allows them to participate in the work of the United Nations. UN Department of Economic and Social Affairs - NGO Branch, "Civil Society Participation - Consultative Status with ECOSOC and Other Accreditations," n.d., http://esango.un.org/civilsociety/displayConsultativeStatusSearch.do?method=search&sessionCheck=false. According to the UN, 'Special consultative status is granted to NGOs which have a special competence in, and are concerned specifically with, only a few of the fields of activity covered by the ECOSOC. These NGOs tend to be smaller and more recently established.' UN Department of Economic and Social Affairs - NGO Branch, "Introduction to ECOSOC Consultative Status," n.d., http://csonet.org/index.php?menu=30.

[168] See for example, Adalah, "Written Statement Submitted by the Adalah – Legal Center for Arab Minority Rights in Israel, a Non-Governmental Organization in Special Consultative Status, UN Human Rights Council A/HRC/22/NGO/125," February 22, 2013, https://unispal.un.org/DPA/DPR/unispal.nsf/0/710E5F03F6DB9F9785257B1D006B7BF4.

[169] For example, in its report entitled "EU Israel Informal Human Rights Working Group: The Arab Minority in Israel" to the EU High Representative, Catherine Ashton, of the External Action Service, there is an entire section "Home demolitions in the Naqab (Al Araqib)" that describes the demolition policy and the action taken by Adalah and makes reference to the UNHRC's concluding observations on home demolitions. Adalah, "EU-Israel Informal Human Rights Working Group: The Arab Minority in Israel," August 16, 2010, https://www.adalah.org/uploads/oldfiles/newsletter/ara/sep10/EU-Israel%20Informal%20Human%20Rights%20Working%20Group.pdf.

[170] Adalah and NCF, "Joint NGO Response to the State of Israel's Replies to the UN HRC's List of Issues" (Haifa: Be'er Sheva, September 16, 2014), 4, https://www.adalah.org/uploads/oldfiles/Public/files/English/International_Advocacy/UN/HRC-ICCPR/Adalah-NCF%20Report-HRC-Bedouin-Sep-2014.pdf.

[171] UN Human Rights Council, "Report by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, UN Doc A/HRC/18/35/Add.1," 2011, para. 1–28 (Annex VI), http://www.ohchr.org/Documents/Issues/IPeoples/SR/A-HRC-18-35-Add-1_en.pdf.

[172] UN Human Rights Council, para. 3 (Annex VI).

of al-Araqib villagers before demolition activities,[173] and thirdly on the provision of alternative accommodation or compensation.[174]

In addition, during their country-visits, some other Special Rapporteurs have met al-Araqib residents. For instance, on 16 December 2011, UN Special Rapporteur on Freedom of Expression Frank La Rue and UN human rights officers, in coordination with Adalah and CSO partners, met with representatives of al-Araqib and heard local accounts about arrests and criminal charges for participation in demonstrations against home demolitions and the confiscation of land.[175] During her country-visit, Adalah arranged for UN Special Rapporteur on Adequate Housing Raquel Rolnik to visit the Negev in February 2012,[176] visiting two unrecognized villages, Abu-Tlul and Assir, and visiting and meeting al-Araqib villagers.[177]

From the international and transnational perspective, crop-spraying and village demolition are two events that transform al-Araqib from a local event to a concern for both international organizations working on human rights and transnational organizations working on indigenous peoples' affairs. International human rights organizations, like Human Rights Watch (HRW) and Amnesty International, pay close attention to what is going on in al-Araqib. Following the July 2010 demolitions, HRW and Amnesty International published a series of press releases in short succession[178] and used the demolition of the al-Araqib as a visible rallying point concerning unrecognized villages, home demolitions, and the threat of forced displacement. In addition to such responsive measures, in 2008, HRW published a comprehensive report 'Off the Map: Land and Housing Rights Violations in Israel's Unrecognized Bedouin Villages,'[179] with a section devoted to home demolitions in al-Araqib.[180] In compiling the report, HRW

[173] UN Human Rights Council, para. 13 (Annex VI).
[174] UN Human Rights Council, para. 15 (Annex VI).
[175] Adalah, "Adalah and NGO Partners Brief UN Special Rapporteur on Freedom of Expression during His Visit to Israel/OPT," December 22, 2011, https://www.adalah.org/en/content/view/7559.
[176] Adalah, "UN Expert on Adequate Housing: Land Development Model in Israel and OPT Excludes, Discriminates, and Displaces Palestinians," February 14, 2012, https://www.adalah.org/en/content/view/7543.
[177] Adalah's press release about the Special Rapporteur's visit includes a picture of the Special Rapporteur and Sheikh Sayyah al-Touri as well as the Director of Adalah's Negev office. Adalah.
[178] Amnesty International, "Israel Sues Bedouin Villagers for Cost of Repeated Evictions," July 29, 2011, https://www.amnesty.org/en/latest/news/2011/07/israel-sues-bedouin-villagers-cost-repeated-evictions/; HRW, "Israel: Halt Demolitions of Bedouin Homes in Negev," August 1, 2010, https://www.hrw.org/news/2010/08/01/israel-halt-demolitions-bedouin-homes-negev; HRW, "Israel: Stop Demolishing Bedouin Homes - Structures Destroyed for Fourth Time in a Month in Negev Village," August 18, 2010, https://www.hrw.org/news/2010/08/18/israel-stop-demolishing-bedouin-homes.
[179] Human Rights Watch, *Off the Map*, 20, No. 5(E):80–81.
[180] The report states that "[o]n May 28, 2002, Israeli authorities demolished 52 homes in the unrecognized village of Al Araqib." Human Rights Watch, 20, No. 5(E):80–81.

officials spoke directly to al-Araqib leaders and villagers, and Sheikh al-Turi provides a witness account of a demolition incident in al-Araqib.[181] In November 2010, five months after the new wave of demolitions in al-Araqib, Amnesty UK and the NCF held a joint conference in London on the topic of 'Unrecognized: A Conversation about Disinherited Bedouins in the Negev'.[182] In the IWGIA's yearbook, *The Indigenous World*, al-Araqib is discussed in the section on the situation of the Bedouin in Israel, with earlier discussions addressing crop-spraying and then shifting attention to village demolitions.[183] The village is also labeled on the IWGIA map of the Negev, and its visibility is given pride of place from 2013 onward together with the unrecognized villages of al-Sira and Wadi al-Na'am.[184] In the 2011 MRG report, Farah Mihlar[185] describes the demolition policy in the Negev and raises al-Araqib's demolition in summer 2010.[186] MRG's State *of the World's Minorities and Indigenous Peoples 2011 - Events of 2010* also reports on the demolition activities in al-Araqib.[187]

A perplexing point about al-Araqib and its singularity was clear as early as 2005. In 'The Bedouin of Israel' section of *The Indigenous World*, IWGIA describes the spraying of fields by the ILA and states that, 'In 2004, three unrecognized villages in southern Negev had their fields sprayed for the seventh time in two years, and the unrecognized village of Al Araqeeb had some 1,400 dumans (sic) of wheat crops fumigated during the sixth ILA operation. Twice in February, fruit trees (olives and dates) were uprooted from Bedouin villages, each some 50 trees.'[188] This text begs a question as to why only al-Araqib was named and the other two affected villages were not—and what the implications are of being named or not named.[189]

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[181] Human Rights Watch, 20, No. 5(E):80–81.
[182] NCF and Amnesty International, *UNRECOGNIZED: A Talk on Dispossessed Negev Bedouins* (London, 2011), https://www.youtube.com/watch?v=Xp1Lh7c26Ps&feature=related.
[183] On crop-spraying in al-Araqib see, IWGIA, "The Indigenous World 2005," 415. On demolitions in al-Araqib, IWGIA, "The Indigenous World 2013" (Copenhagen, May 2013), 330, https://www.iwgia.org/images/publications/0613_EB-THE_INDIGENOUS_ORLD_2013.pdf.
[184] IWGIA, "The Indigenous World 2014" (Copenhagen, 2014).
[185] Farah Mihlar, "Israel's Denial of the Bedouin" (London: Minority Rights Group International, November 22, 2011), http://group194.net/english/user_files/book_download/mrg_brief_bedouin.pdf.
[186] Mihlar, 6.
[187] MRG, "State of the World's Minorities and Indigenous Peoples 2011 (Events of 2010)" (London, July 2011), 222, http://minorityrights.org/wp-content/uploads/old-site-downloads/download-1077-Full-text.pdf. Al-Araqib was also mentioned in the MRG's *State of the World's Minorities and Indigenous Peoples* 2012 and 2016.
[188] IWGIA, "The Indigenous World 2005," 418.
[189] On the 'politics of naming', see Gabrielle Lynch, "What's in a Name? The Politics of Naming Ethnic Groups in Kenya's Cherangany Hills," *Journal of Eastern African Studies* 10, no. 1 (January 2, 2016): 208–27. Ella Shohat examines spatiality and the question of naming in the context of Arab Jews/Mizrahim in Israel. Ella Shohat, "Rupture and Return: Zionist Discourse and the Study of Arab Jews," *Social Text* 21, no. 2 (June 16, 2003): 49–74. Furthermore, it is important to note that the Bedouin in the Negev are considered the only indigenous peoples in the region, which begs a broader question as to why and how some groups appear in these

iii. Al-Araqib in the Realm of Knowledge Production and Judicial Law-Making

In terms of the realm of knowledge production, scholarship on the Bedouin often incorporates the unrecognized village of al-Araqib. Yet, the tendency is not to write on al-Araqib as a single topic but to introduce the subject of inquiry, support an argument, or present al-Araqib as a case study of a larger phenomenon.[190] Al-Araqib has garnered academic attention for several reasons. Firstly, al-Araqib illustrates several land-related phenomena in the Negev, such as home demolitions, the threat of forced displacement, and crop-spraying. Secondly, owing to the activities of domestic, international, and transnational civil society, there is a body of para-academic literature addressing al-Araqib, most of which is electronically available. Thirdly, scholars writing on al-Araqib are often involved in other activities, usually in civil society efforts that cooperate with al-Araqib. Finally, al-Araqib villagers are accessible and willingly talk with international scholars. The villagers' openness has transformed al-Araqib from an unrecognized village into an ethnographic site for empirical study. It is worth mentioning that al-Araqib women, whether residents or activists, have received heightened scrutiny and their voices can be heard in the scholarship,[191] mostly from a critical perspective.[192] In addition, international studies examining environmental issues[193] and water rights[194] refer to al-Araqib, and al-Araqib is referenced as part of scholarship aimed at highlighting how international concepts and categories, like indigenous peoples, operate in reality.[195]

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reports and others do not. The Bedouin's exceptionalism as a result of their indigenous peoples' status has not gone unnoticed by scholars. See, for example, Frantzman, Yahel, and Kark, "Contested Indigeneity."

[190] Nasser Rego, "Israel, 1948 and Memoricide: The 1948 Al-'Araqib/Negev Massacre and Its Legacy," *Holy Land Studies: A Multidisciplinary Journal (Edinburgh University Press)* 11, no. 2 (2012). See also, Amit M. Schejter and Noam Tirosh, "Social Media New and Old in the Al-'Arakeeb Conflict: A Case Study," *The Information Society* 28, no. 5 (2012): 304–15.

[191] Nora Gottlieb, "Reconstruction: The Voices of Bedouin-Arab Women on the Demolition of Their Homes in the Unrecognized Villages of the Negev," *HAGAR: Studies in Culture, Polity & Identities* 8, no. 2 (2008): 83–108. Gottlieb, 14. See also, Nora Gottlieb and Paula Feder-Bubis, "Dehomed: The Impacts of House Demolitions on the Well-Being of Women from the Unrecognized Bedouin-Arab Villages in the Negev/Israel," *Health & Place* 29 (2014): 146–53.

[192] Shalhoub-Kevorkian et al., "Funding Pain," 170.

[193] Emily McKee, "Performing Rootedness in the Negev/Naqab: Possibilities and Perils of Competitive Planting," *Antipode* 46, no. 5 (November 1, 2014): 1181.

[194] Sharmila L. Murthy, Mark K. Williams, and Elisha Baskin, "The Human Right to Water in Israel: A Case Study of the Unrecognized Bedouin Villages in the Negev," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, March 5, 2013), 59. This reflects a broader trend in the study of Bedouin history as pointed out by Ratcliffe et al., who argue that: 'It should, however, be noted that there are still gaps in this research [of Bedouin history]: the community still has a complex relationship with the past for fear of external trouble as well as disputes over previous compromises and internal balances of power.' Richard Ratcliffe et al., "Introduction," in *The Naqab Bedouin and Colonialism: New Perspectives*, ed. Mansour Nasasra et al. (Abingdon, Oxon: New York, NY: Routledge, 2014), 12.

[195] See, Nyhan, "International Law in Transit: The Concept of 'Indigenous Peoples' and Its Transitions in International, National and Local Realms-the Example of the Bedouin in the Negev."

In terms of the realm of human rights law-making, international law scholars examining the Israeli/Bedouin land dispute almost invariably refer to al-Araqib.[196] For example, in the introduction of *Bedouin (In)Justice: Human Rights Law and Bedouin Arabs in the Naqab/Negev,* Ahmad Amara and Ismael Abu-Saad begin with a description of the demolitions in al-Araqib, emphasizing the international attention garnered, and specifically from international media outlets, like *The New York Times*.[197] Indeed, al-Araqib can be drawn on to explain rights-based phenomena like adequate housing, the issue of forced displacement and eviction, and the right to culture.[198]

In this way, al-Araqib has become a focal point on the question of the status and rights of indigenous peoples under international human rights law. Mansour Nasasra, whose scholarship emerges from within the Bedouin, comments on al-Araqib extensively when he discusses indigenous peoples' land rights and he relies on the international definition of indigenous peoples (discussed in Chapter 4). In his article, "The Ongoing Judaisation of the Naqab and the Struggle for Recognising the Indigenous Rights of the Arab Bedouin People," Nasasra refers to al-Araqib over thirty times.[199] A central theme is that the village is a 'new and potent symbol of the ongoing struggle between Israel and the indigenous population,' which is shaped by 'peaceful resistance and people power.'[200] Noting the risk of isolating the village, Nasasra argues that al-Araqib must be seen as 'Bedouin *sumud* [steadfastness] on their land', which is an effective form of 'non-violent indigenous resistance.'[201] Nasasra goes some way to explain the role of al-Araqib, observing that '[t]hanks to the village of Al-Araqib, and to Bedouin advocacy and activism, for the first time since 1948 the Naqab Bedouin case reached the international community through extensive media coverage and advocacy.'[202]

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[196] Tawfiq S. Rangwala, "Inadequate Housing, Israel, and the Bedouin of the Negev," *Osgoode Hall Law Journal* 42 (2004): 415. Not unrelated to Rangwala's article on the question of adequate housing, Ahmad Amara introduces the topic of Bedouin land ownership and dispossession with a description of a home demolition in "The Negev Land Question: Between Denial and Recognition." See, Ahmad Amara, "The Negev Land Question: Between Denial and Recognition," *Journal of Palestine Studies* 42, no. 4 (August 1, 2013): 27.

[197] Ahmad Amara and Ismael Abu-Saad, "Introduction," in *Indigenous (In)Justice: Human Rights Law and Bedouin Arabs in the Naqab/Negev*, ed. Ahmad Amara, Ismael Abu-Saad, and Oren Yiftachel (Cambridge, MA: Harvard University Press, 2013), 1.

[198] Adequate housing; (2) limits on forced displacement and eviction; (3) rights to culture; (4) participation rights; and (5) rights to equal treatment. Amara, "The Naqab Bedouin and Colonialism," 232.

[199] Mansour Nasasra, "The Ongoing Judaisation of the Naqab and the Struggle for Recognising the Indigenous Rights of the Arab Bedouin People," *Settler Colonial Studies* 2, no. 1 (March 19, 2012): 81–107.

[200] Nasasra, 81.

[201] Nasasra, 82.

[202] Nasasra, 82.

Nasasra's article is also important because it hints at the complexities and contradictions inherent in al-Araqib's indigenous turn in international human rights law. While Nasasra's argument is that the Bedouin are indigenous to the Negev, he also describes al-Araqib villagers as internally displaced persons (IDPs), supported by statements made by al-Araqib villagers. In making this observation, Nasasra notes:

> Al-Araqib village […] epitomises the Bedouin narrative of living as Internally Displaced People (IDP) since 1948. The process of expelling Bedouin tribes into the *siyaj* included terrorising tribes into temporarily leaving their land with the promise that they could return a short time later. As an interviewee commented, 'we were evicted from our land through the warning of Israeli methods.'[203]

Internally displaced persons and indigenous peoples are treated differently under the 1993 Guiding Principles on Internal Displacement[204] and the 2007 UN Declaration on the Rights of Indigenous Peoples.[205] In the context of the Bedouin in the Negev, Nasasra and some domestic scholars[206] argue that the Bedouin are both internally-displaced following the transfer of the Bedouin to the *siyag* in 1951 and also indigenous to the Negev, which suggests an intersection of rights[207] and accounts for the fact that the majority of Bedouin are no longer living on their ancestral lands.[208]

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[203] Nasasra, 92.

[204] Internally Displaced Persons (IDPs) are: 'persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or in order to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border.' Principle 9 reads: 'States are under a particular obligation to protect against the displacement of *indigenous peoples*, minorities, peasants, pastoralists and other groups with a special dependency on and attachment to their lands.' UN ECOSOC Commission on Human Rights, "Guiding Principles on Internal Displacement," February 11, 1998.

[205] While the UN Declaration on the Rights of Indigenous Peoples does not explicitly mention internally-displaced persons, Article 10 states that, 'Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.'

[206] Alexandre (Sandy) Kedar, "Land Settlement in the Negev in International Law Perspective," *Adalah's Newsletter* 8 (December 2004), http://weblaw.haifa.ac.il/he/Faculty/Kedar/lecdb/landregime/29.pdf.

[207] On the intersection of indigenous peoples' rights and the rights of internally-displaced persons, literature is scant. See, Maria Stavropoulou, "Indigenous Peoples Displaced from Their Environment: Is There Adequate Protection?," *Colorado Journal of International Environmental Law and Policy* 5 (1994): 105; Michael Holley, "Recognizing the Rights of Indigenous People to Their Traditional Lands: A Case Study of an Internally-Displaced Community in Guatemala," *Berkeley Journal of International Law* 15 (1997): 119–57. See also, Doreen Lustig and Benedict Kingsbury, "Displacement and Relocation from Protected Areas: International Law Perspectives on Rights, Risks and Resistance," *Conservation and Society* 4, no. 3 (July 1, 2006): 404–18; Catherine Phuong, *The International Protection of Internally Displaced Persons* (Cambridge: Cambridge University Press, 2005). On the application of international human rights law and international humanitarian law, see for example Aeyal Gross, "Human Proportions: Are Human Rights the Emperor's New Clothes of the International Law of Occupation," *European Journal of International Law* 18, no. 1 (2007): 1–35.

[208] Joseph Schechla, "The Invisible People Come to Light: Israel's 'Internally Displaced' and the 'Unrecognized Villages,'" *Journal of Palestine Studies* 31, no. 1 (October 1, 2001): 20–31.

Legal relations between al-Araqib and the Israeli judiciary are symbolic of the domestic authority exercised by state institutions on its citizens and territories, and of a minority group's attempt to counteract domestic influence through the domestic courts. On the domestic level, legal scholars study the application of Israeli law in al-Araqib, which can bring Bedouin customary law into the discussion.[209] Examples of domestic law used for and against the Bedouin include the litigation between al-Araqib residents and the state over crop-spraying, village demolitions, and the land ownership dispute.[210] Significant for the purpose of this inquiry is that one of the claims included in the petition over the land dispute concerned the status and rights of al-Araqib villagers as indigenous peoples in international human rights law (discussed in Chapter 5).

3. The Role of Local Context in Global Moments of Indigeneity

This chapter reviewed the events and people involved in initiating a new way to talk about the Bedouin and the role of the Bedouin and their localities in making active the international status and rights of indigenous peoples. By de-centering the land question, critical light is cast on how two villages, and their inhabitants, have become an indigenous peoples under international conditions and have situated themselves squarely within the frameworks offered by international human rights law. While al-Sira was the first village to ask for international help, by calling on UN Special Rapporteurs, the snowball effect saw al-Araqib take over from where al-Sira began. It is important to stress that despite the judicial outcome in favor of al-Sira, the village residents (principally Alamour) have not abandoned but continue to engage with the international community. Indeed, the role of intermediaries and networks in relaying information between the Bedouin, civil society, international bodies, and scholars offers important insight into the interconnectedness of different realms of activity, and points to the merging of local and global contexts, discussed further below. While al-Araqib was less

[209] In her doctoral thesis, Noa Kram draws on the law, history, advocacy, and anthropology to examine the Bedouins' struggles for land rights based on their customary practices of land ownership. She also quotes the testimony of some of the villagers when describing the law, specifically in the court case. In the *Al-Uqbi* trial, a member of the al-Uqbi tribe described the cultivation of land in al-Araqib for instance. Setting aside the written proceedings, Kram analyzes the *Al-Uqbi v. the State of Israel,* which includes the opening statements, the court testimonies of Bedouin witnesses, expert opinions, and closing arguments. Kram, "Clashes over Recognition."

[210] The *Al-Uqbi* case concerned a land ownership dispute over the legality of a 1954 requisition of land in the unrecognized Bedouin village of al-Araqib under Israel's Land Acquisition (Validation of Acts and Compensation) Law 1953, see, Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others (March 15, 2012); CA 4220/12 Al-Uqbi and others v. The State of Israel and others (May 14, 2015).

successful than al-Sira in the domestic courts, the village has been internationalized in different realms of activity, representing and articulating the narrative of some 45 unrecognized villages in the Negev, and has become central to the work of nationwide CSOs, the UN, international human rights organizations, transnational indigenous peoples' organizations, and academic commentators.

The rights rhetoric often used to talk about al-Araqib is indigenous peoples' rights, and the indigenous undercurrent running through al-Araqib suggests that the Bedouin, or at least some of them, have appropriated the concept and category of indigenous peoples under international law conditions, if not yet by name. In this particular local context, the success of the indigenization process is illustrated not only by how the international penetrates the local but also by how the local manages to penetrate international settings and engage with international audiences that are beyond the frame of Israeli territory and legal order. Unlike the other actors described above, the Israeli courts demonstrate judicial resistance to the transplant of international human rights law. It is difficult to reconcile the opposing stance of civil society and the judicial position toward the application of international indigenous peoples' rights to the Bedouin, which hints at the schism that arises when the concept and category of indigenous peoples is reproduced and replicated in context.

Context draws our attention to the anomalies, hybridities, and frictions that ensue when the concept and category is re-made domestically and the quest for indigenous recognition becomes a local ambition. Against the deepening and thickening of the concept and category of indigenous peoples in al-Sira and al-Araqib, we do not have to go far to detect its shallowness and thinness in other Bedouin localities. Here, alternative frames of reference or activities are employed but they are normally tied to international human rights law, rather than indigenous peoples rights law; for example, Bedouin women's organizations employ the human rights framework of international women's rights in their work. If a local site like the unrecognized village of al-Araqib is *gradually* transforming into an indigenous village and other localities are not, then what does this tell us about the concept and category of indigenous peoples in the context of the Bedouin in Israel? Such questions and contexts reveal the power/authority of the production, accumulation, and circulation of the concept and category of indigenous peoples and unveil the promises and pitfalls of international human rights law in context.

Local context does not arise in a single moment, as a whole, untouched by outside influences. If indigenous is a new millennium phenomenon in the Israeli/Bedouin context, then what was written about the Bedouin before this international watershed? By looking back to the past, we can learn about the Bedouin in southern Israel and the twists and turns in the narrative of their becoming indigenous in the sphere of international human rights law and local context.

To see a world in a grain of sand

William Blake, *Fragments*

II. A Survey of Literature on the Bedouin: Knowledge before the Concept and Category of Indigenous Peoples Emerged in the Israeli/Bedouin Context

This chapter explores knowledge and writings about the Bedouin as they existed prior to these moments of global indigeneity since the turn of the new millennium, in order to understand how the Bedouin were researched and written into time and place by the external actors who influenced history, politics, and even popular fiction—as well as by themselves. This literature survey of the Bedouin in the Negev unveils an openness, old and new, about the individuals involved in claiming the Bedouin, as well as how and why they claim the Bedouin. Against the prevalent assumption that the Bedouin are an isolated population,[211] this review suggests that the Bedouin have always attracted people and, wittingly or not, have drawn the outside world in.

The first three sections examine European writings on the Bedouin. First, I present literature from the time when Europeans, white and mostly male, began to increasingly travel and explore the region from the 19th century, reconceiving and reproducing the 13th century Khaldunian image of the Bedouin as the pure Arab. Then, I consider the birth of Europe's "noble savage of the Holy Land" five centuries later.[212] Finally, I explore ethnographies of the Bedouin, starting in the 20th century with Aref el-Aref, the District Officer in the British administration, who wrote the first complete ethnography on the Bedouin in the Negev. At once a local and foreigner, el-Aref aspired to write like a European traveler and his amateur scholarship mimicked their works. His conflicting political allegiances, which underlie his work in the Mandate administration and his writings on the Bedouin, set him apart from his European role models. By contrast, the first three decades after the establishment of the new Israeli State saw

[211] On the isolation of the Bedouin, see Cédric Parizot, "Gaza, Beersheba, Dhahriyya: Another Approach to the Negev Bedouins in the Israeli-Palestinian Space," *Bulletin Du Centre de Recherche Français à Jérusalem*, no. 9 (October 15, 2001): 98, 104. See also, Donald Powell Cole, "Where Have the Bedouin Gone?," *Anthropological Quarterly* 76, no. 2 (2003): 237.

[212] Ibn Khaldûn, *The Muqaddimah: An Introduction to History*, ed. N.J. Dawood, trans. Franz Rosenthal, Princeton Classics (Princeton, NJ: Princeton University Press, 2015).

anthropologists study the Bedouin as if they were encased in a world constituted by endogenous traits of the Bedouin and excluding external factors and forces, especially politics. These anthropologies, or 'salvage ethnographies',[213] concentrated on the Bedouin as a cultural artefact or as the last relic of pure Arab tribes on the eve of modernity, effectively de-politicizing and historicizing the Bedouin in a specific time and place.

The fourth section examines the work of Bedouin scholars themselves, starting in the 1980s when Bedouin scholars in Israel began to research and write against the existing literature and continuing through the watershed moment when a handful of Bedouin scholars started to use the term *indigenous* to describe the Bedouin. Making a discrete entry point, which was largely glossed over at the time, this Bedouin-led intervention floated the term and laid the foundations for the international definition of the UN to gain a foothold in Bedouin areas in the Negev.

The fifth section presents the results of the incremental surge of critical studies that has opened new theories and methodologies with which to study the Bedouin. By the 1990s, relations between the Israeli government authorities (the state) and the Bedouin (a minority population) had polarized dramatically. Bedouin citizens of Israel had become politicized, and had started to challenge their marginalized status in Israeli society and resist plans to solve the land dispute through relocation to government-planned towns in the Negev. In parallel, critical studies emerged and challenged existing *status quo* knowledge. This scholarship by an eclectic group of Bedouin and critical scholars marks a shift in knowledge production: No longer treated as an isolated group or subgroup, new studies on the Bedouin show them to be representative of multiple phenomena that not only affect the Bedouin locally but also address domestic and regional issues in Israel and the Middle East.

In the final section, I focus the literature review beyond academic commentaries and scholarship. The first wave of Hebrew literature in Palestine was heavily influenced by Zionism, with topics centering around unique aspects of the Jewish experience, such as the Jewish past and Jewish pioneers. Tired from the 1948 War, the Sinai campaign, and ultimately the wars of 1967 and 1973, a new generation of Hebrew fiction writers from the 1950s and beyond voiced concern about Zionism and Israel's attitude toward its Arab neighbors and its

[213] James Clifford, "On Ethnographic Allegory," in *Writing Culture: The Poetics and Politics of Ethnography: A School of American Research Advanced Seminar*, ed. James Clifford and George E. Marcus (Berkeley, CA: University of California Press, 1986), 111–13.

Arab inhabitants. Portrayals of the Bedouin in this popular Israeli literature for a Hebrew readership indicate that the Bedouin remain an anomaly, quirk, or oddity of modernity on the one hand, and a threat to Israeli security and sovereignty on the other.

While this literature review critically interrogates the existing body of work on the Bedouin, the main purpose is to provide context for understanding how knowledge of the indigenous peoples' status and rights arose in the Israeli/Bedouin context. The writers surveyed here, whether travelers, formal academics, para-academics,[214] or popular fiction writers, each belong to a certain period of time, which contrasts to the territorial borders that were either invisible at the time or have remained unsettled. Nonetheless, this review stresses the connections between the actors, which are relational and not fixed to a certain time or place. All of these writers examined in this chapter wrote the Bedouin into texts, which remains the principal way to describe and understand the Bedouin today. Hence, the review of these written texts draws from different kinds of sources: primary sources, especially during the Ottoman and Mandatory periods, amount to precursors of knowledge on the Bedouin; secondary sources, namely academic texts, constitute the main source of knowledge on the Bedouin; and literary sources, old and new, mythicize the Bedouin so that stories connect the past legends about the Bedouin with their current predicament. A mismatch of sources has its shortcomings, but the benefit of multiple sources outweighs the costs, for they allow us to witness and comprehend how knowledge on the Bedouin changed over time.

1. First Encounters: Western Travelers (and Their Maps) Meet the Bedouin

The earliest existing literature accessible to the Western reader is ultimately about the West's first encounter with the Bedouin. Napoleon's invasion into Palestine and the Middle East at the end of the 18th century heightened the political significance of the region for Europe.[215] In

[214] Both formal and para-academics are involved in producing knowledge, but with different reasons, objectives, and methods in the knowledge production process. *Formal academics* are trained, usually at a university, to carry out research and produce knowledge according to the scientific standards of their discipline. By contrast, *para-academics* work at a think-thank or CSO, and produce material (both written and audio-visual) for a distinct purpose rather than for the sake of knowledge. Para-academic materials usually have a targeted audience, and the para-academic does not necessarily attach ownership to the material, which belongs to the think-thank or NGO, and therefore is not named as the author.

[215] Nathan Schur, *Napoleon in The Holy Land* (London: Greenhill Books, 2006); Eitan Bar-Yosef, *The Holy Land in English Culture 1799-1917: Palestine and the Question of Orientalism* (Oxford: New York: Clarendon Press, 2005); Dror Ze'evi, "Back to Napoleon? Thoughts on the Beginning of the Modern Era in the Middle East," *Mediterranean Historical Review* 19, no. 1 (June 1, 2004): 73–94; Leon Carl Brown, *International Politics and the Middle East: Old Rules, Dangerous Game* (Princeton, NJ: Princeton University Press, 1984).

particular, toward the end of the Ottoman era when the empire was falling apart,[216] European travelers and traders, romantic writers, and biblical scholars visited and wrote itineraries, reports, letters, and memoirs about Palestine, which also documented the Bedouin[217]—for a European readership.[218] Ottoman Palestine was made up of administrative units that covered southern Israel, parts of the Palestinian territories, and Jordan,[219] and in the 19th century, Europeans used the term Palestine interchangeably with Syria and the Holy Land. These writers wrote in abundance,[220] and the 19th century is known as the 'golden age of travel literature'[221] and 'discovery century *par excellence*',[222] with themes including religious/Christian,[223] scientific/research,[224] imperial,[225] and military/political.

Irrespective of their profession, each traveler had their own interests and agendas, whether religious, political, or economic, and these writings had major shortcomings.[226] Encounters

[216] Bar-Yosef, *The Holy Land in English Culture 1799-1917*, 62.
[217] Muhammad Suwaed, "The Image of the Bedouin in Travel Literature and Western Researchers Who Visited Palestine in the Nineteenth Century," *Digest of Middle East Studies* 25, no. 1 (March 1, 2016): 92.
[218] For a concise explanation as to how Europeans started travelling to this part of the world, see Maggy Hary, "The Holy Land in British eyes: sacred geography and the 'rediscovery' of Palestine, 1841-1917," *Cromohs - Cyber Review of Modern Historiography* 16, no. 0 (2011): 342.
[219] Only following the British Mandate did these units become one political unit with the Mediterranean Sea on the west, the Jordan River on the east, contemporary Lebanon to the north and the Sinai desert and the present Egyptian border on the south. After 1948, most of this area would become Israel, often referred to as *Eretz Yisrael*, with the West Bank under Jordanian control and Gaza controlled by the Egyptians. 1967 was the year when Israel captured the West Bank and Gaza but they remained under a separate administrative and legal regime.
[220] According to Reinhold Rohricht, in his *Bibliotheca Palaestine*, some 3,515 visitors, mostly from Western countries, had recorded their travels in Palestine in writing from 300AD to the end of 1877 (when he first started to arrange his bibliography). From 300 to 1799, the number of people writing on this subject slowly rose to 1,561 (that is, an average of one person per year), while during the first 80 years of the 19th century (from 1800 to 1877), nearly 2,000 Western travelers came to Palestine, recording their visits in numerous books and papers. Reinhold Rohricht, *Bibliotheca Palaestine* (Berlin: H. Reuther, 1890). See, Suwaed, "The Image of the Bedouin in Travel Literature and Western Researchers Who Visited Palestine in the Nineteenth Century," 92.
[221] Suwaed, "The Image of the Bedouin in Travel Literature and Western Researchers Who Visited Palestine in the Nineteenth Century," 92.
[222] Beshara B. Doumani, "Rediscovering Ottoman Palestine: Writing Palestinians into History," *Journal of Palestine Studies* 21, no. 2 (1992): 7.
[223] Hary, "The Holy Land in British eyes," 340–41.
[224] As well as the Palestine Exploration Fund (PEF), the Germans, Americans and Russians also established bodies to investigate Palestine.
[225] Suwaed, "The Image of the Bedouin in Travel Literature and Western Researchers Who Visited Palestine in the Nineteenth Century," 94–95. See also, Bar-Yosef, where he discusses the various travelers to the region. Bar-Yosef, *The Holy Land in English Culture 1799-1917*, 61–67.
[226] Ben-Arieh has written extensively on this period. Yehoshua Ben-Arieh and Moshe Davis, *Jerusalem in the Mind of the Western World, 1800-1948* (Westport, CT: Praeger, 1997); Yehoshua Ben-Arieh, "Nineteenth-Century Historical Geographies of the Holy Land," *Journal of Historical Geography* 15, no. 1 (January 1, 1989): 69–79; Yehoshua Ben-Arieh, *Painting the Holy Land in the Nineteenth Century*, ed. Yohia Goell, trans. Ziporah Brody and Ethel Broido (Jerusalem: New York: Yadlzhak-Ben-Zvi Publications, 1997); Yehoshua Ben-Arieh, "Pioneer Scientific Exploration in the Holy Land at the Beginning of the Nineteenth Century," *Terrae Incognitae* 4, no. 1 (January 1, 1972): 95–110; Yehoshua Ben-Arieh, *The Rediscovery of the Holy Land in the Nineteenth Century* (Jerusalem: Magnes Press, Hebrew University, 1979). See also, Bar-Yosef, *The Holy Land in English*

between Europeans and locals were often transient,[227] travel routes were selective, and the writers' key informants were mainly their guides, Arab or Bedouin villagers, whose accounts were often based on tradition, legend, and even imagination. There was a communication barrier, given the travelers' paucity in the local language. Furthermore, most travelers were keen on writing their travel experience into text, willing to make a major personal investment to join the 'endless textual procession',[228] which gave rise to 'an avalanche of travel books'.[229] It was common for these writers to borrow from each other, with passages being replicated from text to text. These travelers also arrived with inbuilt biases and attitudes, learned at school or read from books, which affected the manner in which they saw things and how they described them.[230]

Irrespective of the shortcomings, these accounts are the precursor of European (and later, Western) knowledge on the Bedouin in the Negev.[231] Initially, the Holy Land and holy sites were the main object of inquiry for Europeans.[232] Later travelers expanded to also analyze the geographic features and conditions of Palestine,[233] but most writers had little regard for the human geography of the country.[234] The religious and historical angles always prevailed,[235] and only belatedly did they write about 'the native population—the felahin and the Beduin—their life style and customs, their religion and so on'.[236] European perceptions, representations, and narrations of the Bedouin in 19th century Ottoman Palestine ranged from extremely positive to negative descriptions of the Bedouin 'terrorizing and sowing fear across the country'.[237] One of the main reasons for these different views can be traced to the tasks carried

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Culture 1799-1917, 68. Suwaed, "The Image of the Bedouin in Travel Literature and Western Researchers Who Visited Palestine in the Nineteenth Century," 93.

[227] For instance, Musil spent only one night in the Negev desert. Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others, para. 23.

[228] Bar-Yosef, *The Holy Land in English Culture 1799-1917*, 68–69.

[229] Eveline van der Steen, *Near Eastern Tribal Societies During the Nineteenth Century: Economy, Society and Politics Between Tent and Town* (Abingdon, Oxon: New York, NY: Routledge, 2014), 18.

[230] Ghazi Falah, "The Processes and Patterns of Sedentarization of the Galilee Bedouin 1880-1982" (Durham University, 1982), 25.

[231] On 'Intellectual Predecessors: East and West' see, Dale F. Eickelman, *The Middle East and Central Asia: An Anthropological Approach* (Upper Saddle River, NJ: Pearson, 2001), 22–42.

[232] On the Holy Land, see Bar-Yosef, *The Holy Land in English Culture 1799-1917*.

[233] Suwaed, "The Image of the Bedouin in Travel Literature and Western Researchers Who Visited Palestine in the Nineteenth Century," 92.

[234] Ben-Arieh, "Nineteenth-Century Historical Geographies of the Holy Land," 78.

[235] Ben-Arieh, 77. See also, Hary, "The Holy Land in British eyes," 344.

[236] Ben-Arieh, "Nineteenth-Century Historical Geographies of the Holy Land," 77.

[237] Suwaed, "The Image of the Bedouin in Travel Literature and Western Researchers Who Visited Palestine in the Nineteenth Century," 97–101.

out by the Bedouin on behalf of the traveler: the Bedouin were both the escort and travel guide, guardian of roads and desert, as well as the plunderer, pillager, and looter. In the eyes of the West the Bedouin were exotic.[238] Culturally and socially distinct, they symbolized unchanging, pristine remnants of a passing traditional society. The dominant image at the time was that of the bucolic Bedouin, which resonates with the noble savage of the region.[239] Moreover, the Holy Land was deemed a *terra sancta,*[240] or a sacred geography,[241] which gave rise to religious perceptions, narrations, and representations of the Bedouin as biblical shepherds following an honorable and pure life.[242] With the Bible as a handbook and map,[243] writers employed the Bedouin instrumentally in the rediscovery of Christianity in the Holy Land[244] and compared the Bedouin to the Patriarchs of the Old Testament.[245]

The Bedouin as 'the Other' forms part of the Orientalizing gaze of the traveling European, focused on finding his own identity in a foreign land.[246] The Bedouin belonged to an Oriental space, characterized as the 'changeless East,' where the 'natives [not only Bedouin] functioned as a living museum.'[247] Eickelman points out how 'the fascination with the Muslim world merged, at least in Britain, with the romantic notion of the pure Bedouin nomad as a primitive contemporary with the virtues of a Victorian gentleman.'[248] Unsurprisingly, the figure of the Bedouin often dominated these Orientalist representations of the Muslim-populated world in the 19th century.[249] Moreover, and still pertinent in today's discussions of the status and rights of the Bedouin as an indigenous peoples, the Bedouin in Ottoman Palestine underwent idealization and stereotyping and were portrayed as wanderers or desert nomads.[250] Bar-Yosef

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[238] Cole, "Where Have the Bedouin Gone?," 235.
[239] Bar-Yosef refers to the 18th century English historian Edward Gibbon's book *The History of the Decline and Fall of the Roman Empire*, and the role the book, particularly chapter 50, played in the perpetuation of the myth of the noble savage. Bar-Yosef, *The Holy Land in English Culture 1799-1917*, 84. See also, Rune Graulund, "From (B)Edouin to (A)Borigine: The Myth of the Desert Noble Savage," *History of the Human Sciences* 22, no. 1 (February 1, 2009): 79–104.
[240] Hary, "The Holy Land in British eyes," 343.
[241] Hary, 340, 349.
[242] Islam, which was seen to the broader Ottoman landscape, was downplayed, ignored and portrayed in an often derogatory way. See, Hary, 344.
[243] Bar-Yosef, *The Holy Land in English Culture 1799-1917*, 62.
[244] Jacob Norris, *Land of Progress: Palestine in the Age of Colonial Development, 1905-1948* (Oxford: Oxford University Press, 2013), 141.
[245] Hary, "The Holy Land in British eyes," 343.
[246] Hary, 343.
[247] Bar-Yosef, *The Holy Land in English Culture 1799-1917*, 83.
[248] Eickelman, *The Middle East and Central Asia*, 26.
[249] On secular academic Orientalism, and vernacular Orientalism, see Bar-Yosef, *The Holy Land in English Culture 1799-1917*, 12.
[250] On the question of invisibility, emptiness, and erasure of people and lands in historic Palestine, see Doumani, "Rediscovering Ottoman Palestine." See also, Hary, "The Holy Land in British eyes," 340. See, also Bar-Yosef,

argues that emptying the land of inhabitants with the exception of a few wandering, nomadic Bedouin tribes constituted a large part of European cultural designs,[251] which would later see the land 'rescued' from emptiness and neglect.

Of interest to this study, three Europeans wrote about the Bedouin across the region in some detail. Swiss explorer Johann Ludwig Burckhardt (1784–1817) was trained as an Arab linguist at Cambridge University and travelled extensively in Jordan, Syria, Lebanon, Palestine, Egypt, and the Arabian Peninsula, eventually adopting the Arab personality 'Shaykh Ibrahim'.[252] As his explorations were the first by a European in the Levant,[253] Burckhardt had a profound influence on those who followed him east and was a major source of information about the Bedouin for 19th-century travel writers.[254] As noted, 'Burckhardt's writings were influential in promoting the myth of the noble Bedouin Arab'.[255] In his seminal work *Notes on the Bedouin and the Wahabys*, published posthumously in 1831, Burckhardt describes the different Bedouin tribes, focusing on the Aeneze tribe in the desert of El Hammad on the frontiers of Syria[256] as the best embodiment of Bedouin ideas of freedom, autonomy, and independence:[257]

> The following sketches related exclusively to the Aenezes; these are the only true Bedouin nations of Syria while other Arab tribes in the neighbourhood of this country have, more or less, degenerated in manners; several being reduced to subjection, while

The Holy Land in English Culture 1799-1917, 56, 82. In particular, Bar-Yosef refers to how 'Beshara Doumani has traced three ways in which native Palestinians were erased from the nineteenth-century Orientalist discourse. First, he points to the fabrication of a historical chronology which emphasized, almost exclusively, the biblical and Crusaders periods; the intervening and following centuries, characterized by Muslim rule, were largely ignored. Secondly, the preponderant number of works about Jerusalem made the history of the city synonymous with the history of Palestine as a whole, even though Jerusalem was hardly a typical Palestinian city.' Bar-Yosef, 83.

[251] Hary, "The Holy Land in British eyes," 340. Doumani also points out that 'emptiness' had less to do with a physical absence but rather concerned 'the absence of "civilized" people, in the same sense that the Americas and Africa were portrayed as virgin territories ready for waves of pioneers.' Doumani, "Rediscovering Ottoman Palestine," 8.

[252] Employed by the British exploration group the African Association, Burckhardt represented the academic-oriented methods of Eastern discovery that seized Westerners in the 19th century. For instance, Petra had disappeared from Western consciousness for over millennium until Burckhardt brought it back into "history" by "discovering" it in 1812. Jacob Rama Berman, *American Arabesque: Arabs and Islam in the Nineteenth Century Imaginary* (New York, NY: NYU Press, 2012), 78. See also, van der Steen, *Near Eastern Tribal Societies During the Nineteenth Century*, 23–24.

[253] van der Steen, *Near Eastern Tribal Societies During the Nineteenth Century*, xii.

[254] Berman, *American Arabesque*, 78.

[255] Geoffrey P. Nash, ed., *Travellers to the Middle East from Burckhardt to Thesiger: An Anthology* (London: Anthem Press, 2011), 46. Aref Abu-Rabia maintains that 'Although they [the remaining Bedouin in the Negev after 1948] come close to the 'ideal type' Bedouin, they are a far cry from the North Arabian nomads so well described by Burckhardt [in *Notes on the Bedouins and Wahdbys*].' Aref Abu-Rabia, *Bedouin Century: Education and Development Among the Negev Tribes in the 20th Century* (New York: Berghahn Books, 2001), 3.

[256] Touvia Ashkenazi, "Social and Historical Problems of the 'Anazeh Tribes," *Journal of the Economic and Social History of the Orient* 8, no. 1 (1965): 93–100.

[257] Berman, *American Arabesque*, 79.

> the free-born Aeneze is till governed by the same laws that spread over the Desert at the beginning of the time of the Mohammedan era.[258]

Burckhardt's observation about 'the free-born Anaze [...] governed by the same laws [...] of the Mohammedan era' suggests that this ideal is in decline.[259] His descriptions of other tribes contain more negative descriptors:

> In the valley of Wale (south of Madaba) a large party of Arabs Sherarat was encamped, Bedouins of the Arabian desert, who resort hither in summer for pasturage. They are a tribe of upwards of five thousand tents; but not having been able to possess themselves of a district fertile in pasturage, […] *they wander about in misery*, have very few horses, and are not able to feed any flocks of sheep or goats. […] They are obliged to content themselves with encamping on spots where the Beni Szakher and the Aeneze, with whom they always endeavour to live at peace, do not choose to pasture their cattle. The only wealth of the Sherarat consists in camels. *Their tents are very miserable; both men and women go almost naked,* the former being only covered round the waist, and the women wearing nothing but a loose shirt hanging in rags about them. *These Arabs are much leaner than the Aeneze, and of a browner complexion. They have the reputation of being very sly and enterprising thieves, a title by which they think themselves greatly honoured.*[260]

Burckhardt defines the Bedouin by his spatial context: the desert.[261] He praises their abilities in this terrain:

> Many secret transactions are brought to light by this knowledge of *Athr* [a method of tracking by which skilled Bedouin trackers read impressions in the sand] […] The Bedouin can scarcely hope to escape detection in any clandestine proceeding, as his passage is recorded upon the road in characters that every one of his Arabian neighbours can read.[262]

His descriptions of Bedouin institutions and customs, however uncivilized they might have seemed to the general Westerner of his era, indicate that they were perfectly adapted to their life in the desert, nonetheless evoking the idea of the noble savage.[263]

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[258] Johann Ludwig Burckhardt, *Notes on the Bedouins and Wahabys, Collected During His Travels in the East*, vol. 1 (London: H. Colburn and R. Bentley, 1831), 32.
[259] van der Steen, *Near Eastern Tribal Societies During the Nineteenth Century*, 23.
[260] Johann Ludwig Burckhardt, *Travels in Syria and the Holy Land* (London: John Murray, 1822), 371.
[261] Berman, *American Arabesque*, 78.
[262] Burckhardt, *Notes on the Bedouins and Wahabys, Collected During His Travels in the East*, 1:377.
[263] Buckhardt's *Notes* is very much an 18th-century methodological study: tribes are classified geographically and according to their place in the social and political system. This classification is followed by accounts of tents and furnishings; dress, arms and diet of the Arabs; arts and industry; sciences, music, and poetry; and finally, warfare and government, and animals and plants. The second part of the book describes the Wahabi war in Arabia, and remains the best available description of the Bedouin's involvement in the war. See, van der Steen, *Near Eastern Tribal Societies During the Nineteenth Century*, 23.

Alois Musil (1868–1944), an Austro-Czech theologian, researcher, and Orientalist, also stands out owing to his work on the Rawala Bedouin tribe while visiting the Arabian Peninsula and Palestine, including the Negev, at the beginning of the 20th century.[264] His interests, however, were scholarly rather than pastoral or ecclesiastical, marked by his 'strong desire to study the geographic and ethnographic background of Biblical history, combined with a hardy spirit of adventure, led him to Palestine in 1895, where he became associated first with a Dominican, and later with a Jesuit, organization'.[265] While studying at the Dominican École biblique et archéologique française de Jérusalem (commonly known as École biblique) in Jerusalem, he became fascinated by the local population, especially their manners and customs.

His three volumes on Palestine and Jordan, *Arabia Petraea*, provide detailed descriptions of nature, topography, and the manners and customs of the local people. Musil made numerous journeys into the desert and was the celebrated discoverer of Qasr Amra, an impressive desert castle with luscious wall frescoes. He stayed with the Rwala for a long period (acquiring the name 'Musa al-Rawali') under the protection of Nouri Ben Shalan, the tribe's leader[266], travelling and camping with the tribe for several months in 1908-09. Musil considered the Rwala to be one of the greatest tribes of the 'Anaze confederation' who, according to him, are 'recognized by all their neighbors as the only true Bedouin tribe of northern Arabia'.[267] In *The Manners and Customs of the Rwala Bedouin*, Musil provided a technical description of the manners, customs, and lore of the Rwala Bedouin. He also collected poetry and took numerous photos during his excursions with the Rwala.[268] Most of the poems quoted by Musil are Rwala poems, but he collected many other poems, using them extensively as illustrations of life in the desert. During World War I, Musil was involved in diplomatic negotiations with the Arabian tribes on the German-Ottoman side. According to his own account, he encouraged an alliance between the Shammar tribes and Ibn Sha'lan.[269] Musil differed from most of his British

[264] Suwaed provides a brief bibliography of Musil, who published his studies in a series of books in the German language that were later translated into English. Suwaed, "The Image of the Bedouin in Travel Literature and Western Researchers Who Visited Palestine in the Nineteenth Century," 92.
[265] American Geographical Society Stable, "Obituary: Alois Musil," *Geographical Review* 36, no. 4 (October 1946): 686.
[266] George Sarton, "The Manners and Customs of the Rwala Bedouins by Alois Musil; J. K. Wright," *Isis: A Journal of the History of Science* 14, no. 2 (October 1, 1930): 444–46.
[267] Alois Musil, *The Manners and Customs of the Rwala Bedouins* (New York, NY: American Geographic Society, 1928), Preface.
[268] Musil was one of the first anthropologists to extensively use photography as a tool. van der Steen, *Near Eastern Tribal Societies During the Nineteenth Century*, 35.
[269] Alois Musil, *Northern Neğd: A Topographical Itinerary* (New York, NY: American Geographical Society, 1928). See also, van der Steen, *Near Eastern Tribal Societies During the Nineteenth Century*, 35.

contemporaries in one significant way; his views were anti-colonial and, similar to T.E. Lawrence (1888–1935), Musil saw Arab independence as a desirable and realistic goal.[270]

While Colonel Claude Reignier Conder (1848–1910) is generally a lesser known writer,[271] his work is illuminating for this study for several reasons.[272] Firstly, Conder was one of the few Europeans to travel to Palestine extensively in a professional and semi-professional capacity. Secondly, his works belong to the few primary sources that capture the perceptions, narrations, and representations of the Bedouin at the time. Notably, Conder's maps and writings maintain their authority and have resurfaced repeatedly in contemporary literature and case law. Educated at the University College London, the Royal Military Academy in Woolwich, and the School of Military Engineering at Chatham, Conder was a British soldier, explorer, and antiquarian, who at the age of 24 spent several years surveying and mapping for the Palestine Exploration Fund (PEF),[273] which is considered a pseudo-academic society.[274] Given his aptitude for surveying and archaeology, Conder belonged to the academic elite, 'who were not amateurs […] but skilled scholars and explorers, honorary dons in the "invisible college" who were involved in a systematic study of Palestine's geography and history.'[275] He was appointed commander of the Survey of Western Palestine in June 1872, responsible for surveying and mapping the area west of the River Jordan, where he directed a party of four European and six locally hired helpers.[276] The result of this survey work begun by Conder from July 1872 to

[270] van der Steen, *Near Eastern Tribal Societies During the Nineteenth Century*, 35.
[271] David Jacobson and Felicity Cobbing, "A Record of Discovery and Adventure: Claude Reignier Conder's Contributions to the Exploration of Palestine," *Near Eastern Archaeology* 68, no. 4 (December 2005): 166.
[272] Moscrop, in his chapter on the Western Survey, provides background information on Conder and his work. John James Moscrop, *Measuring Jerusalem: The Palestine Exploration Fund and British Interests in the Holy Land* (London: Leicester University Press, 2000), 95–128.
[273] For a historical account of the PEF between the 19th century and Allenby's entering Jerusalem, see Eitan Bar-Yosef, *The Holy Land in English Culture 1799-1917: Palestine and the Question of Orientalism* (Oxford: New York: Clarendon Press, 2005), 175, 196–97. The PEF collaborated with the War Office: cartographical work carried out by PEF took into account the British government's recognition of Palestine's importance in the 1860s, which would transform into direct control following WWI. Arguably, the maps produced helped the British conquer Palestine in 1917. See, Bar-Yosef, *The Holy Land in English Culture 1799-1917*, 175, 196–97. See also Hary, "The Holy Land in British eyes," 347. For a concise account of surveying activities during the 19th century, see Haim Goren, "Sacred, but Not Surveyed: Nineteenth-century Surveys of Palestine," *Imago Mundi* 54, no. 1 (January 1, 2002): 87–110.
[274] Bar-Yosef describes this organization as 'Orientalism in action'. See, Bar-Yosef, *The Holy Land in English Culture 1799-1917*, 7. On the PEF as a 'pseudo-academic society', see, Bar-Yosef, 72. On the dual religious/mapping function of the PEF, see Bar-Yosef, 167.
[275] The 'invisible college', Bar Yosef borrows from Philippa Levine. Bar-Yosef, *The Holy Land in English Culture 1799-1917*, 165.
[276] Conder's party continued their survey work until an attack on their camp at Safed. Both officers and several other members of the party were seriously injured, and the work of the Survey was suspended until Ottoman authorities dealt with the ringleaders of the assault. Conder remained in Palestine during this period and then

October 1875 and completed in 1877 under Kitchener, was a 26-sheet map that was reproduced by photo-zincography at the Ordnance Survey Office in Southampton and published at a scale of one inch to one mile in London in 1880.[277] Written memoirs accompanied the map.

During and after his time at the PEF, Conder wrote prolifically.[278] He regularly contributed to the *PEF Quarterly Statement*, (later known as the *Palestine Exploration Quarterly)*, detailing the survey work and providing background information on interactions with local populations, including interactions with the Bedouin. Once his work in Palestine ended in 1882, he remained on the PEF's Executive Committee until his death in 1910. Having studied the geography, history, and archaeology of the country, Conder authored several publications and memoirs, including *Tent Work Volumes I and II* (1878), which was a popular success in Britain. Along with Kitchener, he co-authored a three-volume series titled *The Survey of Western Palestine*. Later, he wrote a book titled simply, *Palestine*.[279] Conder felt compelled to write because '[t]he map, however, is but a part of the material collected, and the map without a memoir would be a sealed book [a flat or incomplete picture].'[280]

By contemporary standards, Conder's writings can be viewed in a favorable light because rather than give his opinions directly on the map itself (as most of his peers and predecessors had done), he included them in the memoirs, separately. Thus, Conder's survey map provides 'evidence for ancient sites as well as for 19th-century development, without the fear of being given false evidence.'[281] Nonetheless, Conder's writings were subject to the weaknesses described above. Although he planned to document a perfect geography and history by employing exhaustive methods,[282] his primary commitment was to gather material to illustrate the Bible. Indeed, his descriptions of landscapes, topology, and monuments can be seen as evidence to corroborate and authenticate the Bible. From that perspective, Conder set about

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returned to England, bringing the maps and information which had been collected. On the attack at Safed, see PEF, "Attack at Safed," Quarterly Statement (London, January 1875).

[277] I. W. J. Hopkins, "Nineteenth-Century Maps of Palestine: Dual-Purpose Historical Evidence," *Imago Mundi* 22 (1968): 32–34.

[278] Jacobson and Cobbing, "A Record of Discovery and Adventure," 166.

[279] Other works of Conder include: C.R. Conder, *Altaic Hieroglyphs and Hittite Inscriptions* (London: Richard Bentley, 1887); C. R. Conder, *Syrian Stone-Lore or, The Monumental History of Palestine* (New York: Scribner and Welford, 1887).

[280] C.R. Conder and Palestine Exploration Fund, *Tent Work in Palestine: A Record of Discovery and Adventure*, vol. 1 (London: Bentley, 1879), xvii. See also, Keith W. Whitelam, "The Land and the Book: Biblical Studies and Imaginative Geographies of Palestine," *Postscripts: The Journal of Sacred Texts and Contemporary Worlds* 4, no. 1 (2010): 76–79.

[281] Hopkins, "Nineteenth-Century Maps of Palestine," 36.

[282] C.R. Conder, *Palestine* (New York: Dodd, Mead, 1889), 11.

writing the first historical record of Palestine, specifically of the country and the population, which was largely based on the Bible and religious scriptures.[283] His survey and mapping exercises served to 'explain many a dim and misty page in the history of the Palestine of old.'[284]

Conder's writings show a preoccupation with the local population, who he described as 'the ancient indigenous population of the Holy Land,'[285] which sets him apart from his peers, the majority of whom tended to ignore the local population, or human geography.[286] Conder was deeply committed to recording the local population because for him they were 'in the last years of […] truly Oriental condition, with a peasantry as yet hardly quite tamed by the Turk, and regions as yet hardly traversed by the European Explorer.'[287] Nowhere was the absence of European knowledge on the local population more evident than in the southern part of the country, where the Bedouin were concentrated.[288] In March 1875, Conder met the Jahalin Bedouin,[289] which the 1875 survey work numbered at '150 men' and '100 tents'.[290] Describing the encounter, Conder introduces the reader to the land south of Ein Gedi, close to Masada. He mentions that local sources believed the area to belong to the Jahalin tribe, Dhullam Arabs had recently driven the Jahalin tribe off their lands, and a war was happening some three hours from the team's camp at Beit Jibrin. Conder was particularly preoccupied with Sheikh Abu Dahuk, the size and strength of the horses, and the Bedouin's fondness for tobacco. The summary of the meeting between Conder and the Jahlin Bedouin betrays the language Conder used to describe the Bedouin:

> The Jahalin, whose name means 'those ignorant of the Moslem faith,' are a *wild* and *degraded* tribe, the poorer being almost *naked*, while the chiefs have an *evil* name. I went into this desert without either guide or interpreter, and the party depended throughout on such knowledge of Arabic as I possessed in communicating with natives. I was not then aware how exact are the border divisions between nomadic tribes, and

[283] Conder and Palestine Exploration Fund, *Tent Work in Palestine*, 1879, 1: xxi.
[284] PEF, "The Arabs in Palestine," Quarterly Statement (London, January 1875), 199, https://biblicalstudies.org.uk/pdf/pefqs/1875_04_199.pdf.
[285] Conder and Palestine Exploration Fund, *Tent Work in Palestine*, 1879, 1: xxii.
[286] Instead, other European writers on the geography of Palestine tended to focus on historical-archaeological sites, ancient ruins, and monuments, with maps, charts, and illustrations; details of the natural landscape, topography, with important details concerning villages and towns; and hydrology and descriptions of roads. Ben-Arieh, "Nineteenth-Century Historical Geographies of the Holy Land," 76–77.
[287] Conder, *Palestine*, 11.
[288] On the absence of knowledge about the Bedouin, see Doumani, "Rediscovering Ottoman Palestine," 6.
[289] C. R. Conder, "The Survey of Palestine: Reports XXXII: The Survey of the Dead Sea Desert; XXXIII: The Shephalah and Plain of Judah, Beit Jibrin, Gath, Adullam, and Libnah; XXXIV: Ascalon, Ashdod; XXXV: Gaza, Gerar, and Makkedah," Palestine Exploration Fund Quarterly Statement (London: Palestine Exploration Fund, July 1875), 132, https://biblicalstudies.org.uk/pdf/pefqs/1875-03_125.pdf.
[290] Tyrwhitt Drake, "Mr Tyrwhitt Drake's Report XIX" (Jerusalem, May 1874), 28, https://biblicalstudies.org.uk/pdf/pefqs/1875-01_027.pdf.

> was surprised to find the Taamireh chief one day very unwilling to follow me. As we returned home the reason became evident. We had crossed the boundary valley into Jahalin country, and a number of *wild half-clad figures* sprang up from behind the rocks on the hillside armed with ancient matchlocks. The Sheikh's influence was enough to prevent their robbing me, but they guarded us for some distance to the border valley, only asking how soon I was going to cover the land with vineyards. They believe that the Franks control the rain, and that they once grew vines in the desert. It is perhaps a dim memory of the days when the Crusaders had sugar-mills at Engedi [Ein Gedi], on the shores of the Dead Sea, as mentioned in the chronicles of the twelfth century, of which mills the ruins are still to be seen.
>
> […] At Engedi the Taamireh left us, and a few days later I rode with my scribe to the camp of the Jahalin, where we sat down and made ourselves guests of the chief. The Arabs were at first surly, but soon came to see that money was to be earned, and finally asked us to recommend their country to tourists. To those who choose to venture into this wild corner, there is an attraction in the wonderful fortress of Masada, on the shores of the Dead Sea, one of the most remarkable places in Palestine, and one which has been little visited.[291]

While Conder may have been a keen observer of the human geography of Ottoman Palestine, this passage demonstrates him as also being harsh and dismissive of the local people.[292]

In *Tent Work Volume II*, Conder devoted an entire chapter to the 'Bedawin' and two separate chapters to the 'Fellahin' (peasants) and to 'Jews, Russians, and Germans', who form part of his fascination with the region's people and their lifestyles and customs.[293] For Conder, the Bedouin were different, segregated and isolated, which was reflected in giving them a separate chapter. Nonetheless, he relates the Bedouin to other populations, namely the *fellahin* and the Jews. Hostility characterizes relations between the Bedouin and the *fellahin* while Jewish/Bedouin relations are comparatively amicable, which suggests that the latter distinction only manifested after the late 19th and early 20th centuries. As an aside, Conder stresses the "docility" of the peasants, who could be worked hard, suggesting that they needed 'European guidance to cultivate their country properly.'[294] From Conder's point of view, the Jews were the most suited to 'direct' the Arab peasants[295]—reflecting how, in the imperial scheme, Jews amounted to 'the medium of European values' to be instrumentalized in order to make Palestine

[291] Conder, *Palestine*, 17.
[292] Jacobson and Cobbing, "A Record of Discovery and Adventure," 166.
[293] C.R. Conder and Palestine Exploration Fund, *Tent Work in Palestine: A Record of Discovery and Adventure*, vol. 2 (London: Richard Bentley, 1879), 204–315.
[294] Hary, "The Holy Land in British eyes," 347.
[295] C.R. Conder, "The Present Condition of Palestine," *Palestine Exploration Quarterly* 11, no. 1 (January 1, 1879): 7–8.

blossom again.[296]

To conclude, it is important to note that Conder's maps and writings are as significant today as they were in the 19th century, and his texts are the first pages of the official record of a Bedouin history in the region. In particular, these historical texts are heavily relied on to piece together the Bedouin's past and historical continuity, or lack thereof, in the region. Scholars often refer to Conder; for example, citing his description of the conflict between the Bedouin and the settled population that lasted until the British Mandate.[297] Although his sources lend themselves to be read from a critical vantage point, as discussed briefly here, it is also worth emphasizing that some scholars deem the maps and writing produced by Conder and the PEF to be wholly accurate and reliable.[298]

If Conder's writings are the precursor of European academic or scientific knowledge, then his maps are also the precursors of state maps and territorial borders. Elsewhere, scholars praise Conder's survey and maps for their detail and systemization.[299] These maps have been described as 'invaluable documentary evidence' that provide 'dual purpose historical evidence, i.e. for both the times in which they were produced and for the Biblical and Classical eras.'[300] Conder's maps are the precursors of maps of the State of Israel, and arguably of alternative maps like the NCF map (the map of unrecognized villages described in Chapter 1). His maps and writing have also offered evidential proof in case law (e.g., in the *al-Uqbi* case discussed in Chapter 5);[301] in this way, Conder, a foreigner to the region, is held as an official mouthpiece of Bedouin history, whose maps and writing speak with an authority and accuracy that are

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[296] Hary, "The Holy Land in British eyes," 348.
[297] For example, Havatzelet Yahel, Ruth Kark, and Seth J. Frantzman, "Are the Negev Bedouin an Indigenous People? Fabricating Palestinian History," *Middle East Quarterly* 19, no. 3 (summer 2012): 10, 12.
[298] Ruth Kark and Noam Levin, "The Environment in Palestine in the Late Ottoman Period, 1798–1918," in *Between Ruin and Restoration An Environmental History of Israel*, ed. Daniel Orenstein, Tal Alon, and Char Miller (Pittsburgh: University Press of Pittsburgh, 2013), 5. See also, Frantzman, in a review essay of *Bedouin (In)Justice*, defends the reliability of these sources against the contention that they were not. Seth J. Frantzman, "The Politization of History and the Negev Bedouin Land Claims: A Review Essay on Indigenous (In)Justice," *Israel Studies* 19, no. 1 (December 11, 2013): 56.
[299] Seth J. Frantzman and Ruth Kark, "The Use of Maps to Examine the History and Growth of Rural Arab Settlement in Palestine 1871-1948" (The 25th International Cartographic Conference and the 15th General Assembly of International Cartographic Association, Paris, 2011), 2, http://icaci.org/files/documents/ICC_proceedings/ICC2011/.
[300] Hopkins, "Nineteenth-Century Maps of Palestine," 30.
[301] According to geographer and environmental development scholar Avinoam Meir, 'In 2005 (*Al Makhdi vs. The State of Israel*, Civil Appeal, 4037/05) the State used *mawat*-based arguments and relied exclusively on historical evidence, including Conder's memoirs.' Avinoam Meir, "Contemporary State Discourse and Historical Pastoral Spatiality: Contradictions in the Land Conflict between the Israeli Bedouin and the State," *Ethnic and Racial Studies* 32, no. 5 (2009): 127.

material to legal proceedings before the courts. The judiciary pays scant attention to disputes over sites included on the map,[302] accusations of misidentification,[303] and the PEF's endeavor to get around these shortcomings.[304] During and after his lifetime, some of Conder's work was known to be erroneous;[305] however, it was eclipsed by his success of studying a material culture about which little had been previously known.[306] Through Conder, against a European backdrop, an uneven and possibly erroneous history of the Bedouin past begins.[307]

2. The Mandate's Bureaucrat Scholars and the Bedouin

If European writers of the Ottoman times were preoccupied with the question of *how do the Bedouin live,*[308] then later writers starting with British Mandate administration were concerned with *how to rule the Bedouin*.[309] An expanded role for research during the British Mandatory period also saw science beginning to play a key role, giving rise to the phenomenon of the bureaucrat scholar. In parallel, further attempts were made to map and survey the Bedouin community using new mapping and aerial techniques. Nonetheless, these surveys fell short of the southern part of Mandate Palestine, a territorial unit bordered by the Mediterranean Sea, the Jordan River, contemporary Lebanon and the Sinai desert, and the present Egyptian border.[310] Therefore, Be'er Sheva city and the surrounding areas were left unsurveyed and unmapped.

Despite the shift to a ruling approach, European—and now, Westernized Arab and Jewish writers—continued to give short shrift to exogenous factors, especially Bedouin political economy, focusing instead on the endogenous traits of the Bedouin, particularly their cultural practices.[311] Writers of the Mandate period described the Bedouin 'as special, their social

[302] Hopkins, "Nineteenth-Century Maps of Palestine," 30.
[303] Cited in Jacobson and Cobbing, "A Record of Discovery and Adventure," 174.
[304] Jacobson and Cobbing, 177.
[305] In his handling of Arabic folklore, he is mistakenly traces the genealogy back to Persian and Aryan sources. Harry T. Norris, "Western Travellers and Arab Story-Tellers of the Nineteenth Century: The Adventures of Abū Zayd Al-Hilālī and Al-Zīr Sālim as Told by Shaykh Abū Wundī of the 'Awāzim of Jordan," *Quaderni Di Studi Arabi* 9 (1991): 189.
[306] Jacobson and Cobbing, "A Record of Discovery and Adventure," 177.
[307] Ghazi Falah, "The Evolution of Semi-Nomadism in Non-Desert Environment: The Case of Galilee in the 19th Century," *GeoJournal* 21, no. 4 (August 1, 1990): 397.
[308] Ratcliffe et al., "The Naqab Bedouin and Colonialism," 9.
[309] Ratcliffe et al., 9.
[310] Ron Harris et al., eds., "Israeli Legal History: Past and Present," in *The History of Law in a Multicultural Society: Israel, 1917–1967*, Law & Society Histories Series (Aldershot: Ashgate Publishing, 2002), 1.
[311] Ratcliffe et al., "The Naqab Bedouin and Colonialism," 9.

affairs following the autonomous logic of distinctively Bedouin or "nomadic" culture, romanticized around values of honor and tribal *asabiya* [solidarity].'[312] Furthermore, early Zionist writers such as Eliezer Ben Yehuda wrote about the Bedouin in pure and prelapsarian terms, viewing them as the cultural and possibly biological descendants of the first Israelis.[313]

Abdul Latif Tibawi (1910–1981), a Palestinian historian and educationalist, was one such bureaucrat scholar in the Mandate's administration.[314] The son of Muhammed and Turfa Tibawi, born in Taiyibatu near TulKarem in the West Bank, he attended village school and TulKarem high school. After graduating from the Arab College in Jerusalem, Tibawi received his Bachelor's in history and Arabic literature from the American University of Beirut and a Master's from University of London. When he returned to Palestine, he taught history in Ramla before becoming personal assistant to Humphrey Bowman, the Director of Education in the Mandatory administration, from 1931 to 1941. He was then promoted to district inspector in Lydda and Gaza districts. Tibawi eventually left Palestine to live and teach abroad: after earning his PhD, he held positions in both Harvard University and London University, where he was appointed Lecturer in Comparative Education and taught until his retirement in 1977. Tibawi researched and wrote on many Middle Eastern topics, including Arabic and Islamic themes, which were translated into several languages, and authored several books and articles on 'Orientalist' histiography.[315] While the Bedouin were not his main focus, Tibawi did touch on the boys' boarding school in Be'er Sheva in his scholarship on the Arab education system in Mandate Palestine.[316]

Another bureaucrat scholar is particularly relevant for this study. Aref el-Aref (1892–1973) governed and wrote about the Bedouin and would elicit kudos for his contribution on Bedouin

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[312] Ratcliffe et al., 9.
[313] Oz Almog, *The Sabra: The Creation of the New Jew*, trans. Haim Watzman (Berkeley, CA: University of California Press, 2000), 185-187. On the 'Hebrew Bedouin' see, Lital Levy, *Poetic Trespass: Writing between Hebrew and Arabic in Israel/Palestine* (Princeton, NJ: Princeton University Press, 2014), 21–59.
[314] Abdul Latif Tibawi, *Anglo-Arab Relations and the Question of Palestine, 1914-21*, 2nd revised edition (London: Luzac Publishing, 1978); Abdul Latif Tibawi, *British Interests in Palestine 1800 - 1901* (London: Oxford University Press, 1961); Abdul Latif Tibawi, *Arab Education in Mandatory Palestine* (London: Luzac Publishing, 1956); Abdul Latif Tibawi, *Western Technology and The Arab World*, vol. 293 (London: Quarterly Review, 1955).
[315] Michael R. Fischbach, "Tibawi, A.L.," *Encyclopedia of the Palestinians* (New York: Infobase Publishing, 2005).
[316] Tibawi, *Arab Education in Mandatory Palestine*, 15. of 1956 book Tibawi also addressed the system of mobile schools for educating nomadic and semi-nomadic tribes in the region. Tibawi, 72–80.

traditions, customs, and culture.[317] His work remains salient for discussing understandings of and literature on the Bedouin during the British Mandate, because as a Westernized Arab, he wrote both from the colonizing and the colonized perspectives. Aref el-Aref was born as Aref Shehadeh in Jerusalem in 1892. His father was a prominent vegetable merchant in the Allun Market in the Old City, who sent the intellectually-gifted Aref to Turkey for a high school education alongside other Palestinian children of *effendis* (Ottoman lord or master) and dignitaries from Jerusalem and other major Palestinian cities. El-Aref earned a first degree in literature at Istanbul University in 1913 while working part-time as a translator for the Turkish daily newspaper *Bayam* to support his studies.

From an early age, el-Aref led a controversial and colorful life.[318] Not only was he educated abroad, but he travelled extensively, mastered many languages, held various positions in the British Mandate government, and landed himself in trouble repeatedly due to his political activism, making him no stranger to the prison cell.[319] Described as 'an Arabian Bonnie Prince Charlie … [since] most exhaustive Government inquiries failed to discover his hiding places',[320] on one of his prison escapes (there were several), he befriended the Bedouin who hid and assisted him. As a result, a group of Bedouin sheikhs of Trans-Jordan submitted a petition to Sir Herbert Samuel, the High Commissioner following the British Mandate in 1922, requesting a pardon on el-Aref's behalf.[321] After a formal pardon and a number of smaller official posts, el-Aref rose to prominence and was appointed the District Administrative Officer of Beersheba, where he worked from 1929 until 1939. In 1933, he wrote *Kitab al-Qada,*[322] translated into English in 1944 as *Bedouin Love, Law, and Legend: Dealing Exclusively with the Badu of Beersheba*.[323] It was the first monograph and complete ethnography on the

[317] Zachary J. Foster, "Arab Historiography in Mandatory Palestine, 1920–1948" (Georgetown University, 2011), 8.
[318] Publishers note in Aref El-Aref, *Bedouin Love: Law and Legend: Dealing Exclusively with the Badu of Beersheba* (Jerusalem: Cosmos Publishing, 1944), 12.
[319] El-Aref is described as 'An Arab, born in Jerusalem, he has been University student, political economist, soldier, prisoner of war, escapee, writer and publisher, author, editor, District officers in various parts of Palestine, Chief Secretary to the Government in Trans-Jordan, has been awarded the M.B.E and O.B.E. and at the moment is District Officer at Ramallah.' El-Aref, 12.
[320] H.V. Morton, *In the Steps of the Master* (London: Dood, Mead and Company, 1934), 156. See also, El-Aref, *Bedouin Love*, 13.
[321] El-Aref, *Bedouin Love*, 14.
[322] The Arabic version means 'The Administration of Justice among the Bedouin.'
[323] El-Aref's *Kitab al-Qada* was also published in Hebrew in 1934-35 and German in 1938. For insight into the role of Harold W. Tilley, Chief of Staff and News Editor of the Sun News Pictorial, Melbourne and Deputy Assistant Commissioner of the Australian Red Cross Society, in translating the text from Arabic to English, see Assaf Likhovski, *Law and Identity in Mandate Palestine* (Chapel Hill, NC: The University of North Carolina Press, 2006), 207–9. El-Aref, *Bedouin Love*, 16.

Bedouin, whom el-Aref called 'Badu of Beersheba'.[324]

> I feel I know them [the Badu/Bedouin] because I spent so many years as a member of tribes and later as a Government official among them in their roamings and their struggles to keep themselves in the same paths as were followed by their fathers and forefathers. From my association with them I have grown to love them in spite of shortcomings and failings, which become less strange with thorough understanding.[325]

Influenced by previous European ethnographers, travel writers, and administrators,[326] el-Aref was keen to emulate Western models to study the Bedouin.[327] Austro-Czech traveler Musil ('Musa al-Rawali,' mentioned above) was one of the first Western ethnographers to study the Bedouin and was considered an authority on the Bedouin, especially Bedouin law. El-Aref went to great pains to follow in Musil's footsteps,[328] and his *Arabia Petraea* was one of the few books that el-Aref cited.[329] Living with the Bedouin for over a decade,[330] el-Aref was in a position to write about Bedouin customs, tribal history, and culture.[331]

As a 'native intellectual', el-Aref could easily argue that he was better able not only to rule 'his' population because of his position as an insider, but also to understand them and their specific needs.[332] El-Aref saw himself in the best role to effect change in Bedouin society. He claimed to have eradicated certain Bedouin rituals—*bisha*, ordeal by fire or test using fire, and *zina*, avenging seduction.[333] He was responsible for introducing education to male Bedouin youth, which he forecast would put an end to 'the present system of handing down by word of

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[324] Aref El-Aref, *Al-Mufassal Fi Tarikh Al-Quds (The Detailed History of Jerusalem)* (Jerusalem: Dar al-Andalus, 1961); Aref El-Aref, *Al-Nakba: Nakbat Bayt Al-Maqdis Wal-Firdaws Al-Mafqud (The Catastrophe: The Catastrophe of Jerusalem and the Lost Paradise)* (Sidon and Beirut: Al-maktaba al-'asriyya, 1956); Aref El-Aref, *Tarikh Ghazza (The History of Gaza)* (Jerusalem: Matba'at Dar al-Aytam al-Islamiyya, 1943); Aref El-Aref, *Tarikh B'ir Al-Sab' Wa-Qaba'Iliha (The History of Beersheba and Its Tribes)* (Jerusalem: Matba'at Bayt al-Maqdis, 1934); Aref El-Aref, *Ru'yay (My Dream)* (Jerusalem: Matba'at al-Aba' al-Fransin, 1934). He had ambitions to publish a collection of Bedouin poems that went unfulfilled.
[325] El-Aref, *Bedouin Love*, 16.
[326] Likhovski, *Law and Identity in Mandate Palestine*, 198–99.
[327] Likhovski, 198.
[328] Likhovski, 128. District Court decision 'while several years later in 1897, a traveler named Musil, who slept overnight in the area states that there was nothing there (page 4 of the third expert opinion).' Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others paragraph 23.
[329] Musil's *Arabia Petrae* is a monumental four-volume series on topography, archaeology, flora, fauna, and customs of the inhabitants, which he wrote at the turn of the 20th century.
[330] El-Aref, *Bedouin Love*, 20.
[331] El-'Aref proved a romantic when it came to the Bedouin, spending much of his time recording their lore and laws, and showed little interest in settling them or developing schemes for them. Ruth Kark and Seth J. Frantzman, "The Negev: Land, Settlement, the Bedouin and Ottoman and British Policy 1871–1948," *British Journal of Middle Eastern Studies* 39, no. 1 (April 1, 2012): 76.
[332] Likhovski, *Law and Identity in Mandate Palestine*, 204.
[333] El-Aref, *Bedouin Love*, 124.

mouth, all knowledge of the history, and genealogical data of families; of recording the passing of time by events, instead of by calendar.'[334] His efforts to improve Bedouin living conditions and rights underscore his altruistic motives.[335]

Despite his infatuation with and high esteem for the Bedouin, el-Aref was unable to conceal his palpable sense of self-importance. His writings show all the signs of his respect and admiration for the "nobility" and "harshness" of Bedouin custom,[336] but his texts are also littered with patronizing and condescending quips and paternalist comments. El-Aref sees himself as a governor over the Bedouin on the one hand, and as a guardian and parental figure looking after them on the other. For example, he indicates that the Bedouin can be 'led like children' but warns that they cannot 'be bounced, or bullied into doing something foreign to their natural inclinations.'[337] The Bedouin's lure is hard to resist and they draw el-Aref into the Bedouin world, where he finds himself '*among* them in their roamings and their struggles to keep themselves in the same paths as were followed by their fathers and forefathers.' (emphasis added)[338]

El-Aref can be easily accused of romanticism.[339] He gives the impression that the Bedouin are outside the realm of civilization and civilized codes. Describing the 'physical and mental trial' for a Bedouin guest unaccustomed to sleeping indoors, el-Aref had no other option but to move his bed 'under the stars'.[340] The camel does not escape his romantic and sentimental attachment, being compared to a desert ship.[341] The Bedouin are identified as 'hardy sons of land' with needle-sharp vision and a cunning for desert craft, making them the most suitable desert trackers. Bedouin honor is related to power, which they revere, and the firearm that a Bedouin carries is a symbol of power, according to el-Aref.[342] In parallel to their practical

[334] El-Aref, 37. See also, el-Aref where he talks about not taking the word of the Bedouin as truth, and which he verified with the leaders and sheikhs. El-Aref, 20.
[335] El-Aref, *Bedouin Love*, 21.
[336] Ratcliffe et al., "The Naqab Bedouin and Colonialism," 4–5. See also, Orit Bashkin, "Journeys between Civility and Wilderness Debates on Civilization and Emotions in the Arab Middle East, 1861–1939," in *Civilizing Emotions: Concepts in Nineteenth Century Asia and Europe* (Oxford: Oxford University Press, 2015), 136–37.
[337] El-Aref, *Bedouin Love*, 35.
[338] El-Aref, 16.
[339] The journalist and pioneering travel writer H.V. Morton (1892-1979) wrote an account of his travels in the Holy Land in *In the Steps of the Master* where he meets with al-Aref. Morton describes al-Aref as 'one of the most romantic men in Palestine'. See, Morton, *In the Steps of the Master*, 155. See also, Seraje Assi, "History and Politics of Nomadism in Modern Palestine (1882-1948)" (Georgetown University, 2016), 159, 187–88.
[340] El-Aref, *Bedouin Love*, 35.
[341] El-Aref, 168.
[342] El-Aref, 29.

knowledge of desert life, superstition plays a role in Bedouin conventions, most explicitly when it concerns Bedouin women; for example, the Bedouin will turn back from a new task if he encounters a woman carrying an empty water bucket on her head.[343] El-Aref maintains that international relations could benefit from employing the Bedouin's truce system, which is not only to be admired but also replicated:[344] According to el-Aref, 'The tendency of powers following an act of aggression is to widen the breach, thus creating cause of war. Badu [the Bedouin] work in the opposite direction. They strive to create conditions that serve as a balm to injured feelings or inflamed passions.'[345]

Place mattered to el-Aref. He was careful to specify that his book relates to the 'Badu of Beersheba', the city established at the turn of the 20th century under the Ottomans as the empire began to disintegrate.[346] The Bedouin, in el-Aref's judgment, are not to be associated with Mandate Palestine or the Negev, but with Beersheba. Movement within place was also important: el-Aref relates that movement from place to place features prominently in the Bedouin's lifestyle, but they always return to their home-site. El-Aref categorizes the Bedouin into the nomadic *Ruhhal* and semi-nomadic *Shibheh-ruhhal*,[347] and he maintains that the 'Bedu of Beersheba' are semi-nomadic.[348] Moreover, Bedouin roaming has 'a definite objective' but el-Aref highlights that 'boundaries and fences are unknown and whereas the civilized raiser of stock would pay, and, expect to pay, for encroaching on a neighboring property the Bedu are fully cooperative.'[349] 'With changing conditions and lessons learned from the value of cultivation of land', el-Aref maintains, 'the Badu are gaining a true appreciation of its [the land's] worth', such that a system of land acquisition (known as *hajer*[350]) was introduced and boundary disputes between the Bedouin arose.[351] Although boundaries fences are absent, '[e]very inch of land is owned by someone and everyone knows his own land in spite of the

[343] El-Aref, 31.
[344] El-Aref, 98.
[345] El-Aref, 98.
[346] Havatzelet Yahel and Ruth Kark, "Israel Negev Bedouin during the 1948 War: Departure and Return," *Israel Affairs* 21, no. 1 (2015): 5. In his study, Abu-Rabia referred to Beersheba as a 'focal point for Arab nationalism. It was here that the ideas of a separate Arab entity and political and military struggle were born and disseminated amongst the Bedouin'. There were clashes as part of the riots of 1936–39, which resulted in the forced exit of Jewish inhabitants from Beersheba. Abu-Rabia, *A Bedouin Century*, 125.
[347] El-Aref, *Bedouin Love*, 22.
[348] El-Aref, 22–23.
[349] El-Aref, 21–22.
[350] 'This meant, simply, that he would take all the land within the boundaries fixed by a distant rise of tree, sweep to the left to perhaps another rise or tree, to the right of him to a *wadi* and back of hum to a sand dune or stony outcrop. In other words he took in all that the eye could see if he want that much.' El-Aref, 179.
[351] El-Aref, 179–80.

absence of boundary fences. A strip of fallow or a strip of sown land carrying a crop different from the land on each side will serve as lines of demarcation. Clumps of basul [a type of cactus known to the Negev] grown at certain points also serve to delineate ownership'.[352] El-Aref observes that although cultivation was formerly regarded as a task for villagers and that 'The Badu were superior to it', the Bedouin now realizes what 'cultivation means to him and if anyone wants a dunam of land from him, he knows how to bargain'.[353] When it came to land registration with the Mandatory authorities, el-Aref reported that sheikhs were skeptical of such official processes because under the Bedouin traditional system, 'swords and rifles' were enough to prove and protect title of lands.[354]

El-Aref has an uncanny ability to link the Bedouin to other groups while simultaneously setting them apart from each other. The Bedouin and 'civilized' groups share commonalities, most apparent in matters of law, love, and legend: the Bedouin have courts like courts in 'civilized countries',[355] the Bedouin men love like civilized men,[356] and the Bedouin's 'Thursday the 25th' is the equivalent of 'Friday the 13th' in the civilized calendar.[357] El-Aref even compares gatherings in a Bedouin *shigg*, the tent for hosting guests, to housewarming parties.[358] Elsewhere, el-Aref contends that the Bedouin 'represent a race of people whose methods of living, whose laws and customs and whose outlook on things, material and spiritual, are in marked contrast to those of civilized communities.'[359] The Bedouin's distinctiveness from other local populations is also important to el-Aref. He points out the difference between the Bedouin and the rest of the Arab population: the Bedouin 'do not like peasants and their living conditions', adding that '[t]hey regard Arabs who live in stone dwellings, as their inferiors. They resent any suggestions of peasant origin, and will not give their daughters in marriage to villagers.'[360]

Supplementing the PEF surveys and maps, el-Aref played an important role in counting, labeling, and tabulating the Bedouin in the population census. El-Aref quickly learned that the

[352] El-Aref, 180.
[353] El-Aref, 181.
[354] El-Aref, 179–80.
[355] El-Aref, 105.
[356] El-Aref, 32.
[357] El-Aref, 30–31.
[358] El-Aref, 22–23.
[359] El-Aref, 16.
[360] El-Aref, 31.

Bedouin defy numbers—he roughly estimated the population to lie between 75,000 and 100,000 Bedouin, admitting that '[n]o one can tell what they are between those margins.'[361] El-Aref points out the futility in census-taking since the Bedouin are of the attitude that 'Allah known their numbers; they themselves knew them. The government could want them only for the purposes of conscription, taxation, or some other form of oppression anathema to the Badu mind.… The Government failed to convince them by fact or tact.'[362] Nonetheless, as 'a good Moslem and a good friend of the Badu',[363] and through gentle acts of persuasion, el-Aref succeeded in his census-taking activities. El-Aref's concrete figures showed that the desert was not an empty space but had Bedouin inhabitants, leaving little room for immigration and settlement by non-Bedouin communities. A conversation between Morton and el-Aref, which appears in *In the Steps of the Master*, is revealing and worth citing in full:

> "What I want to know is how you managed to count the Bedouin," I [Morton] said. "It was not easy!" smiled Arif. "As soon as my intention was made known, five thousand of them packed up and escaped to Sinai. Whole tribes went into hiding. It took me eight months to persuade them. I had to go out and live with them, sleep with them and eat with them. But what won them over in the end was the idea that if their numbers were known to the Government, it would be clear that there could be *no room for Zionists in the Beersheba district*."[364] (emphasis added)

El-Aref's commitment to counting, tabulating, and naming the Bedouin can be seen in light of the rationalizing urge of the colonial system itself.[365]

While his census and ethnography works are commendable,[366] like the European writers before him, el-Aref had a covert ideological motivation: in his case, Arab nationalism rather than Christian ideology.[367] For el-Aref, the Palestinian inhabitants were most similar to the original nomadic Arabs (Bedouin) that originated from the Arabian Peninsula. In this way, el-Aref sought to annex the Bedouin to the Arab national movement, and to use Bedouin culture to create a pan-Arab identity. A weakness emerges in el-Aref's schema, which legal historian

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[361] El-Aref, 16.
[362] El-Aref, 202–3.
[363] El-Aref, 204–5.
[364] Morton, *In the Steps of the Master*, 157–58.
[365] Likhovski, *Law and Identity in Mandate Palestine*, 205–6. See also, Anat Laibler, "Statisticians' Ambition: Governmentality, Modernity and National Legibility," *Israel Studies* 9, no. 2 (August 12, 2004): 121–49; Timothy Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity* (Berkeley, CA: University of California Press, 2002); Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*.
[366] For example, Morton praises 'His [el-Aref's] most remarkable achievement has been the carrying out of a census of the Bedouin. This is the first time in history that the desert tribes have been numbered because, like the Israelites of old, they have a strong prejudice against a census'. Morton, *In the Steps of the Master*, 156–57.
[367] Foster, "Arab Historiography in Mandatory Palestine, 1920–1948," 22, 30.

Likhovski contends amounts to an act of mythmaking: el-Aref attempts to prove that the Bedouin were simultaneously the descendants of Canaanites, Philistines, Amalekites, and Nabateans, and the descendants of the Arabian Peninsula. Likhovski concludes that el-Aref wanted to link the Bedouin to 'the cradle of the Arab nation' and thereby to stave off Jewish claims to Palestine.[368] Arab nationalism conjured a perfect image of Palestine where the British and Jewish populations were neither present nor had any influence.[369] The Bedouin, and specifically their society and culture, were incorporated into this ideological scheme and construct for the purpose of his nationalist agenda .[370] However, this attempt failed to take into account how the Bedouin saw themselves (or how applicable Bedouin legal customs were in a nationalist context), and Likhovski argues that el-Aref would have rejected the proposition that Bedouin culture might not represent the authentic culture of the inhabitants of Mandate Palestine. Likhovski also contends that the Bedouin did not consider themselves as belonging to a nation—Arab or any other—as the nation is a late 19th and early 20th century concept,[371] instead identifying as Muslim, or nomadic.[372]

El-Aref represents something of 'a native colonizer'—like a colonial ruler on the inside, which enabled him to understand and to govern the Bedouin.[373] His threefold passion for 'work, the fight for Arab independence, and writing' drew the Bedouin into his master plan and Arab nationalist dream.[374] The Bedouin were used by early European and Western writers for their Christian ideological goals, and el-Aref for his Arab nationalist goals—later scholars and politicians would continue this trend.

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[368] Likhovski, *Law and Identity in Mandate Palestine*, 201.
[369] 'Al-Arif's desert was accordingly constructed as the Arab nationalists' ideal image of Palestine—devoid of the presence or influence of the British or the Jews. Double irony existed here. First, the nationalists' use of Bedouin culture as an emblem of Arab culture was not necessarily the way the Bedouin conceived their identity; second, the Bedouin legal system was not a pure, untainted system of authentic law.' Likhovski, 199.
[370] The origins of Islam, and its Arab culture, can be traced back to the nomads of pre-Islamic Arabia. And while the Bedouin were illiterate, they are considered to represent the spirit and authenticity of Arab Islamic culture. For a critical analysis that argues that Muslim notions of Arabness were in fact projected backwards in re-constructions of pre-Islamic history so as to unify retroactively pre-Islamic Arabians as all 'Arabs', see Peter A. Webb, "Creating Arab Origins: Muslim Constructions of Al-Jāhiliyya and Arab History" (SOAS, University of London, 2014).
[371] Likhovski, *Law and Identity in Mandate Palestine*, 200. Likhovski refers to Hourani's *Arabic Thought*. Albert Hourani, *Arabic Thought in the Liberal Age 1798-1939* (Cambridge: Cambridge University Press, 1962).
[372] Likhovski, *Law and Identity in Mandate Palestine*, 200.
[373] The term "native colonizer" implies the influence of Western colonial discourse and problematizes the relationship between el-Aref and the Bedouin. Likhovski, 261 (footnote 72).
[374] El-Aref, *Bedouin Love*, 14.

3. Militarist and Modern Anthropologies and the Bedouin

In the new State of Israel, the Bedouin were a topic of study for anthropology, which was a growing discipline in a new education system, and the results continued to be strongly influenced by an ideological agenda. For the new Israeli anthropologists, the Bedouin epitomized the esoteric, exotic Other on the periphery of Israeli society.[375] Anthropologists were genuinely interested in the Bedouin's social organization, viewing the Bedouin as a local, particularistic group who lacked political and ideological agendas.[376] A common tendency among anthropologists was to limit their studies to the customs and traditions of the Bedouin as a group of nomadic, desert-dwellers.[377] This section first explores the relationship between Zionism, the State of Israel, and Israeli anthropology. With that foundation, I present views of the Bedouin during the two main periods of anthropological study of the Bedouin in the Negev: (i) the military period, 1948–1966, during which the Bedouin were governed as military subjects; and (ii) the modern period, starting when the Bedouin were granted Israeli citizenship in 1966.

a. Zionism, the State of Israel, and Israeli Anthropology

The first anthropologists to arrive in the new State of Israel during its formative years brought with them the social scientific paradigms in which they trained: British structural-functionalism and US symbolic-interpretivism and sociological theories on modernization-secularization. They had to reconcile their theoretical agendas with their institutional commitment to and engagement in Israeli nation-building processes and modernization projects.[378] Hence, anthropology, like other disciplines,[379] played a national role and participated in the Zionist project, which became clearer when their studies concerned the management of Arab

[375] Ratcliffe et al., "The Naqab Bedouin and Colonialism," 9.
[376] Khalil Nakhleh, "Anthropological and Sociological Studies on the Arabs in Israel: A Critique," *Journal of Palestine Studies* 6, no. 4 (1977): 61.
[377] Clinton Bailey, *Bedouin Law from Sinai and the Negev: Justice without Government* (New Haven, CT: Yale University Press, 2009); Emanuel Marx, *Bedouin of the Negev* (New York: Frederick A. Praeger, 1967); Gräf Erwin, *Das Rechtswesen der Heutigen Beduinen* (Walldorf-Hessen: Verlag für Orientkunde, 1952).
[378] Yehuda Goodman and Joseph Loss, "The Other as Brother: Nation Building and Ethnic Ambivalence in Early Jewish-Israeli Anthropology," *Anthropological Quarterly* 82, no. 2 (Spring 2009): 485–86.
[379] Some argue that other disciplines like Oriental studies, sociology and history were more committed to the nation-building project. Dan Rabinowitz, "Oriental Othering and National Identity: A Review of Early Israeli Anthropological Studies of Palestinians," *Identities* 9, no. 3 (2002): 319–20.

relations.[380] Connecting anthropology and Zionism,[381] Van Teeffelen argues that Israeli anthropology was 'not as a comment on Zionist ideology, but as an expression of it.'[382] Other scholars argue that compared to other disciplines anthropology was less complicit in Israeli nation-building processes and Zionist commitments were either implicit or unconscious. In any case, Zionism influenced the internal critique of the discipline's historical development, theoretical perspectives, and challenges of representation.[383]

Leaving aside the debate on the precise relationship between anthropology and a Zionist ideology, a clear link between the state apparatus and anthropology emerged. Israeli anthropologists contributed to governmental institutions through anthropological research, lectures, and consultation.[384] For instance, in the 1950s and 1960s (the 'military period' discussed below), anthropologists studied the survival of the *hamula* (the tribe), and the useful purposes that these structures could serve for the state apparatuses,[385] such as the role of tribal chiefs in mediating state/minority relations.[386] Anthropologists also served as directors of state departments and submitted their anthropological research to government ministries.[387] Pioneering scholars often started their careers in Israeli government institutions and only later pursed an academic track. Those who later became Arabist scholars often began as government employees gathering intelligence for the purpose of state security, surveillance, and control.[388] In these ways, Israeli anthropologists often contributed to the state; however, they frequently avoided evaluating government policies, and their understanding of what constituted politics was narrow.[389]

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[380] Ratcliffe et al., "The Naqab Bedouin and Colonialism," 15.
[381] Toine Van Teeffelen, "Anthropologists on Israel: A Case Study in the Sociology of Knowledge" (Amsterdam: Antropologisch-Sociologisch Centrum, Universiteit van Amsterdam, 1977), ii.
[382] Van Teeffelen, 9.
[383] Rabinowitz, "Oriental Othering and National Identity," 319–20. Israeli sociology differs. For example, in 1995, Uri Ram published a book titled, *The Changing Agenda of Israeli Sociology,* which provided a critical overview of Israeli sociology in its political context. See, Joyce Dalsheim, "Reviewed Work: Perspectives on Israeli Anthropology by Esther Hertzog, Orit Abuhav, Harvey E. Goldberg, Emanuel Marx," *Anthropological Quarterly* 84, no. 3 (Summer 2011): 780.
[384] Van Teeffelen, "Anthropologists on Israel: A Case Study in the Sociology of Knowledge," 6.
[385] Gideon M. Kressel, "Continuity and Endurance of Patrilineage in Towns," *Middle Eastern Studies* 27, no. 1 (January 1, 1991): 81–82. See also, Ratcliffe et al., "The Naqab Bedouin and Colonialism," 15. On the significance of the *hamula* see, Rabinowitz, "Oriental Othering and National Identity," 313.
[386] John Bitzan, "When Lawrence of Arabia Met David Ben-Gurion: A History of Israeli 'Arabist' Expertise in the Negev (1943-1966)" (Ben-Gurion University of the Negev, 2006).
[387] Harvey Goldberg, "Anthropology in Israel," *Current Anthropology* 17, no. 1 (1976): 120.
[388] Rabinowitz, "Oriental Othering and National Identity," 308. According to Lustick, 'the term "Arabistism", as used in the Israeli press, refers to those officials who administer government policy in the Arab sector. The connotation is that these men speak, Arabic, know the "Arab mentality", and have had long experience in the security services in connection with Arab affairs. Lustick, 322.
[389] Ratcliffe et al., "The Naqab Bedouin and Colonialism," 23.

The question of the colonial associations of anthropologists and Middle East experts has received heightened scrutiny in the literature, and Israeli anthropologists and Arab experts have not gone unscathed.[390] Starting in the 1970s (the 'modern period' discussed below), anthropology and other social sciences have been studied as a form of social knowledge embedded in a colonial legacy and logic.[391] Ironically, just as the role of colonialism in anthropology was internally critiqued, which resulted in a restriction on access, a new wave of anthropologists migrated to Israel. In the nascent nation-state, these anthropologists arrived only to discover new 'classical anthropological objects of study in their backyard, living in a new, radically different, modern setting, and free'.[392] Those who later became Arabist scholars often began as government employees gathering intelligence for the purpose of state security, surveillance, and control 'with the best of the state's legitimacy.'[393] Some were aware of the new literature on the nexus of anthropology and colonialism,[394] and specifically of the critical studies emerging on how they as scholars of anthropology were implicated in colonialism.[395]

Although these developments of Israeli anthropology were occurring inside the discipline, a degree of outwardness saw Israeli anthropologists fostering global connectedness with other anthropologists, with young anthropologists building contacts with British and US universities.[396] Hence, while Israeli anthropologists preoccupied themselves with local questions and the domestic educational establishment, they simultaneously connected with the international anthropology community. Applied anthropology or 'rural sociology'[397] in particular would see Israeli anthropologists engage with the rest of the world.[398] Despite this international trend in the discipline of anthropology, Israeli anthropological views of the

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[390] Talal Asad, "Anthropological Texts and Ideological Problems: An Analysis of Cohen on Arab Villages in Israel," *Economy and Society* 4, no. 3 (1975): 251–82.
[391] Talal Asad, ed., *Anthropology and the Colonial Encounter* (Amherst NY: Humanities Books, 1973); Dell Hymes, *Reinventing Anthropology* (New York: Pantheon Books, 1972).
[392] Goodman and Loss, "The Other as Brother: Nation Building and Ethnic Ambivalence in Early Jewish-Israeli Anthropology," 486.
[393] Goodman and Loss, 486.
[394] Asad, *Anthropology and the Colonial Encounter*.
[395] Rabinowitz, "Oriental Othering and National Identity," 316. For an example of the awareness among Israeli anthropologists, see Joseph Ginat, *Women in Muslim Rural Society: Status and Role in Family and Community* (New Brunswick, NJ: Transaction Books, 1982), 9–10.
[396] Van Teeffelen, "Anthropologists on Israel: A Case Study in the Sociology of Knowledge," 7.
[397] Goodman and Loss, "The Other as Brother: Nation Building and Ethnic Ambivalence in Early Jewish-Israeli Anthropology," 486. For Turkey, see Zerin Tandoğan, "Anthropology in Turkey: Impressions for an Overview," in *Other People's Anthropologies: Ethnographic Practice on the Margins*, ed. Aleksandar Bošković (New York: Oxford: Berghahn Books, 2010), 98.
[398] Goodman and Loss, "The Other as Brother: Nation Building and Ethnic Ambivalence in Early Jewish-Israeli Anthropology," 486.

Bedouin attached significance to the internal aspects of the Bedouin, which were largely encased in a Bedouin-only lifeworld disconnected from the rest of reality.

b. The Military Period and Ethnographies of Bedouin Culture

Anthropologies on the Bedouin during military rule between 1948 and 1966 used 'culture' as the key explanatory paradigm.[399] Anthropologists' intellectual immersion in Bedouin culture happened in parallel with official efforts to draw new maps, which commenced in the south of the new country (i.e. the Negev).[400] Official mapmakers and scholars worked in close collaboration; for instance, in the process of drawing new maps, historical terms dating back to the Ottoman and British times, or Arabic terms, were re-written and replaced with modern Hebrew. Negeb and Naqab, the British and Arabic terms for the area, were erased and re-written as Negev on Israeli maps.[401] New population surveys were conducted. Territorial maps, population surveys, and knowledge emphasized boundary drawing and name labeling, counting and tabulating. Israeli anthropologists emerged, the majority of whom had gained first-hand experience of the Bedouin as military officers. Besides playing a key role in developing the nascent discipline in the Israeli educational system, they gained scholarly prominence for their research and writings on the Bedouin. These anthropological studies often overlapped and resonated with the utopist, nationalist, and Zionist anecdotes generated by early Zionist leaders,[402] many of whom wanted to bolster Zionist exploits in the Negev desert.[403]

Culture was the primary analytical lens to interrogate the internal structures, politics, and economy of the Bedouin, for the dual objective of understanding them theoretically and governing them practically. Scholars generated knowledge on the Bedouin for the purpose of assisting the military government govern the Bedouin,[404] and the Negev was a key area for government officials. 'Making the desert bloom',[405] a well-worn slogan associated with David

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[399] Ratcliffe et al., "The Naqab Bedouin and Colonialism," 5.
[400] Meron Benvenisti, *Sacred Landscape: The Buried History of the Holy Land since 1948* (Berkeley, CA: University of California Press, 2002).
[401] Some critical commentators argue that efforts to re-write place names mark an attempt to superimpose a Jewish presence on the landscape. With an emphasis placed on the Hebrew language, erasure of old Arab names and indifference towards Arabic audience seemed all but inevitable. Benvenisti.
[402] See, Moshe Dayan, *Moshe Dayan: Story of My Life: An Autobiography* (New York: William Morrow and Company, 1976).
[403] Ratcliffe et al., "The Naqab Bedouin and Colonialism," 5.
[404] See also, Ratcliffe et al., 15.
[405] Alan George, "Making the Desert Bloom, A Myth Examined," *Journal of Palestine Studies* 8, no. 2 (Winter 1979): 88–100. David Ben-Gurion said: 'without the settlement of the Negev, [Israel] cannot be secure, and [will]

Ben Gurion, the founding father of the State of Israel and the first Prime Minister, left an imprint on the region.[406] The University of the Negev was later renamed Ben Gurion University of the Negev, tying his political legacy with the education establishment in the capital of the south.[407]

Despite the charge of complicity in the state apparatuses, anthropologists were not under pressure to find solutions to the question of the Bedouin and did not always conform with the establishment. Hence, anthropologists of the military era often managed to carve out a niche as mediators between the military governors and military subjects, which meant they could propose alternatives accounts and proposals and stood their ground against the authorities on issues of mutual concern, namely the *hamula* (tribe) and conflict resolution.[408] Therefore, anthropologists, who generated knowledge of the nascent discipline, often played dual roles: first, they supported the state, and second, they acted as cultural brokers between the Bedouin and the state, the latter of which they criticized for its interventions.[409] Acknowledging the representative role of modern social-science and its brokering role between the Bedouin and the state,[410] one anthropologist summarized his position: 'My closeness to Northern and Negev Bedouin communities has permitted me to serve as a counselor and a mediator.'[411]

The over-focus on culture emphasized the Bedouin nomadic way of life, distinguished them from the Arab inhabitants, and located them in a particular time and place. Kinship, a non-modern and blood-based political organization, was at the heart of understanding the Bedouin from an economic, cultural, and societal perspective.[412] Kinship was not only a social-scientific model but also a tool to create 'political distantiation' between the social scientist and the Bedouin, his object of inquiry.[413] Political distance arguably also helped create a historical

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not succeed in attaining economic independence.' Quoted in Yehuda Gradus and Richard Isralowitz, "The Negev: A Region on the Periphery of Israeli Social and Economic Development," in *Transitions: Russians, Ethiopians, and Bedouins in Israel's Negev Desert*, ed. Richard Isralowitz and Jonathan Friedlander (Farnham: Ashgate Publishing, 1999), 13.

[406] Yahel and Kark, "Israel Negev Bedouin during the 1948 War: Departure and Return," 2–3.

[407] Yahel and Kark, 2–3.

[408] Goodman and Loss, "The Other as Brother: Nation Building and Ethnic Ambivalence in Early Jewish-Israeli Anthropology," 496.

[409] Goodman and Loss, 500.

[410] Emanuel Marx, "The Anthropologist as Mediator," in *Change and Development in Nomadic and Pastoral Societies*, ed. John G. Galaty and Philip Carl Salzman (Leiden: Brill, 1981), 119–20.

[411] Gideon M. Kressel, "The Arab World's Travails: The Desert's Burden," *Middle East Quarterly* 5, no. 1 (March 1998): 57 (footnote 4).

[412] On kinship generally see, Goodman and Loss, "The Other as Brother: Nation Building and Ethnic Ambivalence in Early Jewish-Israeli Anthropology," 495–96.

[413] Rabinowitz, "Oriental Othering and National Identity," 314–15.

distance between the scholar, who belonged to the new country, and the Bedouin, who belonged to the past. Ben Gurion's vision of the Negev desert included revolutionizing the Bedouin's culture and way of life and bringing them into the 20th century. Mosche Dayan, a prominent military leader and politician, who forecast Israel's modernity, also anticipated the 'phenomenon of the Bedouins will disappear.'[414]

c. The Modern Period: Theorizing the Bedouin and Modernity

The modernization plan for the Bedouin was scheduled to occur in two stages: the first stage entailed a transformation from traditional military subjects to citizens of the State of Israel, and the second move required the Bedouin to change from a traditional and conservative way of life to a Western-oriented modern life. It is possible to pinpoint the introduction of the Israeli modernization in the Negev to the year 1968, when the special transitional governance gave rise to the establishment of local councils and institutions responsible for relocating and concentrating the Bedouin to government-designated areas in the Negev.[415]

The modernization project to adapt the Bedouin to modern needs or habits was foreshadowed by a preoccupation with Israeli authenticity, which amounts to a foundational contradiction in the state's overall modernization goals. Modern Israel not only meant movement from rural localities to urban centers but also in the opposite direction: agrarian pursuits were often equated with Israel's indigenous origins and authenticity,[416] and so settlement in the periphery was viewed as a renewal of the ancient acclaimed bond between the people of Israel and the land of Israel.[417] The groups actively involved in settlement in the periphery of the ethno-territorial state were viewed as custodians of the 'authentic' and the national cultural core.[418] This meta-paradox had a profound impact on how anthropologists studied the Bedouin and the traditional/modern binary.

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[414] *Ha'aretz* is a Hebrew (and English) national paper in Israel that was set up in 1918, making it the longest running print newspaper. The English version is printed and sold together with the International New York Times. Ha'artez is considered left-wing and liberal in domestic matters and foreign affairs.

[415] The planning of this project has a longer history, which Nasasra describes as 'forced urbanization and sedentarization in the 1960s'. Mansour Nasasra, "Bedouin Tribes in the Middle East: Changing Dynamics and the New State," in *The Naqab Bedouin and Colonialism: New Perspectives*, ed. Mansour Nasasra et al. (Abingdon, Oxon: New York, NY: Routledge, 2014), 47.

[416] James Ferguson, "The Country and the City on the Copperbelt," *Cultural Anthropology* 7, no. 1 (1992): 80–92.

[417] Goodman and Loss, "The Other as Brother: Nation Building and Ethnic Ambivalence in Early Jewish-Israeli Anthropology," 484.

[418] Rabinowitz, "Oriental Othering and National Identity," 306.

The new genre of scholarship on the 'modern' Bedouin also demonstrates an internal paradox in the modernization project. During the period of modernization, the 'Negev Bedouin' emerged as a distinct object of inquiry, especially in anthropological studies dedicated to researching and writing about the Bedouin. However, the modernization plan included sedentarization and urbanization (the antithesis to the nomadic and agricultural lifestyle of the Bedouin), and thus was designed to eliminate the Bedouin's cultural and social distinction and homogenize them with the rest of the Israeli citizenry leading a modern life. Behind the state's modernization plan for the Bedouin was the notion was that all societies must proceed along a universal, linear path of development identical to that of the West, or Israel. Modernization theories assumed that the most significant historical change is the linear transformation from traditional life to modern life, which had little regard for the issue of acculturation—the process of social, psychological, and cultural change that stems from blending between cultures.[419] In retrospect, the modernizing urge in this context can be seen as part of the broader colonial legacy and logic of the discipline.[420]

Israeli anthropologists wrote prolifically on the subject of the 'Negev Bedouin' and the Bedouin in the Sinai and Gaza,[421] signifying a territorial fixity and a societal and cultural coherence that further reified the previous notion of a distinct culture, which had enjoyed spatial fluidity and flexibility. For example, Clinton Bailey and Frank Stewart were preoccupied with questions dealing with Bedouin law and honor,[422] Bedouin poetry in the Sinai, and Bedouin links in Gaza. For a brief time, these studies fell under the nomenclature 'Bedouin of the Negev and Sinai',[423] which summed up the geopolitics that would subsequently change after Israeli/Egyptian peace in the early 1980s.[424] Nonetheless, the 'Negev Bedouin' is a distinct genre of scholarship to this day, although a recent development in the last few years

[419] For a comparison, refer to Akhil Gupta and James Ferguson, "Discipline and Practice: 'The Field' as Site, Method and Location in Anthropology," ed. Akhil Gupta and James Ferguson (Berkeley, CA: University of California Press, 1997), 21–22.
[420] Goodman and Loss, "The Other as Brother: Nation Building and Ethnic Ambivalence in Early Jewish-Israeli Anthropology," 487–88. See also, Hymes, *Reinventing Anthropology*, 29.
[421] It is worth noting, however, that this phrase has become a mainstay. For example, Abu-Saad uses the term in his 1997 article on Bedouin education. See, Ismael Abu-Saad, "The Education of Israel's Negev Beduin: Background and Prospects," *Israel Studies* 2, no. 2 (Fall 1997): 21–39.
[422] For example, Bailey, *Bedouin Law from Sinai and the Negev*; Frank H. Stewart, *Honor* (Chicago, IL: University of Chicago Press, 1994).
[423] Bailey, *Bedouin Law from Sinai and the Negev*; Clinton Bailey, *Bedouin Poetry from Sinai and the Negev: Mirror of a Culture* (Oxford: New York: Clarendon Press, 1991); Frank H. Stewart, *Bedouin Boundaries in Central Sinai and the Southern Negev* (Wiesbaden: Otto Harrassowitz, 1986).
[424] Smadar Lavie, *The Poetics of Military Occupation: Mzeina Allegories of Bedouin Identity Under Israeli and Egyptian Rule* (Berkeley, CA: University of California Press, 1990).

saw the introduction of 'Naqab Bedouin studies'[425], a new subdiscipline of Palestinian studies (discussed below).[426]

Sedentarization[427] also marked a change in how scholars studied the 'Negev Bedouin'.[428] Institutionally, BGU became a hub for Negev Bedouin studies, and in 1998 BGU's Center of Bedouin Studies and Development was founded to promote education and training both on and of the Bedouin, as well as community research, which in recent years concentrated on Bedouin women researchers at BGU.[429] Replacing the ethnographies of the military era, which detailed the Bedouin way of life and overemphasized culture, theories of modernization became salient for studying the services and infrastructure provided for the Bedouins as part of the sedentarization program, including sanitation, health and education, and municipal services. This shift from ethnography to modernization study paralleled a larger shift in scholarship on the Arab minority in Israel.[430] In the 1970s and 1980s, the Bedouin were synonymous with

[425] For a critique of the limitations of past studies and an explanation of Yiftachel's use of 'Naqab Bedouin' in his contribution, see Oren Yiftachel, "Epilogue: Studying Al-Naqab/Negev Bedouins-Toward a Colonial Paradigm?," *HAGAR: Studies in Culture, Polity & Identities*, Bedouin Arab Society in the Negev/Naqab, 8, no. 2 (November 2008): 290.

[426] 'Naqab Bedouin Studies', first articulated in the edited volume: *The Naqab Bedouin and Colonialism: New Perspectives*, is an endeavor to decolonize knowledge production and understand the complexities of the Naqab Bedouin. While this new genre can be critiqued, positively and negatively, for the purpose of this study, it is a good example of the shift from apolitical knowledge production on the Bedouin to political knowledge production on and with the Bedouin. Moreover, it is important to note that the edited volume is a result of the proceedings of a workshop discussed in this chapter. Mansour Nasasra et al., eds., *The Naqab Bedouin and Colonialism: New Perspectives* (Abingdon, Oxon: New York, NY: Routledge, 2014).

[427] There was a general trend to integrate nomadic and semi-nomadic Bedouin into the sedentary population, and a number of studies were carried out to this end. See, among others: Ghazi Falah, "The Development of the 'Planned Bedouin Settlement' in Israel 1964–1982: Evaluation and Characteristics," *Geoforum* 14, no. 3 (January 1, 1983): 311–23; A. S. Abdulrasoul Al-Moosa, "Bedouin Shanty Settlements in Kuwait: A Study in Social Geography" (School of Oriental and African Studies, University of London, 1976); Donald Powell Cole, *Nomads of the Nomads: The Āl Murrah Bedouin of the Empty Quarter* (Chicago, IL: Aldine Publishing Company, 1975); A.M. Abou-Zeid, "The Sedentarization of Nomads in the Western Desert of Egypt," *International Social Science Journal* 11, no. 4 (1959): 550–58.

[428] The Negev Bedouin studies by Hebrew and English speakers can be traced back to the 1980s, when the Negev and the Sinai were separated after the peace agreement in 1980 and the Bedouin were subsequently studied as a separate entity. The Naqab Bedouin studies by Arabic speakers, commonly the Bedouin themselves, emerged after the 2010s, specifically with the publication of *The Naqab Bedouin and Colonialism: New Perspectives* in August 2014. On this point, political-geographer Yiftachel says: 'While the Bedouins of the Naqab share distinct cultural, geographic, and ethnic characteristics, they continue at the same time to be embedded within far wider networks in Sinai and Transjordan, the Palestinian West Bank and Gaza, and of course Israel itself (Parizot, 2004). The usage of this category should therefore be constantly problematized as reflecting a forced separation of the Naqab Bedouins from other parts of their own society.' Yiftachel, "Epilogue: Studying Al-Naqab/Negev Bedouins-Toward a Colonial Paradigm?," 290.

[429] Ratcliffe et al., "The Naqab Bedouin and Colonialism," 15–16. See also, Ben-Gurion University of the Negev, "BGU Dedicates Center for Women Bedouin Students," January 21, 2016, http://in.bgu.ac.il/en/Pages/news/bedouin_center.aspx.

[430] Ahmad H. Sa'di, "Modernization as an Explanatory Discourse of Zionist-Palestinian Relations," *British Journal of Middle Eastern Studies* 24, no. 1 (May 1, 1997): 25–48.

nomads and fell under 'peasant studies', a subfield of modernization theory, which focused on the adaptation of the Bedouin to the modern way of life that replaced their nomadic lifestyle and pastoral economy.[431] Accordingly, modern life marked the 'end of nomadism', which was seen as a transitory development.[432] Concurrently, Jewish-Israeli scholars started to unpick the historical record of the Ottoman period, examine 'tradition', and consider Ottoman attempts at modernization and development,[433] as well as the lingering difficulties of state/society relations. They traced resilient cultural tendencies to maintain autonomy from state interference, or what Meir termed the 'centrifugal' tendencies of essential nomadic politics,[434] whereby the Bedouin's reaction to the government's attempts to impose order over their lives is to disperse and expand.

In a countermove to these narratives, Bedouin public officials—primarily educators, social workers, and health specialists—emerged and began to produce knowledge on the clash between modern service provision and traditional Bedouin society.[435] This emergence of Bedouin scholars was a key development in the indigenous turn of the Bedouin according to the international human rights law of indigenous peoples.

4. Bedouin Scholars and the First Use of the Term Indigenous

Starting in the 1980s, and particularly in the 1990s and 2000s, Bedouin scholars researched and wrote in order to upend previous preconceptions, narrations, and representations of the Bedouin—and to blunt the edges of Orientalizing dichotomies like the traditional/modern binary. Broadly speaking, the scholarship of Bedouin academics was intended to counter the previous and concurrent wave of scholars writing on the 'modernization' of the Bedouin and,

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[431] Avinoam Meir, *As Nomadism Ends: The Israeli Bedouin of the Negev* (Boulder, CO: Westview Press, 1997); Steven C. Dinero, "Resettlement and Modernization in Post-Nomadic Bedouin Society: The Case of Segev Shalom, Israel," *Journal of Planning Education and Research* 15, no. 2 (January 1, 1996): 105–16; Emanuel Marx and Avshlom Shmueli, eds., *The Changing Bedouin* (New Brunswick, NJ: Transaction Books, 1984).
[432] Meir, *As Nomadism Ends*.
[433] Gideon M. Kressel, *Let Shepherding Endure: Applied Anthropology and the Preservation of a Cultural Tradition in Israel and the Middle East*, Suny Series in Anthropology and Judaic Studies (Albany: State University of New York Press, 2003); Gideon M Kressel et al., "Changes in the Land Usage by the Negev Bedouin Since the Mid-19th Century. The Intra-Tribal Perspective," *Nomadic Peoples*, no. 28 (1991): 28–55.
[434] Avinoam Meir, "Nomads and the State: The Spatial Dynamics of Centrifugal and Centripetal Forces among the Israeli Negev Bedouin," *Political Geography Quarterly* 7, no. 3 (July 1, 1988): 251–70.
[435] Abu-Saad, "The Education of Israel's Negev Beduin: Background and Prospects"; Alean Al-Krenawi, "Group Work with Bedouin Widows of the Negev in a Medical Clinic," *Affilia* 11, no. 3 (October 1, 1996): 303–18; Aref Abu-Rabia, *NO Negev Bedouin and Livestock Rearing: Social, Economic and Political Aspects* (Oxford: Berg Publishers, 1994).

in particular, to critically study urbanization and sedentarization policies and the provision of state services, including health and education services, for the Bedouin in the Negev. Bedouin scholarship departed from the cultural paradigms of the 1950s and modernization theories of the 1960s and 1970s,[436] allowing knowledge that emerged from the Bedouin themselves to be taken seriously.[437] In a subversive attempt or a retaliatory loop, this scholarship marks a rupture in the knowledge production on state/minority relations in the context of the Bedouin in the Negev. Not only does such a move effect a departure from methodologies and theories to study the Bedouin but it also situates the Bedouin within broader fields of study, most notably in the field of Palestinian/Israeli studies, in which the Bedouin are compared to the Bedouin in the greater Middle East region,[438] and marginalized groups in similar situations.[439] These studies also help situate Bedouin-related topics in the political economy, thereby removing the Bedouin from their academic isolation and the analytical straightjacket of scholarship in service of the identity and existence of the State of Israel.[440] In other words, these Bedouin scholars sought to de-provincialize studies on the Bedouin and to accentuate the political cleavages and polarizing developments in state/minority relations. Of particular interest to this study, Bedouin scholars began using the term *indigenous* before the turn of the 21th century, indicating that the concept and category of indigenous peoples in the context of the Bedouin in Israel is not an invention of the new millennium.

Three Bedouin scholars epitomize the rupture in knowledge production on the Bedouin, that is, the shift from non-Bedouin writing about the Bedouin for their own agendas (and in line with external epistemic approaches) to Bedouin themselves producing knowledge to disrupt those agendas (and approaches). It is important to stress that two scholars—Ismail Abu-Saad

[436] It is important to note a general trend in the region, namely that attempts were being made to integrate nomadic and semi-nomadic Bedouin into the sedentary population. A number of studies were carried out to this end. See, among others: Falah, "The Development of the 'Planned Bedouin Settlement' in Israel 1964–1982"; Al-Moosa, "Bedouin Shanty Settlements in Kuwait"; Cole, *Nomads of the Nomads: The Āl Murrah Bedouin of the Empty Quarter*; Abou-Zeid, "The Sedentarization of Nomads in the Western Desert of Egypt."
[437] Ratcliffe et al., "The Naqab Bedouin and Colonialism," 18–19.
[438] Abu Rabia is inclined to compare the Bedouin to the Bedouin in the region. See, for example, Aref Abu-Rabia, *Indigenous Medicine Among the Bedouin in the Middle East*, 1 edition (Oxford: New York: Berghahn Books, 2015); Abu-Rabia, *A Bedouin Century*.
[439] Abu Saad compares the Bedouin to the Native Americans of the United States, the First Nations of Canada, and the Aborigines of Australia. See, for example, Ismael Abu-Saad, "Spatial Transformation and Indigenous Resistance: The Urbanization of the Palestinian Bedouin in Southern Israel," *American Behavioral Scientist* 51, no. 12 (August 1, 2008): 1715–22.
[440] Falah compares the state structure to the South African apartheid. Ghazi Falah, "Dynamics and Patterns of the Shrinking of Arab Lands in Palestine," *Political Geography* 22, no. 2 (February 2003): 179–209; Ghazi Falah, "Living Together Apart: Residential Segregation in Mixed Arab-Jewish Cities in Israel," *Urban Studies* 33, no. 6 (June 1, 1996): 823–57.

and Aref Abu Rabia—are originally from the Negev and are tenured at BGU. The third, Ghazi Falah, is a Bedouin scholar from the Galilee, an Israeli and Canadian citizen, and a professor at an American University. These Bedouin scholars were among the first, if not the first, to employ the term *indigenous peoples* as an analytical concept in their critical studies on the Bedouin in Israel, but with an understanding based on the theoretical approaches in anthropology and sociology, rather than the concept and category of indigenous peoples as it would develop in the international human rights law.

In the domestic setting, there is disagreement about when the term 'indigenous' was first used. Academics arguing against the Bedouin's indigenous status and rights maintain that the term was initially introduced by Bedouin scholar Abu-Saad in the mid-2000s.[441] On the other side, arguing that the inception of the term can be traced back to himself, Yiftachel points to an article he co-authored in the late 1990s called 'Frontier Development and Indigenous Peoples'.[442] I contend that they both initiated the term, or the use of the concept and category, but with its own particularities within their respective disciplines.[443] While ontological considerations cannot be totally extracted or ignored, especially since the scholars claiming the Bedouin as indigenous are also Bedouin themselves, the focus in this study is on the epistemic inception and development of the concept and category of indigenous peoples.[444]

a. Professor Ghazi Falah, a Geographer and Bedouin from the Galilee

Tenured at the University of Akron, Professor Falah is a Bedouin and comes from the Galilee, a region in northern Israel that has a sizeable Bedouin population. Falah wrote his doctoral thesis at the University of Durham on the sedentarization of the Bedouin in the Galilee, covering from 1880 to 1982.[445] His current research interests lie in the social, urban, and political geography of the Middle East, with a specific focus on what he refers to as his

[441] Frantzman, Yahel, and Kark, "Contested Indigeneity," 94.
[442] Tovi Fenster and Oren Yiftachel, "Frontier Development and Indigenous Peoples," *Progress in Planning* 47, no. 4 (January 1, 1997): 251–336.
[443] See, Fenster and Yiftachel.
[444] Lorenzo Veracini argues about the ontological divide that separates indigenous peoples/settler colonial societies, which manifests in their different relationships to land. Veracini argues that indigenous peoples have indigenous ontological relations to the land while settlers have a non-ontological relationship to the land. See generally, Lorenzo Veracini et al., "Indigenes and Settlers (Fourth World)," in *A Companion to Global Historical Thought* (Oxford: Wiley-Blackwell, 2014), 451–65. Specific to the question of settler-colonialism in the Israel/Palestine context see, Lorenzo Veracini, "What Can Settler Colonial Studies Offer to an Interpretation of the Conflict in Israel–Palestine?," *Settler Colonial Studies* 5, no. 3 (July 3, 2015): 268–71.
[445] Falah, "The Processes and Patterns of Sedentarization of the Galilee Bedouin 1880-1982."

homeland Palestine.[446] A prolific writer,[447] he started by critically analyzing the sedentarization and urbanization processes in his earlier writings in the 1980s and 1990s. Significantly, Falah's scholarship treats the Bedouin in the Negev and the Galilee separately, and studies them comparatively.[448] Furthermore, Falah compares Jewish/Arab relations and addresses the disparity in resource allocation—land, water, and budget—distributed along ethnic cleavages between the minority and majority populations in Israel.[449] A recurrent theme throughout his research and writing is the government's settlement policy, which Falah argues was a means to appropriate Bedouin lands and convert them into state lands.[450] Building on the question of land, Falah coins and introduces new analytical terms like *Judaization* and *Israelization*,[451] *de-signification*,[452] and *enclaves and exclaves*, which according to Falah, constitute spatial apartheid.[453]

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[446] Ghazi Falah, "Growing up in Rural Galilee, Palestine: Memories of Childhood Geographies," *Cultural Geographies* 20, no. 3 (July 1, 2013): 299–318.

[447] Ghazi Falah and Laura Khoury, "Walking on the Razor's Edge: Religious Groups and the 2011 Arab Spring," in *The Changing World Religion Map: Sacred Places, Identities, Practices and Politics*, ed. Stanley D. Brunn (New York: Springer, 2015), 3501–14; Falah, "Growing up in Rural Galilee, Palestine"; Ghazi Falah and Caroline Nagel, eds., *Geographies of Muslim Women: Gender, Religion, and Space* (New York: Guilford Press, 2005); Ghazi Falah, "Peace, Deception and Justification for Territorial Claims: The Case of Israel," in *Geographies of War and Peace*, ed. Colin Flint (Oxford: Oxford University Press, 2005), 297–320; Falah, "Living Together Apart"; Ghazi Falah and David Newman, "The Spatial Manifestation of Threat: Israelis and Palestinians Seek a 'Good' Border," *Political Geography* 14, no. 8 (November 1995): 689–706; Ghazi Falah, "Land Fragmentation and Spatial Control in the Nazareth Metropolitan Area," *The Professional Geographer* 44, no. 1 (1992): 30–44; Falah, "The Evolution of Semi-Nomadism in Non-Desert Environment"; Ghazi Falah, *The Forgotten Palestinians: Arab An Naqab 1906-1986 [Al-Filastiniyyun al-mansiyyun:'Arab al-naqab, 1906–1986]* (Tayiba: Research Center for Arab Heritage, 1989). A regular contributor to a number of journals, Falah is the editor-in-chief of *The Arab World Geographer*.

[448] One such article that draws a comparative approach between the Bedouin in the south and center of the country is Falah, "The Development of the 'Planned Bedouin Settlement' in Israel 1964–1982."

[449] Ghazi Falah, "Arabs versus Jews in Galilee: Competition for Regional Resources," *GeoJournal* 21, no. 4 (1990): 325–36.

[450] Ghazi Falah, "Israeli State Policy toward Bedouin Sedentarization in the Negev," *Journal of Palestine Studies* 18, no. 2 (January 1, 1989): 72, 88.

[451] On Israelization, Ghazi Falah, "Israelization of Palestine Human Geography," *Progress in Human Geography* 13, no. 4 (December 1, 1989): 535–50. On Judization, Ghazi Falah, "Israeli 'Judaization' Policy in Galilee and Its Impact on Local Arab Urbanization," *Political Geography Quarterly* 8, no. 3 (July 1, 1989): 229–53. See also, Ghazi Falah, "The Facts and Fictions of Judaization Policy and Its Impact on the Majority Arab Population in Galilee," *Political Geography Quarterly* 10, no. 3 (July 1, 1991): 297–316.. Two papers of the same year gave rise to critical responses from Arnon Soffer and Oren Yiftachel and Dennis Rumley, which brings out the polemics and sensitivities involved when this term is raised in scholarship. See, Arnon Soffer, "Israeli 'Judaization' Policy in Galilee and Its Impact on Local Arab Urbanization: A Response," *Political Geography Quarterly* 10, no. 3 (July 1, 1991): 282–85; Oren Yiftachel and Dennis Rumley, "On the Impact of Israel's Judaization Policy in the Galilee," *Political Geography Quarterly* 10, no. 3 (July 1, 1991): 286–96.

[452] On "de-signification" see, Ghazi Falah, "The 1948 Israeli-Palestinian War and Its Aftermath: The Transformation and De-Signification of Palestine's Cultural Landscape," *Annals of the Association of American Geographers* 86, no. 2 (1996): 256–57.

[453] On enclaves, see Falah, "Dynamics and Patterns of the Shrinking of Arab Lands in Palestine," 184.

Discussing the immediate effects of the establishment of the State of Israel on the distribution of Bedouin throughout Israel in the mid-1980s,[454] Falah states, 'the *indigenous population* of the Negev desert and other Bedouin groups in Israel have been frustrated in their attempt to improve their lives and welfare in a rapidly changing world.'[455] Unable to practice their 'traditional culture', Falah argues, '[n]early all aspects of Bedouin life have been affected and these changes have shaken, and now threaten, the very roots of their culture.'[456] He exposes the 'Bedouin policy', which amounts to official administrative practices to control the Bedouin community, which had an impact on the their traditional settlement patterns.[457] In particular, Falah critically assesses the policy of forced sedentarization, which can be classified under three headings: (i) recognized, (ii) unrecognized, and (iii) planned. Faulting the existing scholarship on the Bedouin, Falah argues:

> Unfortunately, accounts of forced sedentarization are few or nonexistent in the published Israeli literature on the Bedouin, despite reasonable coverage in the Israeli daily press. It seems that writers (mostly Israeli) either do not consider "forced sedentarization" as an important aspect of the overall Israeli Bedouin policy, or deliberately omit to consider this topic because they do not wish to harm their state's position in world opinion. As a result, Israeli writers have overemphasized processes and factors within Bedouin society rather than external factors imposed upon them.[458]

Falah makes a number of pertinent points on the subject of the modernization of the Bedouin, and the specific plan to sedentarize the Bedouin. Acknowledging the 'dramatic changes' experienced by the Bedouin, Falah criticizes state efforts at 'westernizing non-western nomads', due to the fact that these efforts result in cutting off the Bedouin from their culture and environment, causing them 'human suffering' and creating a 'demoralized Bedouin community'.[459] According to Falah, 'It would be typical for people from the "enlightened" West, from the developed, industrialized world, to view social services and the concentration of Bedouin in planned settlements with approval.'[460] While Falah points out that the Bedouin

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[454] Ghazi Falah, "How Israel Controls the Bedouin in Israel," *Journal of Palestine Studies* 14, no. 2 (January 1, 1985): 35–51.
[455] Falah, 35.
[456] Falah, 35.
[457] Falah, 36.
[458] Ghazi Falah, "The Spatial Pattern of Bedouin Sedentarization in Israel," *GeoJournal* 11, no. 4 (December 1, 1985): 361–68. This he repeats. There have been a number of unsatisfactory explanations of the Judaization policy in Galilee: studies by Israeli scholars have not attempted to approach the topic from the local Arab perspective, nor did they endeavour to challenge in any way the biases of modern planning inherent in this policy. Falah, "Israeli 'Judaization' Policy in Galilee and Its Impact on Local Arab Urbanization," 230.
[459] Falah, "How Israel Controls the Bedouin in Israel," 49–50.
[460] From such a perspective, it is argued that the Bedouin to some extent fail to distinguish between objective difficulties and those connected with their changing sub-culture and thus feel an exaggerated sense of deprivation. Falah, 50.

do not reject the provision of these services and do not prioritize a 'world without time', services are 'offered as a recompense for the appropriation of Bedouin lands, [so] one should not wonder why Bedouin reject government settlement schemes.'[461]

In a later intervention on the 'Israeli State Policy toward Bedouin Sedentarization in the Negev',[462] Falah speaks of the Bedouin's 'ancestral lands' in his attempt to answer 'why must nomads be settled?'[463] After addressing the land dispute focusing on legislative measures, Falah argues that the *siyag*, to a greater or lesser extent, served as the precursor for government-planned towns—but the transfer project of the Bedouin to these designated areas remains incomplete. The original aims were, firstly, to transfer Bedouin lands into the hands of the State, and secondly, to settle the Bedouin population in an enclosed quarter. Falah argues that the State has failed in its endeavors to gain control of the land, while attempts to Westernize the community continue as the secondary purpose.

As has already been intimated, Falah's scholarship is replete with the term *indigenous*. In 1991, in 'Pre-State Jewish Colonization in Northern Palestine and its Impact on Local Bedouin Sedentarization 1914-48', Falah introduces a broad spectrum of terms including but not limited to 'indigenous inhabitants' or 'indigenous pastoral nomads'.[464] In his discussion on 'Pre-state Jewish colonization in Northern Palestine and its Impact on Local Bedouin sedentarization 1912-1948', Falah refers to the British as 'adjudicator and partner' on the one hand,[465] and the Jewish community as a 'new immigrant community of Jewish cultivators',[466] 'European

[461] Falah, 50.
[462] In Falah, "Israeli State Policy toward Bedouin Sedentarization in the Negev."
[463] Falah, 73. The short answer is that the State of Israel wants possession of the land belonging to the nomadic Bedouin. This has resulted in a tug-of-war situation between the Bedouin and the State. Indeed, at the core of this dispute is land ownership in the Negev. The Bedouin's land claims are entrenched in customary land practice, which took precedence over formal laws promulgated by Ottoman and British Mandate. Vying for ownership of the same parcels of lands is the State of Israel, whose ownership claim is cemented in Zionist ideology. Interestingly, it is the same laws dating back to the Ottoman and British Mandate periods that Israel employs to dispossess the Bedouin and take their land. Israel has also enacted a number of laws to accelerate its land absorption. Another important event for the Bedouin was the creation of the *siyag* (the closed area), which concentrated the Bedouin when the State of Israel was established.
[464] Interesting to cite: 'Thus, they gravitated toward "empty spots" which villagers were not able to populate: viz., the plains and the Rift Valley. In contrast, the indigenous settled Arab population had chosen the mountainous areas, principally--though by no means exclusively--for reasons of security.' This would lead the reader to believe that indigenous is not just a Bedouin-only phenomenon. Ghazi Falah, "Pre-State Jewish Colonization in Northern Palestine and Its Impact on Local Bedouin Sedentarization 1914–1948," *Journal of Historical Geography* 17, no. 3 (July 1991): 295.
[465] Ghazi Falah, "Pre-State Jewish Colonization in Northern Palestine and Its Impact on Local Bedouin Sedentarization 1914–1948," *Journal of Historical Geography* 17, no. 3 (July 1991): 289.
[466] Falah, "Pre-State Jewish Colonization in Northern Palestine and Its Impact on Local Bedouin Sedentarization 1914–1948," 290.

(Jewish) colonizers',[467] and settlers[468] on the other. This would suggest that Falah views the indigenous/colonial divide in relational and historical terms, while also implying that today's tenuous minority/relations have also been influenced by external actors. Interestingly, also Falah notes that the problems facing the Bedouin are 'not so much those of being Bedouin, but rather those of being Arabs in a Zionist State',[469] thereby incorporating the Bedouin into the larger Arab minority in Israel and situating them within the broader state/minority relations and debates on incompatible ideological/national values.

b. Professor Aref Abu-Rabia, a Medicinal Anthropologist

A student of anthropologist Emanuel Marx, Aref Abu-Rabia is a tenured Professor at the Department of Middle East Studies at BGU. Abu-Rabia studies folk and ethnic medicine of the Middle East, concentrating on traditional medicine in Palestine in the 20th century, and identifies as a 'native anthropologist'.[470] His personal ties with Bedouin tribes have helped foster a relationship where his informants feel free to communicate and exchange information. On this point, he remarks,

> It is usually difficult to gain more than a superficial knowledge of intimate life in other cultures, as anthropologists know. However, as I myself am a Bedouin from the Negev, and as I have maintained close personal ties with the tribes among whom I carried out fieldwork for my PhD thesis in 1983–5, informants felt relaxed and were generally glad to share information with me.[471]

Abu-Rabia's writings cover traditional medicine, family customs, holy saints, education, violence, and abuse of children, as well as cosmopolitanism, Sufism, Islamic medical law, and ethics.[472] The geography of his research covers the Middle East and North Africa as well as Islamic communities in the West. Abu-Rabia maintains that concentrating on traditional knowledge, and specifically traditional medicine, will facilitate the preservation of 'heritage

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[467] Falah, 291.
[468] Falah refers to settlers as 'Zionist settlers' as well as 'Jewish settlers' and 'new settlers'. Falah, 294, 301, 306.
[469] Quoting from his article on 'Patterns of Spontaneous Bedouin Settlement in Galilee', in Falah, "How Israel Controls the Bedouin in Israel," 36.
[470] Aref Abu-Rabia, "A Native Palestinian Anthropologist in Palestinian-Israeli Cosmopolitanism," in *Anthropology and the New Cosmopolitanism: Rooted, Feminist and Vernacular Perspectives*, ed. Pnina Werbner (Oxford: New York: Bloomsbury Publishing, 2015), 159.
[471] Aref Abu-Rabia, "The Evil Eye and Cultural Beliefs among the Bedouin Tribes of the Negev, Middle East," *Folklore* 116, no. 3 (December 1, 2005): 242.
[472] Abu-Rabia is the author of Abu-Rabia, *Indigenous Medicine Among the Bedouin in the Middle East*; Abu-Rabia, *A Bedouin Century*; Aref Abu-Rabia, *Negev Bedouin and Livestock Rearing: Social, Economic and Political Aspects* (Oxford, UK: Providence, RI: Bloomsbury Academic, 1994). He is the co-author of Gideon M. Kressel, Sasson Bar-Zvi, and Aref Abu-Rabia, *Charm of Graves: Perceptions of Death and After-Death Among the Negev Bedouin* (Brighton: Sussex Academic Press, 2014).

and knowledge of ethnobotanic and folk medicine of the indigenous pastoral tribes of the Middle East.'[473] His documentation of traditional medicine is a chronicle of the traditional Bedouin way of life and the treatments of ailments that have historically affected the Bedouin.[474] Abu-Rabia carried out extensive fieldwork and empirical work with traditional healers. Employing a historical approach, he provides insight into the development of the current healthcare system, starting with the British Mandate's introduction of doctors and hospitals.[475]

Far from a cultural apologist, Abu-Rabia documents the layers of complexity in Bedouin society in the 1980s to the 2000s. In his commentaries on current issues, such as 'honor killings' and polygamy, we perceive there to be an uneasy, cultural disjuncture between the traditional way of life and modern life, or between cultural aspects and external factors. In his discussion on 'honor killings', Abu-Rabia points out,

> In the wake of the transition from pastoral culture to urban living, there has been a general rise in domestic violence in Bedouin society. Urbanization has also been marked by a decline in the status of sheikhs, who, in the past, put their own lives on the line on behalf of battered women and gave them shelter until domestic harmony could be restored.[476]

In addition to studying the clash of Bedouin/Israeli lifestyles, Abu-Rabia describes the ways in which Bedouin have responded to the imposition of modernity: 'Despite increased exposure to modernization, there is a parallel trend afoot: a return to Muslim religiosity and stricter fulfillment of Islamic religious practices and codes of behavior among Arabs (Bedouin and rural).'[477] This would suggest the modernization project has substituted transitional life with religious life, and not modern life which was the intended goal of the project.

At first blush the term *indigenous* does not appear very often in Abu Rabia's work; however, his frequent use of 'traditional' can be seen as loosely synonymous with the term *indigenous*.

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[473] Aref Abu-Rabia, "Urinary Diseases and Ethnobotany among Pastoral Nomads in the Middle East," *Journal of Ethnobiology and Ethnomedicine* 1, no. 1 (August 2, 2005): 2.
[474] Abu-Rabia, "Urinary Diseases and Ethnobotany among Pastoral Nomads in the Middle East."
[475] Abu-Rabia delves into is the education system that has developed among the Bedouin in the Negev. Similar to his historical approach to the healthcare system, in *Bedouin century: Education and development among the Negev Tribes in the 20th century*, Abu Rabia commences his study with the Ottomans, then the British and finally the introduction of the Israeli education system up until 1998. Abu-Rabia, *A Bedouin Century*.
[476] Aref Abu-Rabia, "Family Honor Killings: Between Custom and State Law," *The Open Psychology Journal* 4, no. (Suppl 1-M4) (2011): 40.
[477] Abu-Rabia, 43.

While not speaking explicitly of indigenous peoples,[478] he in fact employs the term *indigenous* in relation to practices that constitute the Bedouin way of life. For instance, in 2008 he taught a class at BGU entitled 'Pastoral Nomads in the Middle East: Nutrition and Medicine', in which he described the Bedouin and their 'indigenous practices and customs in medicine'.[479]

c. Professor Ismael Abu-Saad, Educational Policy and Administration

Ismael Abu-Saad is a Professor of Educational Policy and Administration in the Department of Education at BGU, holder of the Abraham Cutler Chair in Education, and founding director of BGU's Center for Bedouin Studies and Development. He began his career as a secondary school teacher and then principal, in both in government-planned towns and unrecognized villages.[480] Later, he wrote his doctoral dissertation, 'Organizational Climate and Teachers' Job Satisfaction in the Bedouin Elementary Schools of the Negev in Southern Israel', at the University of Minnesota in the US. While his primary research focus has been on educational policy and development among indigenous peoples, Palestinian-Arab education, and higher education,[481] he also engages with questions of social identity in heterogeneous societies, the impact of urbanization on the Bedouin, and organizational behavior in multicultural contexts—frequently discussing all three tracks together.[482] His scholarship continues to prominently feature education and social transition among Bedouin in the Negev, which has historically posed a unique challenge given their nomadic/semi-nomadic lifestyle. Abu-Saad writes on the development of the educational system for the Bedouin in relation to their changing environment, and evaluates its effectiveness in meeting the new challenges of educating this group. Moreover, he does not limit his studies to the education system facing the Bedouin, but also includes all inhabitants in former Mandatory Palestine from a historical and contemporary perspective.

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[478] Aref Abu-Rabia, "Displacement, Forced Settlement and Conservation. Displacement, Forced Settlement and Sustainable Development.," in *Conservation and Mobile Indigenous Peoples*, ed. Dawn Chatty and Marcus Colchester (New York: Oxford: Berghahn Books, 2002), 202–11.

[479] Aref Abu-Rabia, "Pastoral Nomads in the Middle East: Nutrition and Medicine (M.A. & Ph.D. Seminar)," 2008, http://in.bgu.ac.il/humsos/mideast/pages/staff/aref.aspx.

[480] Tel-Sheva Comprehensive School, Al-Hawashla Elementary School, Laqiya Elementary School, and Rahat High School, among others. Ismael Abu-Saad, "Curriculum Vitae and List of Publications" (Ben-Gurion University of the Negev, October 2009), http://www.bgu.ac.il/~abusaad/Ismael%20Abu-Saad%20CV%20Oct.%202009.pdf.

[481] Abu-Saad, "The Education of Israel's Negev Beduin: Background and Prospects."

[482] Ismael Abu-Saad, "Bedouin Arabs in Israel: Education, Political Control and Social Change," in *The Education of Nomadic Peoples: Current Issues, Future Prospects*, ed. Caroline Dyer (New York: Oxford: Berghahn Books, 2006), 141.

On the topic of education in the context of the Bedouin, Abu-Saad contributed to Adalah's newsletter with an article on 'Education as a Tool of Expulsion from the Unrecognized Villages,' where he analyzes how residents in unrecognized villages are unable to exercise their right to education due to the illegal status of their homes under Israeli domestic law. This is exacerbated given that the schools accessible to unrecognized villages are only 'temporary', reflecting the view of state authorities that the Bedouin will shortly be moving to government-planned towns where Bedouin children and adolescents have better access to education and consequently a better standard of education.[483]

A theme evident in a lot of his writing is the role of the Israeli education system in blurring, rather than enhancing, Bedouin identity.[484] Writing in the early 2000s, Abu-Saad discusses 'Education as a Tool for Control vs. Development among Indigenous Peoples: The Case of Bedouin Arabs in Israel', in which he refers to the United Nations, the UNWGIP, the Sub-Commission on the Prevention of Discrimination of Minorities, and the IWGIA. He argues that 'the indigenous aspect of the Palestinian struggle has been overlooked' and draws a commonality between Palestinians in Israel and Aborigines in Australia.[485] Against the backdrop of indigenous representation, Abu-Saad points to the role of the education system in inoculating an Israeli-Arab identity whereby 'Ministry of education-approved textbooks were re-making them [Bedouin] into "Israeli Arabs" whose stereotype is less negative than the stereotype of those Arabs who live beyond the borders of the State of Israel.'[486]

A series of articles has led Abu-Saad to studying the Bedouin's indigeneity, and eventually, to fully engaging with the international framework of indigenous peoples in his studies of the identity of the Bedouin in the Negev. In one of his earliest articles on individual and collective identity, based on a questionnaire survey, Abu-Saad and his co-authors probe the orientation and politicization of the Bedouin in Israel. In a telling conclusion, they pose the rhetorical question: 'As long as the state's national corporate identity explicitly excludes Arab citizens

[483] Ismael Abu-Saad, "Education as a Tool of Expulsion from the Unrecognized Villages" Adalah's Newsletter (2004): 3–4.
[484] For example, see Abu-Saad, "Bedouin Arabs in Israel: Education, Political Control and Social Change," 249–50.
[485] Abu-Saad, 242–43.
[486] Ismael Abu-Saad, "The Portrayal of Arabs in Textbooks in the Jewish School System in Israel," *Arab Studies Quarterly* 29, no. 1 (2007): 26.

ideologically and materially, how can they be expected to identify with that state?'[487] They also suggest that, if the Bedouin are unable to relate to the corporate identity of the state, they are able to rethink their identities and seek out other identities such a religious corporate identity (i.e., an identity that can be associated with the Islamic movement rather than any particular nation or ethnic group) or a national corporate identity (i.e., one based on Palestinian collective belonging).[488] To support the general disenchantment with their tenuous situation of the Bedouin, they draw on the perspective of majority, specifically mentioning, 'Landau (1993) reported that in response to modernisation, discontentment with their treatment by the government (e.g., land expropriation, urbanisation, etc.) and the breakdown of governmental segmentation of Arabs, the attitudes and behaviour of the Bedouin were more and more coming into line with those of other Arabs in Israel.'[489] Despite a broad spectrum of responses to their survey questions on identity, Abu-Saad and his co-authors found that those who were certain about their identity (i.e., Israeli or Palestinian) were more likely to be polarized on certain issues; for example those saw themselves as Israeli recognized the right of Israel to exist but had reservations about establishing a Palestine state, while those who saw themselves as Palestinian did not think that they could enjoy full equality as non-Jewish and non-Zionist citizens in the State of Israel.[490] The article falls short of mentioning indigeneity, or indigenous identity, as one of the corporate identities available to the Bedouin, which is distinct from religious and national identities. Building on this initial study, the same authors argue that institutionalized mechanisms to de-Arabize the Bedouin are futile and bound to fail, and they make a causal link between such efforts to de-Arabize the Bedouin and the Bedouin's move away from an Israeli collective identity and toward an Arab or Palestinian collective identity.[491] The failure to de-Arabize and Israelize the Bedouin stems from the following: 'Israel's national identity is constructed in a manner that leaves no room for Arab culture and heritage and this identity provided the legitimization for discriminatory policies against the Bedouin, as well as against other Arab groups.'[492]

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[487] Ismael Abu-Saad, Yossi Yonah, and Avi Kaplan, "Identity and Political Stability in an Ethnically Diverse State: A Study of Bedouin Arab Youth in Israel," *Social Identities* 6, no. 1 (2000): 60.
[488] Abu-Saad, Yonah, and Kaplan, 59. Based on corporate identity, which is made up of community and identity, 'national corporate identity' can be considered as acting 'as a complementary category to citizenship', see Rebecca Kook, "The Fact of Pluralism and Israel National Identity," *Philosophy and Social Criticism* 24, no. 6 (1998): 10.
[489] Abu-Saad, Yonah, and Kaplan, "Identity and Political Stability in an Ethnically Diverse State," 54.
[490] Abu-Saad, Yonah, and Kaplan, 58–59.
[491] Yossi Yonah, Ismael Abu-Saad, and Avi Kaplan, "De-Arabization of the Bedouin: A Study of an Inevitable Failure," *Interchange* 35, no. 4 (2004): 401.
[492] Yonah, Abu-Saad, and Kaplan, 403.

In 2008, Abu-Saad's point of departure was indigenous peoples' shared history of exclusion, specifically in the decision-making processes that directly affect them, such as decisions related to displacement and relocation, development initiatives, and the urbanization process.[493] Abu-Saad reviewed the indigenous experiences of and responses to urbanization in settler societies, namely in the US, Canada, and Australia. Linking the Bedouin's experience to other indigenous peoples' experiences, Abu-Saad maintains that 'The common indigenous experience of space being "appropriated from indigenous cultures and then 'gifted back' as reservations, reserved pockets of land for indigenous people who once possessed all of it" (Smith, 1999, p. 51), was taken to the extreme with the [Israeli] government's urbanization plan for the Bedouin.'[494] Against this backdrop, Abu-Saad examines the experience of the Bedouin in the Negev, who are identified as Palestinian and indigenous, and whose traditional lifestyle of land-based, semi-nomadic pastoralism is being replaced by landless, labor force, and government-planned urbanization. Issues of key importance to that process are explored, including the historical political context and state/indigenous relations, the land conflict, and the settler-colonial vision inherent in the conceptualization and implementation of urban models in the Negev. Notably, the paper confirms that organized community resistance in the modern nation-state, which is without a normative foundation, has greater success in the preservation of their culture, rights, and identity. Abu-Saad automatically locates indigenous peoples' survival and preservation within a paradigm that does not allow for the agency of indigenous people, who conduct themselves by their own custom and tradition.

Abu-Saad's use of the term *indigenous* is a gradual progression within his work, and the usage has been prolific in his writings.[495] Even in his frequent use of the term *indigenous* to describe

[493] Abu-Saad, "Spatial Transformation and Indigenous Resistance: The Urbanization of the Palestinian Bedouin in Southern Israel."
[494] Abu-Saad, 1731–32.
[495] For example, in 1993, he presented a paper, 'Higher Education among the Indigenous Bedouin Arabs of the Negev: The Last Frontier', at the International Conference on Regional Development sponsored by a grant from the USA Public Health Service. Ismael Abu-Saad, "Higher Education among the Indigenous Bedouin Arabs of the Negev: The Last Frontier" (The Dead Sea, Ein Bokek, December 27, 1993). Referenced in Ismael Abu-Saad et al., "Bedouin Arab Mothers' Aspirations for Their Children's Education in the Context of Radical Social Change," *International Journal of Educational Development* 18, no. 4 (July 1, 1998): 347–59; Ismael Abu-Saad, "The Assessment of Organisational Climate in Bedouin Arab Schools in Israel," *Educational Management & Administration* 23, no. 4 (October 1, 1995): 260–70. Five years later, in 1998, he delivered a paper entitled 'Social and Educational Development of Indigenous Yaqui and Bedouin Communities in the Sonoran and Negev Deserts'. Ismael Abu-Saad, "The Challenge of Mainstream Schooling in Indigenous Communities: Student Perceptions of School Climate and Family Relations among Bedouin Arabs in Israel and Yaqui Indians in Arizona" (Be'er Sheva, April 4, 1998). While he published only a few annual articles during the years 1997-2003, Abu-Saad gave a presentation at a conference hosted by Adalah, which was called 'Planning, Control and the Law in the Naqab [Negev].' In 2008, in addition to 'Spatial Transformation and Indigenous Resistance: The

the Bedouin in the Negev, I would argue that at this time the term was mainly used in a descriptive sense or in the applications drawn from anthropology or sociology (the international definition itself was undergoing its own jurisgenerative transformation in international human rights law at the same time, investigated in Chapter 4). As discussed in in an earlier chapter, in the mid-2000s and especially around 2007 when the UN Declaration on the Rights of Indigenous Peoples was adopted by the UN General Assembly, the meaning and application of *indigenous* to the Bedouin in the Negev would undergo a rapid shift. Although Bedouin scholars had been using the term *indigenous* in the background for some time, it was only in the mid-2000s that the term was applied under international human rights conditions, and with the corresponding legal implications (see Chapter 5).

5. New Knowledge Production on and with the Bedouin

The 21st century has already witnessed an explosion of new knowledge production and scholarship about the Bedouin in the Negev, in the fields of colonial and postcolonial studies, Palestine/Israel studies, Middle East studies, and critical studies. This work has built on the foundations laid in the 1990s and 2000s by Bedouin scholars who started to challenge previous representations of the Bedouin by Westerners and pro-State Israelis, seeking to counter existing narratives and to place the Bedouin of Israel into the broader political context. The resulting

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Urbanization of the Palestinian Bedouin in Southern Israel' mentioned above, he also published a critical analysis on 'State Rule and Indigenous Resistance among al Naqab Bedouin Arabs'. Ismael Abu-Saad, "Introduction: State Rule and Indigenous Resistance among Al Naqab Bedouin Arabs," *HAGAR: Studies in Culture, Polity & Identities* 8, no. 2 (Winter 2008): 3–24; Ismael Abu-Saad, "Bedouin Arabs in Israel between the Hammer and the Anvil: Education as a Foundation for Survival and Development," in *Future of Indigenous Peoples: Strategies for Survival and Development*, ed. Duane Champagne and Ismael Abu-Saad (Los Angeles, CA: UCLA American Indian Studies Center, 2003), 103–20; Ismael Abu-Saad, "Education as a Tool for Control vs. Development among Indigenous Peoples: The Case of Bedouin Arabs in Israel," *HAGAR: Studies in Culture, Polity & Identities* 2, no. 2 (2001): 241–59; Abu-Saad, "The Education of Israel's Negev Beduin: Background and Prospects." Abu-Saad also contributed to the section on the Bedouin in the 2009 edition the IWGIA's *Indigenous World*. See section on 'The Indigenous Palestinian Bedouin in Southern Israel' in IWGIA, "The Indigenous World 2009" (Copenhagen, 2009). He submitted a syllabus to teach a class entitled 'The Cultural Survival of Indigenous Peoples: The Case of the Negev Bedouin Arabs in Israel' for Fall 2010. In 2011, Abu-Saad again includes *indigenous* in the title of an article: 'The Indigenous Palestinian Bedouin of the Naqab: Forced Urbanization and Denied Recognition'. Ismael Abu-Saad, "The Indigenous Palestinian Bedouin of the Naqab: Forced Urbanization and Denied Recognition," *Mada Al-Carmel Arab Center for Applied Social Research*, The Palestinians in Israel Readings in History, Politics and Society, July 2011, 120–27. Already in these articles, his use of language is essential to understanding the way in which the internationally-defined status and rights of indigenous peoples emerged and an indigenous peoples' consciousness and subjectivity has developed in the Israeli/Bedouin context since the turn of the millennium. Duane Champagne and Ismael Abu-Saad highlight the need for academic studies of indigenous peoples that educate the academy and the public regarding indigenous peoples' issues and that study indigenous culture, law, history, and economics, focusing on 'land rights, self-government, and community preservation as well as collective relations to nation-states'. Duane Champagne and Ismael Abu-Saad, "Preface," in *The Future of Indigenous Peoples: Strategies for Survival and Development* (Los Angeles, CA: UCLA American Indian Studies Center, 2003), xx.

knowledge directly challenges the Orientalist, modernist, and developmentalist research agendas hindering previous writing on the Bedouin[496]—anthropologists are no longer academic commentators describing the Bedouin, and the term *indigenous* is not solely employed according to its anthropological connotations. This alternative knowledge production acknowledges, implicitly and explicitly, the influence of the politicization and polarization in state/minority relations in the Israeli/Bedouin context.[497] Hence, two distinct bodies of scholarship currently exist: on the one hand, there is the dominant knowledge, with academics following existing studies on the Bedouin in line with the position of state institutions that deal with the Bedouin; on the other hand, alternative or new knowledge seeks to revise the existing body of knowledge, consciously challenging the hegemonic knowledge production (both bodies of knowledge are discussed in Chapter 5).[498]

This section outlines the resulting shift in knowledge production, as an eclectic group of critical scholars—Bedouin, Israeli, and international—emerged and began to challenge the previous monopoly on *status quo* knowledge. The term *indigenous* as applied to the Bedouin acquires international, legal and political meaning, and in this new knowledge on the Bedouin, the framework of the international human rights law of indigenous peoples has been incorporated, either directly or indirectly. I examine the newer scholarship that draws on the internationally-defined status and rights of indigenous peoples, as applied to the Bedouin context in Israel. I begin by presenting the models, topics, and approaches used to challenge the dominant literature's representations of the Bedouin, and then introduce the range of critical scholars

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[496] On critical approaches in studies of Bedouin/state relations in Israel, see Nasasra et al., *The Naqab Bedouin and Colonialism*; Mansour Nasasra, *The Naqab Bedouins: A Century of Politics and Resistance* (New York, NY: Columbia University Press, 2017); Abu-Saad, "Spatial Transformation and Indigenous Resistance: The Urbanization of the Palestinian Bedouin in Southern Israel"; Oren Yiftachel, "Critical Theory and 'Gray Space': Mobilization of the Colonized," *City* 13, no. 2–3 (2009): 246–63; Yiftachel, "Epilogue: Studying Al-Naqab/Negev Bedouins-Toward a Colonial Paradigm?"; Ronen Shamir, "Suspended in Space: Bedouins under the Law of Israel," *Law and Society Review* 30, no. 2 (January 1, 1996): 231–57. See Chapter 6 on 'Bedouins as "Other" to the Israeli Nation: National and Historical Aspects of the Land Disputes', for further discussion in Kram, "Clashes over Recognition," 45–46.

[497] This politicization can be viewed as part of a larger landscape of literature on the interface between academia and politics in Palestine and the Middle East. Its relevance to the colonial project in particular has long been discussed by, for example, Mitchell, *Rule of Experts: Egypt, Techno-Politics, Modernity*; Sa'di, "Modernization as an Explanatory Discourse of Zionist-Palestinian Relations"; Lila Abu-Lughod, "Zones of Theory in the Anthropology of the Arab World," *Annual Review of Anthropology* 18, no. 1 (1989): 267–306; Van Teeffelen, "Anthropologists on Israel: A Case Study in the Sociology of Knowledge"; Asad, "Anthropological Texts and Ideological Problems: An Analysis of Cohen on Arab Villages in Israel"; Asad, *Anthropology and the Colonial Encounter*.

[498] Oren Yiftachel, Batya Roded, and Alexandre (Sandy) Kedar, "Between Rights and Denials: Bedouin Indigeneity in the Negev/Naqab," *Environment and Planning A: Economy and Space* 48, no. 11 (November 1, 2016): 2129–61.

who have participated in this knowledge production. Finally, I turn to the ways this new wave of literature uses the concept and category of indigenous peoples and frames the Bedouin as part of an international human rights context. This scholarship by the Bedouin and critical scholars marks a rupture: No longer handled as a distinct group, or a minority within the Arab minority in Israel, in these new studies the Bedouin are representative of multiple phenomena that affect not only the Bedouin but also the Arab minority nationwide, and Arabs in the neighboring region.

a. Challenging Previous Literature: Colonial Models, Postcolonial Studies, and Interdisciplinary Approaches

Previous sections of this chapter have outlined the main phases of knowledge production on the Bedouin, with an emphasis on the motivations and agendas of those writers and scholars. The last two decades of the 19th century saw the inception of knowledge production by Europeans on the Bedouin in the Negev, with Bedouins idealized as the 'noble savage' and written into a Biblical context for Christian religious purposes. In the mid-20th century, anthropological study of and writing on the Bedouin by Westerners and Western-educated Jews who adopted the new State of Israel focused on defining the nomadic Bedouin as past-tense, in order to leave room for Jewish/Israeli appropriation of Bedouin lands, and on assimilating the Bedouin as a settled Israeli population. Up until the 1980s, the history of the region was written from the dominant Zionist position, which excluded subordinate historical narratives of the local population in former Mandatory Palestine. In the late 20th century, Bedouin themselves began producing literature and knowledge, focused mainly on overturning the assumptions of the dominant narrative.

In the 21st century, a new wave of scholars—both Bedouin and non-Bedouin—have employed colonial models and postcolonial approaches in their work to better understand the land dispute between the Bedouin and the State of Israel.[499] 'New Historians' in Israel have set out to challenge and contest the dominant Zionist historical narrative and have begun to re-tell the history of the Israeli state from a critical perspective. More recently, their focus has expanded

[499] Postcolonial theories respond to the phenomenon of colonialism and its impact on the present. The term *postcolonial* does not refer to the "end" of colonialism, but rather to the history of colonialism and its effects on the present.

to examining the situation of the Bedouin with the New Historian lens.[500] Somewhat related to the New Historian turn in history, the settler-colonial model has been deployed as the principal analytical model to study Israel and Palestine,[501] part of which examines Zionism as a project of settler-colonialism.[502] Detractors argue that this model is ill-fitting or inapplicable to Israel,[503] while other scholars argue that in order to fully comprehend the tenuous situation of the Bedouin in Israel, one must take into account Jewish colonialization in Israel/Palestine.[504] Moreover, it is argued that use of the colonial model also exposes the 'depoliticization' approach of previous mainstream studies regarding state policies and 'amend[s] the distortions of the power-knowledge nexus'.[505]

Understanding the Bedouin in a colonial and/or indigenous context allows scholars to compare the Bedouin with other groups, in a broad spectrum of colonial settings, thus introducing new layers to that understanding. As discussed above, Abu-Saad has compared the Bedouin to indigenous populations in the US, Canada, and Australia. Others have compared the Bedouin in Israel with the Bedouin throughout the Middle East and North Africa region.[506] In 2008, a special issue on 'Bedouin Arab Society in the Negev/Naqab' was published by HAGAR: *Studies* in Culture, Polity and Identities at BGU. Editors Pnina Motzafi-Haller and Michael

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[500] See, for example, Ilan Pappé, "The Forgotten Victims of the Palestine Ethnic Cleansing," in *The Naqab Bedouin and Colonialism: New Perspectives*, ed. Mansour Nasasra et al., Routledge Studies on the Arab-Israeli Conflict (Abingdon, Oxon: New York, NY: Routledge, 2014), 57–67.

[501]For an analytical model of settler-colonialism, see Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8, no. 4 (December 1, 2006): 387–409.. For a critical application of this model to the Israeli/Palestinian context, see Rachel Busbridge, "Israel-Palestine and the Settler Colonial 'Turn': From Interpretation to Decolonization," *Theory, Culture & Society* 35, no. 1 (January 1, 2018): 91–115.

[502] Shortly after the Six Days War in 1967, Marxist historian Maxime Rodinson wrote Maxime Rodinson, *Israel: A Colonial Settler-State?*, trans. David Thorstad (New York: Monad Press, 1973). See also, Lorenzo Veracini, *Israel and Settler Society* (London: Pluto Press, 2006); Gershon Shafir, *Land, Labor and the Origins of the Israeli–Palestinian Conflict 1882– 1914* (Berkeley, CA: University of California Press, 1996); Oren Yiftachel, *Ethnocracy: Land and Identity Politics in Israel/Palestine* (Philadelphia, PA: University of Pennsylvania Press, 2006). For a global analysis of settler colonialism that includes Aotearoa/New Zealand, Australia, Canada, the United States, South Africa, Algeria and Israel, see Daiva K. Stasiulis and Nira Yuval-Davis, eds., *Unsettling Settler Societies: Articulations of Gender, Race, Ethnicity and Class* (London: SAGE Publications, 1995). For a consequential conceptual exercise to transcend the settler-colonialism, see Raef Zreik, "When Does a Settler Become a Native? (With Apologies to Mamdani)," *Constellations* 23, no. 3 (September 1, 2016): 351–64.

[503] S. Ilan Troen, "De-Judaizing the Homeland: Academic Politics in Rewriting the History of Palestine," *Israel Affairs* 13, no. 4 (October 1, 2007): 872–84; Shlomo Avineri, "Zionism as a Revolution: Zionism as a Permanent Revolution," in *The Making of Modern Zionism: The Intellectual Origins of the Jewish State* (New York: Basic Books, 1981), 3–13, 217–27.

[504] Yiftachel, "Epilogue: Studying Al-Naqab/Negev Bedouins-Toward a Colonial Paradigm?"

[505] Oren Yiftachel, "Naqab/Negev Bedouins and the (Internal) Colonial Paradigm," in *Indigenous (In)Justice: Human Rights Law and Bedouin Arabs in the Naqab/Negev*, ed. Ahmad Amara, Oren Yiftachel, and Ismael Abu-Saad (Harvard: Harvard University Press, 2013), 295.

[506] See for example, 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, no. 4 (June 19, 2012): 487–510. See also, Nasasra, "Bedouin Tribes in the Middle East: Changing Dynamics and the New State."

Feige introduce the topic as set against the 'general growing knowledge of subaltern people, their plight, their difficulties in the global world and their resistance in the face of state oppression' and in furtherance of 'engaged critical research'.[507] Their introduction places the Bedouin in the context of 'minority populations residing in the periphery' of societies across the world:

> In this special volume we focus our sights close to home, and examine *how issues that plague minority populations residing in the periphery—acute deprivation, cultural marginality and systematic exclusion—play out in the Israeli Negev region among the Bedouin community*. This is literally our own backyard. As Israelis, as residents of the Negev and as editors of a journal published at the Ben Gurion University of the Negev, we and many of the contributors to this volume live our lives, teach, work and raise our families in one of the poorest regions of Israel, where impoverished Bedouin towns are established in the midst of dispersed shanty towns (referred to in Israeli formal Speech as unrecognized villages).[508] (emphasis added)

Comparative studies of the Bedouin often examine the differential states' treatment of the groups, on a continuum from favorable to mistreatment, and conduct comparative or transnational analysis of the Bedouin's mobilization and, for example, the American civil rights movement or other rights mobilization worldwide.[509]

As these colonial and postcolonial studies suggest, another element of this shift in knowledge production is the move from the relative disciplinary sterility that limited the Bedouin to an anthropological object of inquiry until the mid-1980s, to cross-, trans-, and interdisciplinary studies. These new disciplines include law and geography,[510] and new interdisciplinary approaches such as legal geography, historical geography, legal history, and legal anthropology.[511] In particular, the interdisciplinary approach of legal geography lends itself to

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[507] Pnina Motzafi-Haller and Michael Feige, "Introduction," *HAGAR: Studies in Culture, Polity & Identities* 8, no. 2 (2008): 1.
[508] Motzafi-Haller and Feige, 1.
[509] Alexander Koensler and Cristina Papa, "Political Tourism in the Israeli-Palestinian Space (Respond to This Article at Http://Www.Therai.Org.Uk/at/Debate)," *Anthropology Today* 27, no. 2 (April 1, 2011): 13–17.
[510] The historical connection of the Bedouins to land in the Negev and the central role of land in their society are discussed in recent anthropological studies (e.g., Aburabia, Safa, "Land, Identity and History: New Discourse on the Nakba of Bedouin Arabs in the Naqab," in *The Naqab Bedouin and Colonialism: New Perspectives*, ed. Mansour Nasasra et al. (Abingdon, Oxon: New York, NY: Routledge, 2014); Bailey, *Bedouin Law from Sinai and the Negev*; Kressel, *Let Shepherding Endure*., geographical scholarship (e.g., Avinoam Meir, "Contemporary State Discourse and Historical Pastoral Spatiality: Contradictions in the Land Conflict between the Israeli Bedouin and the State," *Ethnic and Racial Studies* 32, no. 5 (June 1, 2009): 823–43; Meir, *As Nomadism Ends*; Yiftachel, "Critical Theory and 'Gray Space'"; Yiftachel, *Ethnocracy*, 2006. and legal works (Yiftachel, Roded, and Kedar, "Between Rights and Denials"; Ahmad Amara and Zinaida Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab," in *Indigenous (In)Justice: Human Rights Law and Bedouin Arabs in the Naqab/Negev*, ed. Ahmad Amara et al. (Cambridge, MA: Harvard University Press, 2013).
[511] Ruth Kark is a political geography. Sandy Kedar is a legal geographer. Emma Nyhan is a legal anthropologist.

comparative analyses, particularly with regard to land regimes in the settler-colonial states and Israel. The modernization and sedentarization narratives of the mid- to late-20th century are entrenched in a broader historical narrative concerning the land ownership dispute between the Bedouin and Israel, and have helped shape Israeli public policy and public opinion on the Bedouin and the Negev. In particular, the 'Dead Negev Doctrine' (DND) has been described 'as an Israeli version of a colonial "terra nullius" approach, through which most of the Bedouin tribes of the Negev (Naqab) have been thoroughly dispossessed [of their lands].'[512] Since the Negev is conceived by the dominant public and academic opinion to be *vacuum domicilum*—an empty space waiting for redemption and settlement—and Bedouin culture is seen as a defeated culture, Bedouin have been seen as facing total disappearance from the historical landscape. However, legal geography contextualizes this notion.

For example, in his study on the prospect of recognizing Bedouin property rights, John Sheehan, who is considered an Australian authority on native title compensation, applies the Native Title framework to the Bedouin, focusing on the *terra nullius*[513] and the *mewat* lands doctrines (the tool employed to dispossess the Aboriginal Peoples of their lands, and the empty land doctrine introduced by the Ottoman in 1858, respectively), while drawing insight from international law and comparative law.[514] In addition to such comparative studies from an international perspective, key domestic interlocutors in the global knowledge production of the concept and category of indigenous peoples in the Israeli/Bedouin context have written an interdisciplinary book titled *Emptied Lands: A Legal Geography of Bedouin Rights in the Negev*.[515] The book begins with the 'legal geography of indigenous Bedouin dispossession', which addresses the dispossession of indigenous peoples, focusing on the evolution and nature of the *terra nullius* concept and its Israeli version, the DND.

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[512] Alexandre Kedar, Ahmad Amara, and Oren Yiftachel, "Emptied Lands: A Legal Geography of Bedouin Rights in the Negev (Redwood City, CA: Stanford University Press, Forthcoming)," n.d., http://www.sup.org/books/title/?id=24714.

[513] The term *terra nullius* is a global concept used in international law, whose origins derive from the 1095 papal bull, of Pope Urban II, which allowed Christian European states to claim land inhabited by non-Christians.

[514] John Sheehan, "Applying an Australian Native Title Framework to Bedouin Property," in *Indigenous (In)Justice; Human Rights Law and Bedouin Arabs in the Naqab/Negev* (Cambridge, MA: Harvard University Press, 2013), 228–53.

[515] Forthcoming from Stanford University Press in February 2018, written by Alexandre Kedar, Ahmad Amara, and Oren Yiftachel. See, Alexandre Kedar, Ahmad Amara, and Oren Yiftachel, "NO Emptied Lands: A Legal Geography of Bedouin Rights in the Negev (Redwood City, CA: Stanford University Press, Forthcoming)," n.d., http://www.sup.org/books/extra/?id=24714&i=Contents.htm.

b. Introducing Critical Scholars: Bedouin, Israeli, and International

While the domestic setting is the key site of knowledge production and scholarship in Israel, there is also a shift in the location of knowledge production beyond the domestic academic arena. In addition to the rise of Bedouin scholars, who have often spent stints studying abroad for university degrees, there is also an increasing number of international scholars who are actively and collaboratively generating new knowledge on the Bedouin.[516] Often, international scholars make links that are not based in Israel and conduct comparative studies that are outside the domestic or regional context. In addition, empirical studies carried out by international scholars are less focused on Bedouin culture but rather concentrate on the claims and rights of the Bedouin.[517] Moreover, international scholars draw on a variety of sources and literature, including para-academic literature, and are often keen to give voice and agency to the Bedouin.[518]

This outside group of scholars has helped to expand the approaches and theories used, which has contributed to internationalizing the new knowledge production and scholarship on the Bedouin. In terms of academic activities, conferences on the Bedouin are no longer limited to Israeli universities,[519] and this interest of the international academic audience is indicative of an internationalization of the knowledge production and scholarship on the Bedouin in Israel, and of the role of the international scholar in making the situation of the Bedouin comprehensible, and the Bedouin visible.[520] Research collaborations, or what some would view as activist scholarship, have often represented an eclectic range of disciplines and

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[516] For example, several international researchers have written their Master's and doctoral theses about various topics on the Bedouin in the Negev. Bogumila Hall, "Subaltern Rightful Struggles Comparative Ethnographies of the Bedouin Villagers in the Naqab and the Akhdam Slum Dwellers in Sana'a" (European University Institute, 2016); Marion Lecoquierre, "Holding on to Place. Spatialities of Resistance in Israel and Palestine: The Cases of Hebron, Silwan and Al-Araqib" (European University Institute, 2016); Rikke Stokholm Riemer, "The 'Multiple Realities' of Intervention Practice in the Context of the State-Bedouin Conflict in Northern Negev: The Case of the Interrelation between the NGO Bustan and the Bedouin Village Qasr A-Sir" (Roskilde University, 2012); Jessica Marx, "Planting and Uprooting Natures: The Judaization of the Arab Landscape in Israel through Afforestation" (Lund University, 2011); Greenspan, "Mediating Bedouin Futures: The Roles of Advocacy NGOs in Land and Planning Conflicts between the State of Israel and the Negev Bedouins."

[517] Or, as Ratcliffe asserts, even 'set[ting] the record straight', Ratcliffe et al., "The Naqab Bedouin and Colonialism," 16.

[518] Ratcliffe et al., 19.

[519] For example, Ratcliffe refers to the publication as 'largely based on the workshop that preceded it.' Ratcliffe et al., 2. Footnote 1 adds: 'The international conference 'Rethinking the Paradigms: Negev Bedouin Research 2000+' was held on 13–14 February 2010 at the Institute of Arab and Islamic Studies, University of Exeter, and was funded by the British Academy, together with the University's Institute of Arab and Islamic Studies and the Department of Politics. For details of the workshop programme, see http://socialsciences.exeter.ac.uk/iais/events/conferences/.' Ratcliffe et al., 26.

[520] Ratcliffe et al., "The Naqab Bedouin and Colonialism," 17–18.

produced knowledge from within and without the domestic academic setting in Israel.[521] Published in short succession in 2013 and 2014, *Bedouin (In)Justice: Human Rights Law and Bedouin Arabs in the Naqab/Negev* and *The Naqab Bedouin and Colonialism: New Perspectives* epitomize this trend. Thematically, these collections encompass Bedouin scholarship in the 21st century, the rise in Bedouin-led activism and agency, and the politics of academia in the region, underscoring the unique features and situational complexity of the Bedouin generally and of their political profile in particular.

Some of the contributions emerge from within the new generation of Bedouin *intelligentsia*. These new publications not only demonstrate how knowledge production and the politics on the Bedouin are entangled, but also reveal how Bedouin scholars are effectively and actively engaged in the knowledge production and scholarship about themselves.[522] Not surprisingly,[523] Bedouin women scholars, often highlighting gender issues specific to Bedouin society, are key figures in shaping this new knowledge production and scholarship, which does not lack political bite.[524] Not all of what they have written has been directed specifically at the 'activist end of the movement'.[525] Similarly, the rise of literature on the Bedouin is not limited to activist-oriented scholarship and several of the published monographs on Bedouin-related topics are not *per se* activist but do not shy away from politics either.[526]

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[521] On younger, better-educated Bedouin writing about their own society see, Cole, "Where Have the Bedouin Gone?," 259.

[522] Native American Studies comes to mind. Linda Tuhiwai Smith's *Decolonizing Methodologies: Research and Indigenous Peoples* has become a seminal work. See, Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (London: Zed Books, 1999).

[523] I say this because Bedouin women are often viewed as agents of change within the Bedouin community. The various Bedouin women's organizations would lend support to such claims. Henriette Dahan-Kalev, Emilie Le Febvre, and Amal El' Sana-Alh'jooj, *Palestinian Activism in Israel: A Bedouin Woman Leader in a Changing Middle East*, Middle East Today (New York: Palgrave Macmillan, 2012); Elizabeth Marteu, "Bedouin Women's Organization In The Naqab: Social Activism For Women's Empowerment," in *The Naqab Bedouin and Colonialism: New Perspectives*, ed. Mansour Nasasra et al. (Abingdon, Oxon: New York, NY: Routledge, 2014); E. Marteu, ed., *Civil Organizations and Protest Movements in Israel: Mobilization around the Israeli-Palestinian Conflict*, 2009 edition (New York, NY: Palgrave Macmillan, 2009); Marteu, "Some Reflections on How Bedouin Women of the Negev Relate to Politics."

[524] A good example of such scholarship is Sarab Abu-Rabia-Queder. Similar to her earlier ethnographic studies, in "Shifting Discourse: Unlocking Representations of Educated Women's Identities", Abu-Rabia-Queder self-reflects and examines her role(s) as a woman, Bedouin and educated, providing a perspective from which to view the politics of academia in 'Naqab Bedouin Studies'. Also important in the development of topics surrounding Bedouin women is the work of Safa Aburabia and Rawia Abu Rabia. Sarab Abu-Rabia-Queder, "Shifting Discourses: Unlocking Representations of Educated Bedouin Women's Identities," in *The Naqab Bedouin and Colonialism: New Perspectives*, ed. Mansour Nasasra et al. (Abingdon, Oxon: New York, NY: Routledge, 2014), 191–213.

[525] Frantzman, Yahel, and Kark, "Contested Indigeneity," 93.

[526] For example, Emily McKee, *Dwelling in Conflict: Negev Landscapes and the Boundaries of Belonging* (Redwood City, CA: Stanford University Press, 2016); Koensler, *Israeli-Palestinian Activism*; Dahan-Kalev, Le Febvre, and El' Sana-Alh'jooj, *Palestinian Activism in Israel: A Bedouin Woman Leader in a Changing Middle*

c. Framing and Conceptualizing the Bedouin as Indigenous

This new wave of knowledge production has also led scholars to apply international understandings of indigenous peoples to the Bedouin, and to draw on international human rights law as a distinct body of knowledge that can provide valid explanations and understandings of the situation of the Bedouin in the Negev.[527] Hence, international human rights law has become an academic focal point, with indigenous peoples' status and rights at center stage. In the postcolonial and international studies mentioned above, the term *indigenous* and the concept and category of indigenous peoples appear repeatedly and reference is often made to international indigenous peoples' recognition and rights.[528] In 2010, a British Academy supported conference at the University of Exeter was titled 'Rethinking the Paradigms: Negev Bedouin', and was the first international conference that included a large number of papers devoted to the Bedouin and referencing them as an indigenous group under international human rights law conditions.[529] This conference was followed by other international conferences, including one at the Center for Palestine Studies at Columbia University in 2015. 'Representations of Indigeneity in Settler-Colonial Contexts: The Case of the Naqab Bedouin' asked questions like 'Is the framework of "indigeneity" useful—politically and analytically—for representations of the Naqab Bedouin?' and 'What are potentials and pitfalls of rights-based representations and activism (indigenous rights, human rights, women's

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East; Steven C. Dinero, *Settling for Less: The Planned Resettlement of Israel's Negev Bedouin* (New York: Berghahn Books, 2010).

[527] International scholars have, in recent years, analyzed the case of the Bedouin in Israel. In 2008, John R. Graham and Alean Al-Krenawi, the latter of BGU, argued that the Bedouin were an indigenous group. In 2012, John Sheehan and Rodolfo Stavenhagen contributed to *Bedouin In(Justice): Human Rights Law and Bedouin Arabs in the Naqab/Negev*. See, Sheehan, "Applying an Australian Native Title Framework to Bedouin Property"; Rodolfo Stavenhagen and Ahmad Amara, "International Law of Indigenous Peoples and the Naqab Bedouin Arabs," in *Bedouin (In)Justice: Human Rights Law and Bedouin Arabs in the Naqab/Negev*, ed. Ahmad Amara, Ismael Abu-Saad, and Oren Yiftachel (Cambridge, MA: Harvard University Press, 2012), 158–92; Alean Al-Krenawi and John R. Graham, *Helping Professional Practice with Indigenous Peoples: The Bedouin-Arab Case* (Lanham, MD: University Press of America, 2008).

[528] On this point, Yiftachel maintains that previous research disregarded the existence of the Bedouins 'as a colonized indigenous people residing within a settler state', although colonial policies have impacted the Bedouin in Israel since 1948. Yiftachel, "Epilogue: Studying Al-Naqab/Negev Bedouins-Toward a Colonial Paradigm?," 175.

[529] The conference included a paper by Abu Nadi, entitled "Indigenous People's health," a paper by Abu-Saad on the "Essential Role of Indigenous Naqab Palestinian Bedouin Research', and academic in the field of education and gender Dr. Sarab Abu Rabia's paper on "Through Feminine Indigenous Eyes a Bedouin Researcher Reflects on her identity and culture". Oren Yiftachel of BGU and the Regional Council of Unrecognized Villages spoke on "Bedouin Arabs of the Naqab/Negev: Studying Colonized Indigeneity". Noa Kram, a PhD student, contributed a paper entitled "The Naqab/Negev Bedouin: Legal Struggles for Land Ownership Rights in Israel". That paper is, according to Kram, being prepared for publication in a book by Harvard Law School's Human Rights Program, entitled *Indigenous (In)Justice: Law and Human Rights for Arab-Bedouin in the Naqab*, illustrating the increasing awareness and acceptance by major institutions of the Bedouin as an indigenous people. Frantzman, Yahel, and Kark, "Contested Indigeneity," 92.

rights, national rights) in the case of the Naqab Bedouin?'. The two edited volumes mentioned above, *Bedouin (In)Justice: Human Rights Law and Bedouin Arabs in the Naqab/Negev* and *The Naqab Bedouin and Colonialism: New Perspectives*, readily draw on the international indigenous peoples' status and rights to discuss Bedouin rights, especially when it comes to the question of their land rights.[530] Chapter titles include 'The Bedouin as an Indigenous Community' and 'International Law, Indigenous Land Rights, and Israel'.

The para-academic use of *indigenous* and application of a human rights and indigenous peoples' rights framework is widespread when reporting on the human rights situation of the Bedouin, who are described as indigenous peoples and whose human rights violations are treated as an indigenous peoples' rights violations. This steady increase in the application of the concept and category of indigenous peoples to the context of the Bedouin in Israel is reflected in the para-academic literature produced by CSOs. For example, HRW reports on the '[t]ens of thousands of Palestinian Arab Bedouin, the *indigenous* inhabitants of the Negev region',[531] while the international fact-finding mission was established in order 'to investigate the human rights conditions of the *indigenous* Bedouin communities in the Naqab [Negev]'.[532] While such CSO reports lie outside the pale of academic literature, they provide alternative accounts and are frequently referenced, although they do not fulfill the academic benchmark of what constitutes scientific knowledge production and scholarship. It is important to note that the authors of this para-academic literature, usually CSO staff, often work directly on the topic in their capacity as legal representatives and also carry out empirical research. Moreover, the domestic CSO actors who compile these reports are skilled in Hebrew, Arabic, and English, and are able to access primary sources and collate that information in these reports. Given that academia and advocacy influence each other, it is worth noting that many of the domestic researchers have worked in the civil society domain or have strong ties with the CSOs, which generates new insights and perspectives and raise awareness.[533]

Since the 1990 publication of the first CSO report, the MRG's 'The Beduin of the Negev', para-academic literature on the Bedouin has increased exponentially and has contributed to all

[530] Ahmad Amara, Ismael Abu-Saad, and Oren Yiftachel, *Indigenous (In)Justice: Human Rights Law and Bedouin Arabs in the Naqab/Negev* (Cambridge, MA: Harvard University Press, 2013); Nasasra et al., *The Naqab Bedouin and Colonialism*.
[531] Human Rights Watch, *Off the Map*, 20, No. 5(E):1.
[532] Anthony Coon et al., "The Goldberg Opportunity: A Chance for Human Rights-Based Statecraft in Israel" (Cairo, December 31, 2010), vi.
[533] Ratcliffe et al., "The Naqab Bedouin and Colonialism," 16.

the elements of the shift in knowledge production described above: colonial and postcolonial approaches, interdisciplinary approaches, comparative studies, international scholarship, and Bedouin voices.[534] For example, Adalah published a position paper called 'From Susiya to Al-Araqib: Forced Displacement on Both Sides of the Green Line' in 2013,[535] which creates a link between the Bedouin in Israel and in the West Bank:

> Al-Araqib and Susiya: two Palestinian villages, one in Israel, one in the West Bank, *share a single story of a struggle against forced displacement*. While the Israeli authorities have threatened these communities' very existence on their land, the continued presence of the people demonstrates their deep reserves of courage and steadfastness. This paper sets out the methods of forced displacement used by Israel to expel Palestinian communities from their land on both sides of the Green Line, and examines the legal context in which it takes place.[536] (emphasis added)

Another report by Adalah's land and planning unit, titled 'Nomads against Their Will', details 'the attempted expulsion of the Arab Bedouin in the Naqab,' using the village of Atir-Umm al-Hieran as the case study.[537] In addition to domestic efforts to generate reading material related to the Bedouin, international human rights organizations continue to publish para-academic literature. A further example is 'The Goldberg Opportunity: A Chance for Human Rights-based Statecraft in Israel', which was based on a fact-finding mission of international scholars,

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[534] Discussing the new role of mode-2 research and para-academic literature by think-thanks, Ratcliffe and his co-authors conclude that 'It marks the rise of new kinds of political institutions articulating 'local' perspectives in ways quite different from earlier regimes of truth.' Ratcliffe et al., 3.

[535] Ben-Youssef, Bishara, and Rosenberg, "From Al-Araqib to Susiya. Forced Displacement of Palestinians on Both Sides of the Green Line."

[536] Ben-Youssef, Bishara, and Rosenberg, 1. The paper was supplemented with a factsheet and fifteen-minute documentary. Adalah also held a film screening and a panel discussion, together with Badil and Rabbis for Human Rights (RHR), at the Educational Bookshop in East Jerusalem. In addition to this, "From Al-Araqib to Susiya" was also screened abroad. It is important to note that this report and documentary were launched on "the commemoration of the 65 Nakba Day," which is an important day in the calendar of the Palestinian history. *Nakba*, when translated from Arabic means "catastrophe." This is a politically-loaded term. A parallel can be drawn between the commemoration of this event and the increased Palestinian consciousness amongst Palestinians in the region, especially among those holding Israeli citizenship. Owing to the surge in Nakba commemorations, it has led the Knesset (the Israeli parliament) to pass into legislation, *Budget Foundations Law (Amendment No. 40) 5771 – 2011*, commonly called the Nakba Law, which prohibits any public organization in receipt of public of funding to commemorate this event. Adalah petitioned against the constitutionality of the law but the petition was dismissed on grounds that the petition was premature and the law had not been used against any organization. In April 2013, Adalah premiered the documentary film in Susiya in the South Hebron Hills, at an outdoor screening powered by generators and attended by members of both communities. The film was screened at the Toronto Palestine Film Festival and the Boston Palestine Film Festival in Fall 2013. Adalah, "Adalah's Annual Report of Activities 2013," May 1, 2014, http://www.adalah.org/uploads/oldfiles/Public/files/English/Publications/Annual%20Report/Adalah-Annual-Report-2013.pdf.

[537] In addition to providing an account of the twin village, a historical account of the village, it is supplemented by maps, correspondence between the villagers and the Prime Minister's Office as well as aerial photographs. Suhad Bishara and Haneen Naamnih, "Nomads Against Their Will. The Attempted Expulsion of the Arab Bedouin in the Naqab: The Example of Atir–Umm Al-Hieran" (Haifa: Adalah: The Legal Center for Arab Minority Rights in Israel, September 2011).

including the former Special Rapporteur on the Rights of Indigenous Peoples. The HRW report on unrecognized villages mentioned above focuses on the land dispute while including oral testimonies of the Bedouin affected by the land policies and state practices.[538]

The literature discussed in this section demonstrates the shift in representations of the Bedouin, from a distinct group, to a minority within the Arab minority in Israel, to an indigenous group with international indigenous peoples' rights, whose experiences can be compared to and are reflective of Arabs in the neighboring region and groups of indigenous peoples across the world. Some scholars point to the rise of the internationally-defined status and rights of indigenous peoples at the same time that the Negev transformed from the Negev (Hebrew) to 'the Naqab' (Arabic),[539] suggesting that other postcolonial or local terms were also made active and effective in parallel to the concept and category of indigenous peoples. In much of the recent work on the political and legal autonomy and agency of the Bedouin, there has been an associated interest in the question of Bedouin identity, wherein their agency and identity are seen to be closely linked.[540]

6. Last Encounters: Israeli Popular Culture and the Bedouin

Despite the important work that has and continues to be done on understanding the Bedouin through a postcolonial and interdisciplinary lens, representations of the Bedouin in fiction based on Israeli culture indicate that problematic representations linger in popular culture. Fiction complicates our understanding of the Bedouin as they are in text, and by shifting from a somewhat elitist enterprise (academic scholarship) to a populist core, the stark perceptions of the Bedouin are made real.[541] As the earlier sections of this chapter reflect, the interchange between fact (objective truth and science) and fiction (small-scale truth and myth) has been a constant feature in writings on the Bedouin. While the latest wave of secondary literature

[538] On al-Sira, see Human Rights Watch, *Off the Map*, 20, No. 5(E):59. On Sheikh al-Turi's account on the home demolition in al-Araqib, see Human Rights Watch, 20, No. 5(E):80.
[539] Frantzman, Yahel, and Kark, "Contested Indigeneity," 87–88.
[540] Amara, "The Naqab Bedouin and Colonialism."
[541] Another interesting figure among the Israeli public Ishmael Khaldi a Bedouin from the Galilee who gained prominence as the first Bedouin diplomat. His career development which can be seen as a series of successive positions that began in the Ministry of Defense, Israeli Police and Israel Defence Forces (IDF). His book, *A Shepherd's Journey: the Story of Israel's First Bedouin Diplomat*, is autobiographical, telling about his transformation from a Bedouin shepherd to an Israeli diplomat. Ishmael Khaldi, *A Shepherd's Journey: The Story of Israel's First Bedouin Diplomat* (Khawalid, Israel: Ishmael Khaldi, 2010).

challenges the dominant knowledge production on the Bedouin, the popular lens re-sensitizes the reader to the misperceptions and stereotypical portrayals of the group.[542]

In *Where the Jackal's Howl*, for example, Amos Oz's short story 'Nomad and Viper' portrays the Bedouin as a shifty and shady character, who engages in petty theft and breaks the law in the kibbutz. In this story, the power of seduction of the black Bedouin shepherd contrasts to the vulnerability of the single woman from the kibbutz.[543] While replicating 19th century stereotypes, the author has imagined co-existence and co-habitation between the kibbutz and the Bedouin encampment on this condition: 'If all the stolen property were returned and the vandalism stopped once and for all, we would be wholeheartedly willing to open a new page in the relation of our two neighboring communities.'[544] Oz adds 'Our children would doubtless enjoy and profit from an educational courtesy visit to the Bedouin encampment, the kind of visit that broadens horizons. And it went without saying that the tribe's children would pay a return visit to our kibbutz home, in the interest of deepening mutual understanding.'[545] This story, where the Bedouin is the perpetrator, is for a Hebrew reader and was later translated into English.

The fictional story adds to our text-based understanding of the Bedouin but its power is not solely literary and infiltrates Israeli popular culture. This story makes for a compelling read, but Oz has also been active in knowledge production in the Israeli/Bedouin context. Outside of his literary works, Oz views the plight of the Bedouin to be a matter of personal concern. A *sabra*, or Jew born on Israeli territory, who lives in the development town Arad, Oz is a literary powerhouse who has gained academic credentials and become a public persona in Israeli society. As a public figure widely read and appreciated by Israeli society, his solidarity visit to al-Araqib at a time of heightened tension, following the fourth village demolition in August 2010, was significant. Oz has acted as an intermediary between the Bedouin and the Israeli public, which makes him an interesting mouthpiece. In a newspaper article titled, 'Situation

[542] On images of the Arabs, including 'the thieving Arab', 'the dirty Arab', and 'the cursing Arab', in Israeli children's literature, see Abu-Saad, "The Portrayal of Arabs in Textbooks in the Jewish School System in Israel," 33–34. Abu-Saad notes that 'such characterizations of Arabs have been found beyond children's literature in the writings of such prominent Israeli literature figures as Amos Oz.' Abu-Saad, 34.
[543] Ismael Abu-Saad, "Palestinian Education in Israel: The Legacy of the Military Government," *Holy Land Studies* 5, no. 1 (May 1, 2006): 36. Abu Saad also writes about this story in Abu-Saad, "The Portrayal of Arabs in Textbooks in the Jewish School System in Israel," 34–35.
[544] Amos Oz, "Nomad and Viper," in *Where the Jackal's Howl*, trans. Nicholas de Lange and Philip Simpson (Wilmington, MA: Mariner Books, 2012), 25.
[545] Oz, 25.

of Bedouin in Negev Is 'Ticking Time Bomb', Oz supports the villagers against home demolitions.[546] Remarking on the living conditions in al-Araqib, Oz speaks of the 'inhumane conditions' yet also acknowledges that the Bedouin are, as the article title suggested, 'a ticking time bomb.'[547] His support of and solidarity with the Bedouin is tinged with his perceptions of their persistent danger to Israel.

Since the Bedouin entered early Hebrew literature at the end of the 19th century and the beginning of the 20th century,[548] the image of the Bedouin conjures up 'a most romantic figure' and 'a primitive being, at home in the untamed, natural setting of the fearsome desert; he was an exotic figure, full of mystery, intrigue, impulsive violence and instinctive survival; he was at once a bold victor and a vulnerable victim of political power struggles and inimical surroundings.'[549] In 2000, Savyon Liebrecht wrote a chapter from an incomplete novel titled *Su'ad*, in which the life of a disabled Jewish man is entangled with that of an orphaned and lame Bedouin girl, who is rejected by her village.[550] The Bedouin girl, Su'ad, enters almost by accident the life of Shimshon 'the crooked', who since childhood has been ridiculed by the people of his own village, and through her determination becomes his life partner.[551] In *Apples from the Desert: Selected Stories*, Liebrecht describes an event in which, 'The Bedouin walked in front of me, treading swiftly as if walking on carpets.'[552] In *Sleepwalkers and Other Stories*, noted Israeli writer and literary critic Ehud Ben-Ezer presents short stories and excerpts from novels dating from 1906 to 1994, which trace the place of Arabs in Jewish-Israeli consciousness. The thirteen stories demonstrate how Jewish writers have presented different interpretations of Arabs, which range from visions of the courageous Bedouin, to fellow-Semites, to an existential or moral problem. The tension between the Arab perceived as an

[546] Jack Khoury and Maya Sela, "Amos Oz: Situation of Bedouin in Negev Is 'Ticking Time Bomb,'" *Ha'aretz*, August 18, 2010, http://www.haaretz.com/amos-oz-situation-of-bedouin-in-negev-is-ticking-time-bomb-1.308671.
[547] Particularly since 'for many Jews, the Bedouin are objects of suspicion, whose loyalty to the state is less than total; this suspicion sometimes turns into fear, as a result of the group's high fertility rate'. Shlomo Swirski and Yael Hasson, "Invisible Citizens: Israel Government Policy Toward the Negev Bedouin" (Be'er Sheva: The Center for Bedouin Studies and Development, 2006), 8. Quoted in Amara and Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab," 98.
[548] Gilah Ramraz-Ra'ukh, *The Arab in Israeli Literature* (Bloomington: Indiana University Press, 1989). See also, Ehud Ben-Ezer, "The Arab in Hebrew Fiction," in *Sleepwalkers and Other Stories: The Arab in Hebrew Fiction*, ed. Ehud Ben-Ezer (Boulder, CO: Lynne Rienner Publishers, 1997), 4.
[549] Warren Bargad, "The Image of the Arab in Israeli Literature," *Hebrew Annual Review* 1 (1977): 55.
[550] Doron B. Cohen, "Minorities in Modern Hebrew Literature: A Survey," *Jewish Literature: Textual Studies (Kyoto University)* 1 (2014): 102–3.
[551] Cohen, 102–3.
[552] Savyon Liebrecht, *Apples from the Desert: Selected Stories* (New York, NY: Feminist Press at the City University of New York, 1998), 227.

external threat and the Arab minority at home characterizes the rhythm of both modern Hebrew literature and contemporary Israeli history.[553] At the same time, the concepts of power, courage, weapons, and power were also derived from the Arab, and especially from the image of the armed Bedouin with his noble horse.[554] The life of Jews and Arabs in Israel become so intermingled that in Ya'akov Buchan's "Sleepwalkers", the Arab is a Hebrew-speaking Bedouin who is an officer in the Israeli Police.

As this brief exploration of fiction writing on the Bedouin reflects, the global knowledge production of the concept and category of indigenous peoples in the Israel/Negev context has to contend with a conflictual history, infused with political sensitivities, societal structures, and suspicions unique to the broader regional context in which the Bedouin find themselves. Contemporary commentaries have attempted to ease off on previous decades' overemphasis on culture; however, such cultural-oriented tendencies are highly resistant to change. This survey of the literature underscores the role of actors—highlighting their vocabularies, ideologies and agendas—and makes us acutely aware of scales of time, terrains of geographies and external factors that influence how people read, think, and write about the Bedouin. In domestic sites, we often confront the prevailing dominant historical narrative, coupled with dominant identities and majority ways of community belonging, which end up creating divisions while simultaneously reinforcing sectarian attachment to one group to the exclusion of possible others.

It is clear that the cogs of indigenization of the Bedouin were set in motion before the new millennium, and that the use of *indigenous* as applied to the Bedouin has taken on new meaning and momentum since 2003 when NCF grassroots activist Haia Noach met the UN official who connected the Bedouin to the indigenous peoples' movement (see Chapters 1 and 3). A recurrent theme in this study is the diversity of roles played by the individuals who have influenced and shaped the knowledge production of indigenous peoples' status and rights in the Israeli/Bedouin context. For instance, el-Aref was a colonial bureaucrat in the British administration as well as an ardent Arab nationalist, who marveled at the Bedouin professionally and ideologically. The next chapter looks more closely at the roles played by

[553] Ben-Ezer, "The Arab in Hebrew Fiction," 4.
[554] Ben-Ezer, 4.

key actors involved in the Bedouin turn to indigenous peoples' rights in international human rights law.

> Then Horton stopped walking. The speck-voice was talking! The voice was so faint he could just barely hear it. 'Speak up, please' said Horton. He put his ear near it. 'My friend,' came the voice, 'you're a very fine friend. You've helped all us folks on this dust speck no end. You've saved all our houses, our ceilings and floors. You've saved all our churches and grocery stores.'
>
> 'You mean...' Horton gasped, 'you have buildings there, too?' 'Oh, yes,' piped the voice. 'We most certainly do...' 'I know,' called the voice, 'I'm too small to be seen but I'm mayor of a town that is friendly and clean. Our buildings, to you, would seem terribly small but to us, who aren't big, they are wonderfully tall. My town is called Who-ville, for I am a Who and we Whos are all thankful and grateful to you.' And Horton called back to the Mayor of the town, 'You're safe now. Don't worry. I won't let you down.'
>
> *Horton Hears a Who*, Dr. Seuss

III. Rights Translators of Indigeneity in the Israeli/Bedouin Context

This chapter focuses on the actors whose involvement is crucial for how official understandings of the concept and category of indigenous peoples, also referred to as the 'international definition', are undergoing socio-legal construction in the Israeli/Bedouin context. It is important to stress at the outset that there is no clear legal definition, which is why it is characterized by uniqueness, indeterminacy, and unpredictability in practice as well as the more discernible abstract patterns of creative action by groups. Among the constellation of actors involved in the Bedouin's indigenization, one key figure emerges—the rights translator—with two corollary figures, the counter-translator, and the non-translator. The *rights translator* can be a transnational activist or human rights defender, a national elite or a middle-tier educated CSO leader, who is able to move 'across boundaries of class, ethnicity, mobility and education.'[555] The job of the rights translator is to appropriate[556] (take up) rights from the international setting and to translate[557] (decode and tailor) rights into local vernaculars

[555] Engle Merry, *Human Rights and Gender Violence*, 134.

[556] Merry maintains that '[a]ppropriation means taking the programs, interventions, and ideas developed by activists in one setting and replicating them in another setting.' Appropriation is transnational; ideas, programs and interventions are discovered in one place and imported to another. Appropriation requires knowledge of different approaches in other countries and the capability to attract funding and political support. If successful then, these ideas and programs enter into global circuits and become an inspiration for replication, which is 'in a different dress for the new location'. Engle Merry, 135.

[557] For Merry, translation amounts to 'adjusting the rhetoric and structure of these programs or interventions to local circumstances.' While it is not necessary to translate, Merry argues that these human-rights-based efforts are more popular if translated. However, there is also a risk that if translated 'so fully that they blend into existing power relationships completely, they lose their potential for social change.' Engle Merry, 135–36.

in domestic settings and local sites of action. The Bedouin's indigenization would suggest that the rights translator appropriates the international definition of indigenous peoples, which they then translate into the local lingua franca or culturally familiar terms. Unlike the rights translator, the objective of the *counter-translator* is to reverse or block efforts to construct the concept and category of indigenous peoples in context.[558] Hence, the counter-translator sabotages or calls into question the appropriation and translation processes, making the vernacularization of rights less prone to occur. Like rights translators, counter-translators are masters of human rights rhetoric, readily drawing on international human rights law and domestic law to argue against the application of the internationally-defined status and rights.

Situated between these two poles, a third group emerges among the constellation of actors: the *non-translator*. A linguistic and legal anomaly, the non-translator evades the *legal* component of the international definition or talks it down for many reasons, mainly but not only strategic (see Chapter 5). Rather than call for a blanket ban, non-translators resort to the concept and category of indigenous peoples as well as the corresponding rights—in exceptional or specific circumstances. However, when they employ those terms and rights, it tends to be in a legally-loose or descriptive fashion that caters to designated forums and audiences. Among the constellation of rights translators and counter-translators, these fringe actors help keep the international definition live and buoyant. The role of non-translators, makes them every bit as important as the rights translator and counter-translator. It is worth noting that these three groups are fluid, that is, an individual can simultaneously be a rights translator for some aspects and a non-translator for others.

What is happening in the Israeli/Bedouin context cannot be fully explained without understanding the "who's who" in these appropriation and translation processes. The constellation of these actors constantly rotates relationally, as well as antagonistically and sporadically. It is possible to group those involved into three broad blocs—proponents, opponents, and skeptics—which can be further divided according to profession/vocation

[558] I purposely avoid using 'deconstruction' because it suggests that construction has previously occurred. Also, the term *deconstruction* comes with its own baggage, and while such distinctions can come across like a semantic squabble, I echo James Boyd White: 'Deconstruction of course aims at breaking down this sense of language too, but it tends to go too far, I think, and comes close to denying the possibility of meaning entirely.' James Boyd White, "What Can a Lawyer Learn from Literature?," *Harvard Law Review* 102, no. 8 (1989): 2017–18. For a useful discussion of deconstruction in general, see Mark Edmundson, "The Ethics of Deconstruction," *Michigan Quarterly Review* 27 (1988): 622–43.; for a discussion of its relevance to law, see J.M. Balkin, "Deconstructive Practice and Legal Theory," *The Yale Law Journal* 96, no. 4 (March 1987): 743–86.

(grassroots, UN, legal, and academic); community belonging (Bedouin, Arab/Palestinian, Jewish-Israeli. or international); and linguistic abilities (English, Hebrew, or Arabic).[559] Irrespective of the limitations of these divisions and subdivisions, they underscore the individual and collective dimensions that shape the ways in which international human rights law is transplanted and then experiences domestic and local cultural translations.[560]

The individuals selected for discussion in this chapter are subject to inquiry for three reasons. Firstly, their input has influenced and shaped the substance and direction of the debates and the building of key alliances. Secondly, in terms of the practice of international human rights law, these individuals help tease apart the practical mechanisms involved when an international definition is vernacularized, revealing the real-world dilemmas in the appropriation and translation of an internationally-created status and rights. And thirdly, relating everyday encounters of international human rights law to broader questions, these individuals provide no small insight into how international law concepts and categories are first produced and then made active and effective in domestic settings. Put differently, in my judgment, international law concepts and categories are constructed in the legal center-stage and social fringes where abstract fragments of law and knowledge—if they fulfil their transformative and jurisgenerative potential—become concrete words and actions.

While this chapter focuses on the actors involved in rights translation, it is important not to lose sight of the Bedouin, their presence among the translators, and their role in the vernacularization of their internationally-created status and rights entitlements,[561] nor to dismiss or downplay the undercurrents of ideological agendas and power relations that shape the thought patterns, speech, and actions of these actors. Like the lineage of writers discussed in the previous chapter, rights translators do not occupy an insular spatio-temporal vacuum; they are connected and can be related to the people, processes, and events that precede and follow them. This chapter unpacks the role of rights translators and the scope of their activities, while illuminating how the concept and category of indigenous peoples transits from the international setting to domestic settings and local sites, where it is made anew and becomes

[559] Other categories include: religious affiliation (Jewish, Muslim, Christian, and non-Jewish/non-Muslim/non-Christian, secular) as well as national belonging (Israeli, Palestinian, and non-Israeli/non-Palestinian/foreign).
[560] Cultural translations occur when not only the words are translated, but also the cultural meanings beyond the text. On cultural translation see, Homi K. Bhabha, "How Newness Enters the World," in *The Location of Culture* (London; New York: Routledge, 1994), 212–35.
[561] See, Gayatri Spivak, "Can the Subaltern Speak?," in *Marxism and the Interpretation of Culture*, ed. Cary Nelson and Lawrence Grossberg (Champaign, IL: University of Illinois Press, 1988), 271–313.

active and effective. (Questions of how such internationally-defined status and rights interact and create new subjectivities and consciousness are temporarily bracketed and left to Chapter 6, which discusses the status and rights of indigenous peoples in the Bedouin vernacular.)

In short, this chapter provides an example that unmasks the actors involved in the socio-legal construction of an international definition in situ. Such an exercise, in my judgment, is useful in gaining a global understanding of how this particular internationally-defined status and rights interact and produce tensions, hybridities, and frictions—and new legal and political dynamics—at the national and international level. The overall structure of the current chapter is built around the activities where the translators are physically located or where the appropriation and translation processes unfold. The first section addresses the ingenuity and adeptness of rights translators to change roles and transgress different realms of activity. The actors analyzed are CSOs including grassroots, advocacy, and legal human rights organizations and their representatives (Section 2); and UN officials, principally the UN Special Rapporteur on the Rights of Indigenous Peoples (Section 3).

1. The Role of the Rights Translator and the Vernacularization of Human Rights

The model of the vernacularization of human rights and its main player, the rights translator, go hand-in-hand; they constitute the operational machinery and the *modus operandi* for the appropriation and translation of international human rights law into local justice. The analytical merit of the concept of the rights translator is its ability and readiness to be applied to other human rights frameworks, including the indigenous peoples' rights framework. Describing the rights translator, Merry comments:

> In order to communicate, the different layers relied on a select few people we call translators. Translators are people who can easily move between layers because *they conceptualize the issue in more than one way*. As they move between layers, these intermediaries translate from one set of principles and terms and another. They played key roles in creating a movement where rights language and indigenous women's stories could come together to create political change. Through their mediation, *human rights became relevant to a local social movement even though the oppressed group itself did not talk about human rights*.[562] (emphasis added)

In other words, rights translators are the chosen few—the elect—of international human rights law. They can communicate, move easily and freely, and conceptualize an issue in many ways.

[562] Engle Merry, *Human Rights and Gender Violence*, 210.

What sets them apart is that they build the collective momentum to create a rights movement and to effect political change, irrespective of whether the oppressed group can use human rights language themselves.

To carry out their mission, rights translators employ sophisticated rhetorical tools—generated in the frameworks of human rights and indigenous peoples' rights—which are used in international forums and for international audiences. Merry builds on the work of Abdullahi An-Na'im[563] to argue that the most effective rights translators are intermediaries who are 'cultural insiders',[564] as their emic status enables them to culturally translate global rights into local terms and to retranslate local concerns to global audiences[565] (see also Chapter 6). By and large, internationally-created statuses and rights are predestined to be translated *up*, *down*, and *across* multiple realms that are simultaneously global, international, transnational, national, and local.[566] Depending on their success and the traction of the particular context and category (and its definition) in context, rights translators create a new, internationally-defined status and rights under the umbrella of the indigenous peoples' rights framework. Rights translators specific to the Israeli/Bedouin context are the human vectors through which the concept and category of indigenous peoples is made into the local vernacular.[567]

More specifically, the rights translator is involved in three stages of rights translation.[568] Firstly, the translator draws on symbols, images, and stories close at hand, which originate in local cultural narratives and ideas, in order to present the idea, program, or intervention. Frames and framing are crucial here.[569] Secondly, the rights translator is required to adapt the

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[563] An-Na'im, "State Responsibility under International Human Rights Law to Change Religious and Customary Laws."
[564] Engle Merry, *Human Rights and Gender Violence*, 134.
[565] Engle Merry, 134.
[566] On rights translation, Merry talks of four layers while also defining those 'layers' as inseparable and simultaneously local, global, transnational, and international. Merry states: '[T]he terms "global" and "local" are not particularly useful. Their meaning is ambiguous and they often become a stand-in for social class." I agree that the terms are problematic (see Chapter 6) and that the meaning distinction does not map directly to distinctions in reality, but find that one must employ them to write a text accessible to today's audience. To understand her view on "local as a matter of degree.' See Engle Merry, 212–15.
[567] More specifically, rights translation occurs through two key processes of the vernacularization of human rights, which includes indigenous peoples' rights law. *Legal transplants* occur when laws from one country are transplanted to another country. Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Edinburgh: Scottish Academic Press, 1974). Legal transplants fall under the processes of legal acculturation or diffusion of law, and Merry organizes them into two stages: first, appropriation. and second, translation. Engle Merry, *Human Rights and Gender Violence*, 135–36.
[568] Merry on translation, see Engle Merry, *Human Rights and Gender Violence*, 136–37.
[569] "Framing" has been a preoccupation of sociologists working on social movements David A. Snow et al., "Frame Alignment Processes, Micromobilization, and Movement Participation," *American Sociological Review*

human rights-based idea, program, or intervention according to the structural conditions in which it operates. Here, the structures adapted to are usually those belonging to the nation-state. In the third stage, as the idea, program, or intervention is translated, the rights translator is also required to redefine the target population. Redefinition can be seen as an act of re-making, which gives rise to new identities, subjectivities, and consciousness. Throughout these stages in translation, rights retain their fundamental character and meaning—even as they become a resource in local struggles.[570]

In the Israeli/Bedouin context, the concept and category of indigenous peoples is vernacularized via an international definition that undergoes rights translation and creates new ways to interpret and give new meanings to the Bedouin as international rights-holders. However, the concept and category's character and meaning, including its inbuilt fault-lines, never radically change. Setting legal transplants and rights vernacularization slightly apart, it would be an error in judgment to view the vernacularization process as a legal transplant (i.e., of laws from one country to another[571]) in either a strictly monist or dualist legal sense; rather, rights vernacularization gestures toward processes of transnationalism that are concomitantly anchored in and transcend the nation-state.[572] In each rights translation in any given situation, there is a cultural margin for context-friendly interpretation and meaning-giving, and so, pluralist and trans-cultural translations arise. Merry makes this point explicit in her study on the interface of gender violence, a human rights violation, and culture, noting: 'It is not their [human rights'] ability to blend into preexisting cultural systems. Adopting human rights locally does not build on a preexisting similarity of cultural beliefs any more than introducing bureaucracy or traffic lights does. But proponents do dress them in familiar costumes.'[573] While global human rights and local culture dialectically interact but never fully merge,[574] the

51, no. 4 (1986): 464–81; Sidney G. Tarrow, *Power in Movement: Social Movements and Contentious Politics* (Cambridge: New York: Cambridge University Press, 2011). Frames help package and present ideas that produce shared beliefs, mobilize collective action, and define appropriate strategies of action. The power of frames is that they help understand situations and provide tools and tactics for their supporters to deploy. Sanjeev Khagram, James V. Riker, and Kathryn Sikkink, eds., *Restructuring World Politics: Transnational Social Movements, Networks, and Norms*, vol. 14 (University of Minnesota Press, 2002), 12–13. The frame is an interpretive package surrounding a core idea. Myra Marx Ferree, "No Access Resonance and Radicalism: Feminist Framing in the Abortion Debates of the United States and Germany," *American Journal of Sociology* 109, no. 2 (September 2003): 308.

[570] Engle Merry, *Human Rights and Gender Violence*, 137.

[571] Watson, *Legal Transplants*.

[572] Richard Huff, "Transnationalism," *Britannica*, https://www.britannica.com/topic/transnationalism.

[573] Engle Merry, *Human Rights and Gender Violence*, 138.

[574] Merry qualifies what she means by blending. Rather than to be fully indigenized, Merry argues that 'To blend completely with the surrounding social world is to lose the radical possibilities of human rights.' Engle Merry, 178.

rights translator always has their finger on the pulse of human rights. For the rights translator actively involved and the rest of the world, the power of human rights is not limited to changing how people think and act, but also how they challenge, and potentially reform, existing hegemonic practices and power structures that violate human rights.[575]

2. Civil Society Organizations: Rights Appropriation and Translation

CSOs, particularly those working on human rights that are often issue specific,[576] are key rights translators. CSO representatives are intermediaries, the middle women and men, who transplant internationally-defined status and rights into domestic settings and local sites, where they are culturally translated. Therefore, CSO representatives offer consequential insight into how both the concept and category of indigenous peoples and rights of indigenous peoples operate in Israeli/Bedouin settings, such as the unrecognized villages of al-Sira and al-Araqib. This section examines different branches of CSOs—be they small-scale or large-scale; grassroots, advocacy, or legal; Jewish, Jewish/Arab, or Arab—involved in vernacularizing human rights. We will shortly see how the appropriation and translation of rights often correspond to human rights activities that are tackling Bedouin rights issues. Arguably, these CSOs constitute *activist* rights translators owing to the nature and scope of their activities. Their work can be proactive, including raising awareness, conducting research, generating public support, or conducting media outreach; and also reactive, responding to what is happening on the ground (e.g., when Bedouin fields are sprayed with Roundup or a home demolition occurs). Irrespective of the activities, these intermediary men and women actively appropriate the rights discourse and international frames before translating them to fit the context and contingencies of the Bedouin in the Negev.

This section opens with a brief investigation of a counter-translator, an Israeli CSO that categorically rejects the vernacularization of the concept and category of indigenous peoples and therefore targets human rights CSOs for the 'misuse' and 'abuse' of the international

[575] This harkens back to Moyn's thesis on the *utopian* ideal of human rights, which irrespective of their date of origin, they edge their way towards the utopian goal: from local to international justice. Moyn, *The Last Utopia: Human Rights in History*.

[576] For example, Association for Civil Rights in Israel (ACRI) focuses on civil rights throughout Israel. Adalah focuses mainly on Arab minority rights and to a lesser extent on the rights of Palestinian residents in the Gaza Strip, the West Bank, and East Jerusalem. The NCF focuses on the rights of the Bedouin in the Negev. Many of these CSOs are in special consultative status with the UN Economic and Social Council (ECOSOC); for example, Adalah and the NCF have been in special consultative status since 2005 and 2013 respectively.

definition in this specific setting. Next, I turn to the main focus of this section: rights translators, and the grassroots appropriation and translation of both the concept and category of indigenous peoples as well as indigenous peoples' status and rights in the Israeli/Bedouin context. The discussion mainly centers around the NCF, first mentioned in Chapter 1, which is a grassroots organization seated in Be'er Sheva city and considered to be the first Israeli CSO to appropriate and translate the concept and category of indigenous peoples to the Bedouin. Among the constellation of CSO translators, the NCF remains the principal actor in the vernacularization of indigenous peoples' status and rights in Bedouin localities as well as further afield in other settings. Finally, I show how the appropriation and translation of the term *indigenous* is neither rigid nor uniform, illustrated by CSOs mainly located in the north of Israel that present a blend of supportive, dissenting, and skeptical voices.

a. The Counter-Translator in the Israeli/Bedouin Context

A Jerusalem-based CSO, NGO Monitor opposes the application of the concept and category of indigenous peoples to the Bedouin in Israel,[577] describing the use of the international definition to the Bedouin to be an act of 'political warfare'.[578] In other words, the appropriation and translation of indigenous peoples' status and rights is considered tantamount to an act of war in the battlefield of politics.[579] If one takes this line of argument to its next logical step, rights translators lose their civilian status and are comparable to 'political combatants'. Listing several domestic and international CSOs,[580] NGO Monitor maintains: 'These NGOs use inflammatory rhetoric with unsupported claims, accusing Israel of "apartheid," "ethnic cleansing," "racial discrimination," "disinheritance," and *"human rights violations against the*

[577] The stated objective of NGO Monitor 'is to end the practice used by certain self-declared 'humanitarian NGOs' of exploiting the label 'universal human rights values" to promote politically and ideologically motivated agendas.' NGO Monitor, "About," https://www.ngo-monitor.org/about/.

[578] The term 'political warfare' is not new to Israel, and is based on the belief that 'disproportionate and unsubstantiated allegations of human rights violations, war crimes and racism have been employed [as a form of political warfare designed] to isolate Israel internationally.' See, Gerald M. Steinberg, "From Durban to the Goldstone Report: The Centrality of Human Rights NGOs in the Political Dimension of the Arab–Israeli Conflict," *Israel Affairs* 18, no. 3 (July 1, 2012): 372. For a critical discussion on the topic, Nicola Perugini and Neve Gordon, *The Human Right to Dominate* (New York: Oxford University Press, 2015), 54–59. '"*Lawfare"* is frequently used to refer to the misuse of international law, and the abuse of domestic and international courts in order to claim international law violations against the "enemy". These claims become powerful and fearsome as a weapon of war.' Susan Tiefenbrun, "Semiotic Definition of Lawfare," *Case Western Reserve Journal of International Law* 43, no. 1 (January 1, 2010): 39.

[579] See, Perugini and Gordon, *The Human Right to Dominate*, 51–54.

[580] The report lists: Adalah, the NCF, ACRI, Bimkom – Planners for Planning Rights and Rabbis for Human Rights (RHR), HRW, and the Euro-Mediterranean Human Rights Network (EMHRN).

'indigenous' citizens of the Negev"'.[581] Indistinguishable from apartheid and ethnic cleansing, the 'human rights violations against indigenous citizens' are seen to as part of an illegitimate political campaign to attack or diminish Israel's legitimacy and standing on the world-stage.

From a strictly international law perspective, 'apartheid' and 'ethnic cleansing' constitute gross human rights violations or serious atrocities, usually inflicted on groups, which international law (and particularly international criminal law) handles through special legal instruments and procedures in specific venues. 'Human rights violations', by contrast, tend to be less gross, target individuals or collectives, and are subject to domestic and international intervention. Ignoring these fundamental differences, NGO Monitor collapses these legal distinctions and clusters them together as acts of 'political warfare'. The line that divides the political and the legal is blurred, which impacts the vernacularization of the concept and category of indigenous peoples and their rights in the Israel/Bedouin context.

NGO Monitor sees the international law of indigenous peoples as a political de-legitimizing tool, and not a legitimate human rights tool. To build its case, NGO Monitor refers to existing scholarship that is critical of the Bedouin's indigenous identification, and argues that '"indigenous" is relatively recent and is essentially a political tool in the hands of Bedouins, academics, and NGOs in their allegations regarding Israeli "violations," while also providing an additional legal route for attacking Israel in international forums such as the UN.'[582] NGO Monitor adds elsewhere, 'NGO reports systematically take a simplistic approach, are based on unreliable sources, and use inflammatory rhetoric with unsupported claims.'[583] While protecting Israel's global reputation,[584] NGO Monitor's advocacy is most active and effective in the domestic setting. Professor Steinberg,[585] NGO Monitor's founder and president and

[581] NGO Monitor, "NGOs and the Negev Bedouin," December 12, 2013, https://www.ngo-monitor.org/reports/ngos_and_the_negev_bedouin/.
[582] NGO Monitor, "NGOs and the Negev Bedouin Issue in the Context of Political Warfare" (Jersualem, November 2013), 4, https://www.ngo-monitor.org/data/images/File/NGO_Monitor-Bedouin_Report_English-Nov13.pdf.
[583] NGO Monitor, 2.
[584] NGO Monitor, "Submission to the Committee for the Elimination of Racial Discrimination (CERD) in Advance of the Periodic Review of Israel (80th Session)" (Jerusalem, January 30, 2012), http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/ISR/INT_CERD_NGO_ISR_80_9182_E.pdf.
[585] Professor Steinberg has written extensively on the broader topic of CSOs and human right, including Gerald M. Steinberg, Anne Herzberg, and Jordan Berman, *Best Practices for Human Rights and Humanitarian NGO Fact-Finding* (Leiden: Boston: Martinus Nijhoff Publishers, 2012); Steinberg, "From Durban to the Goldstone Report"; Gerald M. Steinberg, "The Politics of NGOs, Human Rights and the Arab-Israel Conflict," *Israel Studies* 16, no. 2 (April 22, 2011): 24–54; Gerald M. Steinberg, "The UN, The ICJ and the Separation Barrier: War by Other Means," *Israel Law Review* 38, no. 1–2 (January 2005): 331–47.

Professor at the Department of Political Studies at Bar Ilan University, has given a series of presentations to the Knesset Internal Affairs Committee, including a presentation on 'the distortions and allegations made by NGOs (non-governmental organizations) that seek to exploit the Negev Bedouin issue in an effort to promote the broader de-legitimization campaign against Israel.'[586]

As these examples illustrate, there seems to be no place in Israel for the 'boomerang effect', which describes how states that initially resist international pressures risk greater pressure in the future as domestic activists enter into powerful transnational alliances and networks.[587] On the contrary, since the surge in human rights activism during the optimistic 1990s—the era of 'NGO-ization'; the constitutional revolution led by Justices on the Israeli Supreme Court, principally Justice Aharon Barak; and the zenith of Israeli/Palestinian peace talks—the new millennium has witnessed a pushback against human rights, especially international human rights law.[588] Coupled with legislative Knesset measures to stymie such activity, CSOs whose mandate is to clamp down on CSO-driven 'political warfare' and 'lawfare' have sprung up nationwide.[589] NGO Monitor is not alone when it calls into question the use of the concept and category of indigenous peoples *vis-à-vis* the Bedouin, nor when it goes to great strides to campaign against the legal application of that concept and category, let alone references to the term *indigenous* (discussed in Chapter 5).

[586] See, NGO Monitor, "Knesset Presentation on NGO Exploitation of Bedouin Issue," November 20, 2013, https://www.ngo-monitor.org/presentations/knesset_presentation_on_ngo_exploitation_of_bedouin_issue/. Slide 8 of the presentation ('The Negev Bedouin Issue in the International Arena') describes: 'Unsupported Claims: (i) Use of the term "indigenous" – the result of political struggles and experience to enable the use of legal means in the attempts at delegitimizing Israel (Frantzman, Yahel and Kark, 2011); (ii) Conflicting aerial photo claims to land ownership.' Gerald M. Steinberg, "The Negev Bedouin Issue in the International Arena" (Jerusalem, November 20, 2013), fol. 8, http://www.ngo-monitor.org/article/ngos_and_the_negev_bedouin.

[587] Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca, NY: Cornell University Press, 1998).

[588] Amara, "The Naqab Bedouin and Colonialism," 163–64, 167, 176.

[589] On 'The Threat of Human Rights' in the Israeli context, see Perugini and Gordon, *The Human Right to Dominate*, 48–70.

b. Grassroots Appropriation and Translation of International Indigenous Peoples' Rights

Shifting focus to rights translators, the Negev Coexistence Forum for Civil Equality (NCF, or Dukium in Hebrew[590]), has broken ground and led the way for the concept and category of indigenous peoples and the framework of indigenous rights to be made in the vernacular in the Negev, opening the Bedouin to a new status and set of rights, as well as rights rhetoric, international venues, and audiences.[591] As a result of NCF grassroots activism, the Bedouin and the concept and category of indigenous peoples have entered into a constructive dialogue. In other words, the NCF has actively appropriated and translated the indigenous rights' framework to name and explain the human rights violations experienced by the Bedouin, which it then retranslates to international audiences. In the process, the NCF has had to redefine the Bedouin as an indigenous peoples under international law conditions.[592]

The physical structures in which the concept and category of indigenous peoples were originally appropriated and translated by the NCF capture an unorthodox quality that not only tests domestic law, but also offers a nuanced insight into the crucial role played by context in making rights active and effective. In the NCF premises themselves, two competing narratives exist alongside one another—one represents the nation-state, and the other the Bedouin minority. Ordinarily, these two would challenge each other, but instead they find themselves sharing a common space—both metaphorically and literally. Located less than five minutes from Soroka Hospital and BGU in Be'er Sheva, the premises house not only the largest grassroots Arab-Jewish organization working on and with the Bedouin in the Negev but also an official bomb shelter for Israeli citizens in the Be'er Sheva district—in the same space. In its protective/security function, the bomb shelter is in active use and is employed during military operations, which occur relatively frequently because of the Negev's proximity to the

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[590] The NCF's web address is: www.dukium.org. For an insight into "dukium", which translated from Hebrew means coexistence, see "coexistence and the rights discourse". See, Elizabeth Faier, *Organizations, Gender and the Culture of Palestinian Activism in Haifa, Israel* (New York: Routledge, 2004), 222–25.

[591] On rhetoric, see Linda L. Berger, "Studying and Teaching Law as Rhetoric: A Place to Stand," *Legal Writing: The Journal of the Legal Writing Institute* 16 (2010): 3.. Legal discourse, according to Beverley Brown, 'signifies a strong interplay between law and language, linking together law as like language and law as itself language' while adding 'the theory of law-as-discourse takes inspiration from the study of legal rhetoric and from socio-legal analyses of the courtroom, but was developed in its own right in the post-structuralist turn in linguistics.' Beverley Brown, "Legal Discourse" (Taylor and Francis, 2008), https://www.rep.routledge.com/articles/thematic/legal-discourse/v-1.

[592] This would be the third stage of Merry's model on the translation, which entails redefinition of the target group. See, Engle Merry, *Human Rights and Gender Violence*, 6.

Gaza Strip.[593] In order for the premises to function as a bomb shelter, however, the NCF has to vacate its offices.

On entering the NCF premises during peace-time, it is necessary to descend two flights of stairs and pass through a public events hall, before you reach the office space. In this back room, the NCF carries out its day-to-day activities—this is where the idea of the Bedouin as indigenous was floated, appropriated, and translated into rights rhetoric and grassroots discourse. The dual-purpose space is inviting and hospitable to visitors, with a large amount of human traffic.[594] Rather than a minimalist look, the premises could be mistaken for a living room, with multiple couches with throws and a coffee table with photo-books on the Bedouin.[595] The space is busy with visual objects, reading materials, and other grassroots paraphernalia, like banners, but it lacks in natural light. The display of publications such as flyers and reports features prominently in the office space, as well as printed cloth bags and calendars on sale. Throughout the premises leading from the entrance to the actual office space, there are dozens of posters, mainly of the NCF's past events. Photographs of the Bedouin hang on the white concrete walls.

One poster is particularly conspicuous and speaks directly to this study. The poster boldly displays the term 'Arab-Bedouin: The Indigenous People'[596] and reads:

> The *Indigenous Arab-Bedouins* have retained their language (a Bedouin dialect of Arabic), their religion (Islam), and their social, cultural, economic and political characteristics. They are *ethnically distinct from the Jewish majority* and *socially distinct from the Palestinian Arab minority living in Israel*. Like other indigenous peoples, the *Negev-Naqab Bedouins* live as citizens of a nation-state, but do not belong to the majority ethnicity. The Israeli authorities do not recognize their Bedouin's traditional ownership rights. As a consequence, nearly all the lands previously held by the Negev Bedouin were nationalized to the Israeli state.

[593] Rocket fire, usually in the form of homemade projectiles or makeshift rockets, is often launched from Gaza. It is worth mentioning that many of the rockets are now intercepted by Iron Dome, an air defense system for intercepting rockets and artillery shells with ranges of up to 70 kilometers. Yiftah S. Shapir, "Lessons from the Iron Dome," *Military and Strategic Affairs* 5, no. 1 (2013): 81–94.. See also, Perugini and Gordon, *The Human Right to Dominate*.

[594] On the first occasion, I came uninvited and spent a few hours on the internet. On the second visit, a group of young people entered the NCF offices, looking for another public center.

[595] Fazal Sheikh, *The Erasure (Trilogy)* (Göttingen: Steidl, 2015); Eyal Weizman and Fazal Sheikh, *The Conflict Shoreline: Colonialism as Climate Change in the Negev Desert* (Göttingen: Steidl, 2015).

[596] It is worth pointing out that the poster does not include the "s" on peoples. The significance of the battle over the 's' (i.e., peoples) and the rights awarded to peoples under international law are discussed in Chapter 4.

The poster exhibits several photographs of Bedouin localities, including the unrecognized village of al-Sira and a photograph of Sheikh Sayyah al-Turi in an al-Araqib field, described as 'a farmer holding healthy crops and a sample of crops that have been destroyed by spraying herbicide, life vs. death.'[597] There is also a picture of the opening ceremony for 'Multaka-Mifgash', the only Arab-Jewish culture center in Be'er Sheva. A map displays the title 'Unrecognized Negev Arab Bedouin Villages in Israel.' The West Bank is a prominent feature, highlighting the close proximity and separation between the Negev in Israel and the West Bank under the Palestinian Authority's control. The poster also incorporates official statistics on the Bedouin that provides information concerning the rate of infant mortality (1990-2005) by the Knesset Research and Information Center, the socio-economic ranking of local councils and municipalities in 2003 by the Israeli Central Bureau of Statistics (CBS),[598] and water consumption. These official statistics exclude unrecognized villages.[599] Because of its poster size, the concept and category of indigenous peoples seems larger than life, which makes it more real, more concrete, and, arguably, more plausible.

[597] It is interesting that all the pictures of Bedouin villages are unrecognized and there are no pictures of government-planned towns or recognized villages in the Negev.
[598] Kseife (a Bedouin government-planned town) is rated 1st and Omer (a Jewish town) at 197th out of 198.
[599] Donald Cole talks about the phenomenon of the Bedouin's '**statistical non-existence' across the region,** Cole, "Where Have the Bedouin Gone?," 235.

Source: Author's photograph of poster displayed in the NCF offices, Be'er Sheva, November 2015.

Before unpacking the role of the NCF in appropriating and translating the concept and category of indigenous peoples, it is worthwhile to point out that translation of the term or its international definition is not the sole preoccupation of this grassroots organization. Rather, *indigenous* belongs to a terminological repertoire employed by the NCF, and echoed by some organizations in the region, to refer to the Bedouin in the Negev. The poster includes some of these other terms, considered as politically contentious but not legal *per se,* that participate in the vernacularization of rights. For instance, the hyphenated term Naqab-Negev appears on the poster; *Naqab* is the Arabic word for describing the geographic area, while *Negev* is commonly used in English and Hebrew. The NCF uses Naqab-Negev simultaneously and interchangeably, which is a both deliberate effort to introduce Arabic into the public discourse for native Hebrew speakers who avoid or lack knowledge of Arabic and a somewhat subversive act when viewed by the state.[600] The inclusion of Naqab-Negev, in my judgment, can be seen

[600] From Noach's perspective, the term *Naqab* is rejected by Hebrew speakers because it sounds similar to *Nakba*, which when translated from Arabic to English means 'the catastrophe'. *Nakba* is a term used to describe the events of 1948 for those who had lived in historic Palestine and left, by force or their own volition, but it is contentious for the majority community in Israel who celebrate 1948 as the year of national liberation and

as part of a growing vocabulary emphasizing the geographic distinctiveness of the Bedouin;[601] however, Naqab is commonly used by Arabic-speakers in the region, including the Bedouin who speak Arabic in their own dialect.[602]

The poster also underscores that the relational dynamics of the concept and category of indigenous peoples in the Israeli/Bedouin context; particularly the Palestinian context that can be seen as related to the Bedouin from both a historical and social perspective. In the main body of the poster text, the Bedouin are called 'Palestinian Arab'. Political in essence, the term *Palestinian* connotes nationality, or national belonging, which unifies the Bedouin with collectives with a Palestinian background in the rest of Israel, the Gaza Strip, the West Bank, East Jerusalem, and the Diaspora. The use of the term *Palestinian* vis-à-vis the Bedouin and the Arab minority in Israel uncovers pointed questions with regard to their Israeli citizenship and loyalty to the State of Israel.[603] And yet, the same poster not only distinguishes the Bedouin from the Israeli-Jewish majority but also separates them from the rest of the Arab minority in Israel: 'They [the Bedouin] are *ethnically distinct from the Jewish majority* and *socially distinct from the Palestinian Arab minority living in Israel*' (emphasis added). The Bedouin are Palestinian, according to the NCF, but also socially different from every group in Israel. The rhetorical/discursive triangulation between the Bedouin's social distinctiveness, a common Palestinian national belonging, and an internationally-defined status illustrates the historical, political, and legal complex that characterizes this particular context.

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independence as the State of Israel. The word *Nakba* constitutes a national Israeli taboo, which was confirmed by Knesset in 2011 through the *'Nakba Law' - Amendment No. 40 to the Budgets Foundations Law* prohibiting the use of the term by state-funded institutions. (A violation of this law will result in the withdrawal of state funding.) During the drafting process there was debate, much of which emanated from the Arab minority in Israel who recognize this date in their historical calendar. The new law also gave rise to a court petition, which failed. This law has been included in several NGO reports, usually under the section of 'discriminatory legislation'. For a light-hearted commentary on the piece of legislation written by a lawyer and scholar and the director of Adalah, see Hassan Jabareen, "The Saga of Abu Nakba," June 5, 2009, https://www.haaretz.com/the-saga-of-abu-nakba-1.277376.

[601] The Negev as a geographic location is a relatively new term and has been subject to debate and critique. See, Amara, "The Naqab Bedouin and Colonialism," 180. For a critique of the re-introduction of Naqab, see also Frantzman, Yahel, and Kark, "Contested Indigeneity," 95.

[602] On the conundrums and contestations regarding terminology and its use, see Ratcliffe et al., "The Naqab Bedouin and Colonialism," 12–13.

[603] On the notion of collective belonging and citizenship in the Israeli/Palestinian context, see Kelly, *Law, Violence and Sovereignty Among West Bank Palestinians*, 18–23.

Any study on the role of the NCF in the appropriation and translation processes must also include a study of a particular individual grassroots activist[604]: Haia Noach. Originally from Omer, a town on the outskirts of Be'er Sheva with a population of about six thousand inhabitants, Noach is the founder and director of the NCF (see Chapter 1 for her biography). While Noach shows a rhetorical flair in rights rhetoric, it is grassroots activism that is her true vocation.[605] Soft-spoken, with a bohemian aura and her hair tied back in a long braid, Noach can be viewed as a personification of grassroots activism in the Negev. For this grassroots and community-based work, she is valued by the Bedouin, CSO intermediaries, and the international community. As noted earlier, she can be seen as the originator and the first individual to take up the concept and category of indigenous peoples from the outside world and then to translate and circulate it on the local level, playing a pioneering role in the indigenous recognition of the Bedouin. Noach's prior background in peace activism and postgraduate studies were preparatory measures that equipped her for subsequent grassroots activities.

While critically important, Noach's involvement only reveals half the story: the international community and particularly the UN have had a hand in coupling the Bedouin and indigenous peoples' rights in international law (see below on the UN Special Rapporteur in this Chapter). When detailing how a UN official told her about the international rights framework of indigenous peoples and recommended that she incorporate this framework into NCF's international advocacy and awareness-raising on behalf of the Bedouin, Noach explains in a laidback manner:

> It [the introduction of *indigenous*] was unconscious. Within the UN at the time, we didn't know much about international lobbying at all. When we met her [the UN official], she said "you have to look into it [the concept and category of indigenous peoples] and see. *I think you can push some information abroad though this crack*." Later on, Yiftachel… and, it's amazing, *not* the academia pushed this thing over. And not the big NGOs, but small NGOs. And now in articles by people who are against the

[604] Merry asserts: 'Although grassroots groups are the ultimate target of these efforts, they are not typically the translators.' Engle Merry, *Human Rights and Gender Violence*, 134. In this particular instance, this observation is less applicable given the activities and effectiveness of the NCF.

[605] NCF grassroots activities include: public awareness campaigns, media outreach, human rights training, and public events like peaceful protests. The NCF has adapted its grassroots activities to meet the needs of the local community. The NCF/Bedouin ties take into account that 'messages must be presented in ways that are understood, in mediums that are heard, and in places where people will notice.' The NCF produces banners, brochures, posters, calendars, shopping bags, and holds community events. These mediums disseminate the indigenous message to the Bedouin and other communities. Despite these grassroots activities, it is clear that the fundamental message, —that indigenous peoples have the right to be recognized and protected, —comes from international human rights law and the transnational indigenous peoples' movement, and is grounded in rights ideas based in (historical and social) justice. Engle Merry, 158.

> definition, they are mentioning the fact we [NCF] are [the first to use it]. (emphasis added)[606]

Notable in her remarks is how the indigenous rights framework is considered a 'crack' through which an opportunity was created to talk about the human rights violations of the Bedouin internationally, which had previously been beyond the NCF's grassroots rhetoric and imagination. This international framework amounted to a resource for advocacy innovations and a way to conduct international lobbying and awareness-raising.

Using the medium of indigenous peoples' rights, the NCF was able to translate *up* from the ground local concerns, dressed as indigenous peoples' rights violations, to international audiences. Noach, the chief grassroots translator, is a member of several elite groups—belonging to the Jewish majority, well-educated with a Master's degree, and moving within international circles that converse through English. One cornerstone in the translation process is that the rights translator is able to transcend multiple realms, and enter and exit them at ease and will. From the grassroots perspective, the term *indigenous* is not an academic brainwave or 'big NGO' phenomenon. Rather, it can be characterized by its smallness of scale, common sense, and spontaneity, reflecting the rhythm of local context in the vernacularization of rights. The haphazard nature of how the concept and category of indigenous peoples came into operation and circulation in this context is extraordinary for its ordinariness/uneventfulness, underscoring the significance of rights translators, who straddle the grassroots and UN worlds. Pressed for details on the UN official who transmitted this vital piece of information with transformative and jurisgenerative potential, Noach elaborates:

> We met a woman who used to work in Ramallah in 2004 I think, or 2003. Jane something. She was a rep in Ramallah. We didn't do any international lobbying until then. She said that you have to start doing international lobbying and check the indigenous peoples' issue. She gave us some connections, and then we started. We understood that it is not enough here. If not, raising awareness somewhere else where you can really make a change, or at least people will know about it. Maybe we would [have] go[tten] into [it] later, I don't know, but she gave us the push, the first real push, to do it.[607]

Taking stock of first contact with the concept and category of indigenous peoples for the Bedouin in the Negev, the following points can be raised: firstly, the concept and category came from the outside in; secondly, the benefactor was a UN official based in Ramallah, a city

[606] Haia Noach, Interview, November 24, 2015.
[607] Noach.

geographically close to Jerusalem and serving as the administrative capital of the Palestinian National Authority (PNA); and thirdly, this unconscious decision can be seen more as a tactical tool destined for an international audience.

To understand the NCF's stance about human rights as the broader framework that applies to the Bedouin, Noach makes a series of observations about the concept and category of indigenous peoples, which take into account the Israeli/Bedouin context and contingencies. Noach comments:

> We are talking about human rights. We wanted very much to use the international arena that is dealing with indigenous peoples to raise awareness. It is not only that they [the Bedouin] are a minority. They are also indigenous. Why [did we do this]? Because the state is describing the Bedouin usually as nomads: people who are here today and gone tomorrow; this will help the state to strengthen their case that they don't have any land rights. Saying someone is indigenous is saying he is from long ago and he has some sort of land rights. […] Although in indigenous, they mean communal land rights and not private land rights. This is the main argument of the people who are saying that they [the Bedouin] are not indigenous. It is still under discussion if they are indigenous or not, at least among academics. As they [scholars] said, they are not giving up anything else: They will still be Muslims, Arabs, Bedouin, and Palestinian in whatever order they are going. […] They are a minority and they have minority rights, but they are also indigenous.

Noach pursues a holistic and pragmatic approach to the concept and category of indigenous peoples in the context of the Bedouin in Israel. By taking into account the distinctive history and social and cultural background of the Bedouin, Noach arrives at the conclusion that the Bedouin cannot be anything other than an indigenous peoples in international human rights law.

Among other activities, the NCF has been actively engaged with the al-Araqib villagers since long before the demolitions of 2010, which saw the village propelled into the global arena. Stressing this point, Noach talks about when al-Araqib fields were sprayed with chemical toxins back in the early 2000s and how NCF had to plead with a legal center to take court action on behalf of the injured parties. Noach discloses, 'We are almost weekly going to the demo in al-Araqib. We are there from day one. We knew them from before. But since the demonstrations, we are visiting them a lot, being there for the weekly demonstration.'[608] Noach adds '[we are] one of the few NGOs that stays in touch. We escort them to court. There is

[608] Noach.

hardly a day that we are not going.'[609] An NCF representative (often herself) attends the weekly al-Araqib demonstrations on Sunday afternoons, as well as every court hearing. It is the ability of the NCF to 'stay in touch' not only with al-Araqib villagers but also with the rest of the world that has an impact on the appropriation and translation of the internationally-defined status and indigenous peoples' rights in this context. Hence, we can conclude that vernacularization of indigenous peoples' rights in the Bedouin context since 2003 and the internationalization of al-Araqib since 2010 have progressed along parallel tracks that are largely driven by NCF grassroots activism.

While it is a grassroots organization with mostly Jewish and Bedouin members acting largely with the Bedouin community, the NCF translates *up* the Bedouin's human rights issues to the international world; in the local setting, however, the rights translation *down* to the Bedouin is less than obvious. In fact, it seems that the NCF and the Bedouin do not engage in rights talk with one another. So, what does this say about the translation *down* of the concept and category of indigenous peoples, and their status and rights? Noach does not conceal or deny her uncertainty about whether the Bedouin would self-identify and describe themselves as indigenous according to the concept and category of indigenous peoples, conceding willingly, 'I am not sure how much the Bedouin [as a community] know about indigeneity. The Bedouin who present the issue [publicly], know about it, accepted it of course, and cooperated.'[610] This phenomenon is not unique to the Bedouin. Merry observes that 'In none of the countries I studied did activists think human rights were widely understood in poor communities. Even for countries with a British colonial legal legacy, human rights are far less salient than national rights at the grass roots.'[611] And so, in the case of the Bedouin it must be asked which rights are more salient: international human rights, domestic citizenship rights, or local Bedouin custom? Merry sheds critical light to make sense of the situation; although domestic and international human rights advocacy seems to be the order of the day, less attention and resources are dedicated to local advocacy. Hence, human rights ideas tend to have minimum resonance at the local level.[612]

[609] Noach.
[610] Noach.
[611] Engle Merry, *Human Rights and Gender Violence*, 165.
[612] Engle Merry, 164.

Irrespective of the practical conundrums when translating, especially downwards, and despite having no legal background, Noach is quick to recognize the conceptual dilemmas presented by the concept and category of indigenous peoples which lacks a clear legal definition. When quizzed about the international definition, Noach responds: 'I am not sure [about the definition]. You have to have a definition. It is there. You can define. You answer the UN criteria. You can pick them up, you can ignore it.'[613] Indeed, Noach's grassroots pragmatism and Merry's legal-anthropological observations seem almost to dance to the same tune: Merry contends that 'It is not unusual for individuals to retreat from a rights consciousness of grievance to a kin-based one. Nor is it surprising that one would try on this identity, drop it, and try again.'[614]

Two key points are worth probing in this particular setting. Firstly, Merry maintains that 'human rights documents create the legal categories and norms… but the dissemination of these norms and categories depends on NGOs seizing this language and using it to generate public support or governmental discomfort.'[615] Secondly, 'this is a fragile and haphazard process, very vulnerable to existing inequalities among nations and the availability of donors, but the NGO role is essential and increasing.'[616] But what if there is no possibility of generating and garnering popular support or domestic discomfort? What if financing is less of an obstacle than domestic issues (political/legal/historical/territorial) that surface in state/minority relations? These questions are addressed below. For now it suffices to say that Noach's wariness of the definition is voiced by other CSO representatives, in the legal field specifically. From a lawyerly standpoint, the argument raised is that the Bedouin would use other signifiers than those which, when read cumulatively, correspond to the criteria enumerated in the international definition (see the next section in this chapter, specifically the insight of Suhad Bishara). These non-uniform attitudes and approaches hint at a schism among CSOs.

[613] Engle Merry, 217.
[614] Engle Merry, 217.
[615] Engle Merry, 71.
[616] Engle Merry, 71.

c. Conundrums and Conflicts in CSO Appropriation and Translation of the Concept and Category of Indigenous Peoples and Indigenous Rights

The internationally-defined status and rights of indigenous peoples has penetrated civil society in Israel, including what Noach calls, 'big NGOs'. By setting in motion a grassroots appropriation and translation of the concept and category in local sites, the NCF can be held responsible for activating and mobilizing indigenous peoples' status and rights that permeated civil society nationwide and even globally. This viewpoint renders the origins of the definition a distinctly grassroots phenomenon detached from intellectual circles, but this position is open to debate; as discussed in Chapter 2, conceptual exercises of the term *indigenous* had already been happening in the background. In another example, the Association of Civil Rights in Israel (ACRI), the oldest and largest CSO in Israel, employs the concept and category of indigenous peoples to refer to the Bedouin in their human rights advocacy. Hence, we can see that CSO translators, whether small and grassroots or big and legal, mutually constitute and reinforce the concept and category of indigenous peoples, arguably participating in joint appropriation and translation. On the whole, rights translators in the CSO arena agree on the application of the concept and category to the Bedouin, but divergence and dissonance is widespread as to what that actually means. So while the NCF and ACRI readily employ the concept and category of indigenous peoples, other CSOs refrain from using it, or exercise a degree of caution when they employ the term in their human rights work. These different positions toward the concept and category are widely known and accepted by the stakeholders involved. Hence, we can say the appropriation and translation processes unfolds highly unevenly and is subject to the ebb and flow of context and contingencies.

When looking at the Bedouin and the concept and category of indigenous peoples, it is important to ask: whose status and rights does the concept and category of indigenous promote and protect? The inverse question is also valid: whose status and rights does this rights framework not advance and safeguard? Unsurprisingly, there is skepticism, falling short of resistance, among a specific branch of CSOs in Israel that questions any attempt to advance the Bedouin's social/cultural distinctiveness. Often, such critical stance emerges among Arab CSOs, also called Palestinian CSOs, whose directors have a Palestinian background and self-identify as such, and which form part of the development of a domestic nationalist agenda. Their reluctance to employ the term *indigenous* for the Bedouin stems from a concern that doing so hinders their work on behalf of Palestinians. They view all the inhabitants who lived

in the Ottoman Empire and former Mandate Palestine as indigenous to the region. Put differently, all Arabs/Palestinians holding Israeli citizenship, in their judgment, are entitled to the internationally-defined status and rights guaranteed by international law. Mainstreaming the international human rights framework among these pre-Israeli inhabitants would have a wider application than the 200,000 Bedouin in southern Israel—it would encompass the entire Arab minority throughout Israel, which constitutes close to 21% of Israeli population, or 1.8 million citizens of the Israeli State.[617] To address this conundrum, Amara, a scholar from the north of Israel who self-identifies as Palestinian, has devised a two-tiered model of indigeneity: political indigeneity and legal indigeneity, which I conceive as ideological indigeneity and pragmatic indigeneity (discussed in Chapter 5). Rather than grapple with such distinctions, however, CSOs think and act strategically and are instrumentally driven—so, the date, the venue, and the audience are key considerations taken into account before determining whether to use the international framework of indigenous peoples' rights.

One cluster of CSOs, including those working within the domestic legal system, recognizes consequences for using *indigenous* in the legal setting. Suhad Bishara is senior attorney and the director of Adalah's land and planning unit, has an international academic background,[618] and is the legal representative of the al-Sira villagers. Bishara identifies two problems in limiting the concept and category of indigenous peoples to the Bedouin in the Negev. The first issue is community fragmentation and disunity. Bishara sheds critical light on this point, arguing: 'Before, I had a lot of discussions about why we use indigeneity? Of course, it is a framework [that we can use]. But there is something really uncomfortable. One of the main issues with the legal framework is that you yourself [are part] of the fragmentation of your society. This was really problematic.'[619] For Bishara, the employment of the definition is viewed as an international mechanism to fragment the Arab minority, which echoes the notion of 'define and rule' by Mamdani but on an international scale.[620] For this cluster of CSOs,

[617] Central Bureau of Statistics, "Media Release: On the Eve of Israel's 69th Independence Day - 8.7 Million Residents in the State of Israel," April 27, 2017.
[618] Suhad Bishara specializes in land and planning rights, and has worked with Adalah since 2001. From 1996-2001, she was a partner in a private law firm specializing in urban planning, and served as a legal consultant to the Association of Forty, the Arab Steering Committee for Urban Planning in the Galilee Society, and the Hotline for Battered Women. Bishara is also a former Chairperson of the Committee for Educational Guidance for Arab Students, and a founder of Kayan Feminist Organization. Adalah, "Staff and Board," https://www.adalah.org/en/content/view/8300.
[619] Suhad Bishara, Interview, December 9, 2014.
[620] Mahmood Mamdani, *Define and Rule: Native as Political Identity* (Cambridge, MA: Harvard University Press, 2012).

indigenous is a loaded concept and category—if they include a claim based on the indigenous peoples' framework in a petition to the Israeli court, a negative ruling against the petitioners is likely to ensue. Moreover, in land litigation for Bedouin petitioners, losing the case translates to losing lands, which enters into the official court transcript and creates a legal precedent in favor of a State where 93% of the lands are already state-owned.[621] Most legal practitioners are acutely aware that the likelihood of winning a case based on an international law claim, irrespective of the human rights framework, is negligible.

Strategic litigation requires weighing the pros and cons of the inclusion of the concept and category of indigenous peoples, and it becomes quickly apparent that Bishara and other lawyers at Adalah have thought hard about this question. After deliberation and internal discussions, Bishara is of the opinion, 'I don't think that [we should use it]. We should think [about] whose interest this really serves. Taking into account the chances, and taking into account you are going to the Israeli system [and it is] the parliament, which is functioning, they will not recognize me as an indigenous.'[622] Her assessment comes down to one of interests, rather than human rights. It is necessary to emphasize that the international definition of indigenous peoples, in such instances, is conceived in the legal sense to be employed by lawyers, communicating in legalese, in legal venues. While recognizing the associated risks, legal practitioners, mainly from the Jewish majority, have on occasion included the international framework of indigenous peoples for this exact reason: raising the claim based on indigenous peoples' rights is seen as a means to challenge the status quo through the tool of international human rights. It can be argued that the inclusion of a claim based on the international law of indigenous peoples in the *al-Uqbi* case forced the judiciary at the highest level of the land to engage with international human rights law (see Chapter 5 for a more detailed discussion), giving the Supreme Court the potential to change the judicial trajectory and steer it into uncharted waters beyond the sovereign state. Acknowledging and accepting the risks of such tactics, some view legal action as a tool of legal resistance, or as a means 'to shake the ground'[623] of the judiciary, even if the chances of legal success are on a wing and a prayer.

[621] ILA, "About Israel Land Authority - Background," n.d., http://land.gov.il/en/Pages/AboutUs.aspx.
[622] Bishara, Interview.
[623] Noach, Interview.

Despite growing reluctance to vernacularize the concept and category *indigenous* as a Bedouin-only phenomenon, rights translators are often compelled to employ the indigenous peoples' rights framework in order to frame their communication, to educate, or to raise awareness. These rights translators acknowledge the questions revolving around community fragmentation and the risk of its politically-loaded nature in lawsuits, but are nonetheless willing to resort to the indigenous rights framework, particularly in international settings. Adalah is a legal center that is critical of the appropriation and translation of the indigenous rights discourse *vis-à-vis* the Bedouin in national settings, namely in domestic courts, but Adalah can be seen to fully engage with the indigenous peoples' rights discourse in international settings.

For example, Adalah's monthly newsletter has included at least one article discussing various international law frameworks for addressing the Bedouin land issues, including the international framework of indigenous peoples (see Chapter 1).[624] Adalah is also willing to have recourse to indigenous peoples' rights in their international advocacy efforts conducted from their US office, which was established in 2012. Nadia Ben-Youssef is Adalah's representative in the United States.[625] She spent a number of years working in Adalah's Naqab office before setting up the US office, and the difference in approaches illustrates the strategic and instrumental use of international human rights in order to raise international awareness among different audiences. Here, Adalah's US representative is a rights translator with one foot on the ground, where it is all happening, and another foot in the international arena. Hence, this CSO representative is an international rights translator and global intermediary in the broadest sense, who arguably amounts to a rights innovator, and at times a rights improviser.

Ben-Youssef is fully aware of her role in the translation of human rights as encompassing whichever human rights framework is at hand—whether it is, civil rights or indigenous peoples' rights—in the specific context. In each specific setting, the rights translator is alert to the type of event (UN, public event, university), the audience (officials, elites, the public,

[624] Kedar, "Land Settlement in the Negev in International Law Perspective," December 2004.
[625] According to Adalah's website: 'Since 2010, Nadia has worked with Adalah as an international law and advocacy consultant focusing on the promotion of the rights of the Arab Bedouin community in the Naqab. Previously, she has documented human rights violations in India, served as a speechwriter and legal assistant to Mrs. Cherie Blair, and worked as a civil litigator for indigent clients in the greater Boston community. She is a member of the New York State Bar, and speaks fluent French and Spanish. Nadia obtained an BA in Sociology from Princeton University and graduated cum laude from Boston College Law School with a certificate in Human Rights and International Justice. In 2013, Nadia began serving as Adalah's Representative in the United States.' Adalah, "Staff and Board."

activists), and their understanding of rights (general knowledge, academic knowledge, or professional/working knowledge). In the US where the origins of American history can be traced to the exploitation of African slave labor, drawing on civil rights discourse is axiomatic in order to make the Bedouin issue comprehensive for an American audience. Ben-Youssef recognizes the power of the audience that in effect determines which rights framework will be employed, if the human rights advocate wants to be heard and understood, and to impact the audience members in order for them to mobilize or give support, including donations. Ben-Youssef maintains that 'the civil rights discourse is one of the strongest frames', adding, 'as an advocate you are looking for an opportunity. It depends on your audience.'[626] The crossover between the Bedouin in Israel and the African-Americans in the United States, and the line between indigenous rights and civil rights, particularly discrimination, is disruptive and fruitful. It is little wonder that rights translators dip in and out of different human rights frameworks to make the Bedouin's situation as comprehensive and compelling as possible.

Ben-Youssef also readily acknowledges the power of indigenous peoples' rights in international human rights law, and draws parallels between the Bedouin in the *siyag* and Native Americans and First Nations in reservations. In the North American context, Ben-Youssef describes her presentation at an event in Canada called 'From Turtle Islands to Palestine':

> There was an event in Toronto: "From the Naqab to Turtle Island" [*sic*], talking about land rights, options in courts. They were oral histories, [which were] accepted in Canada. I was speaking with a First Nations Leader from British Columbia, who is not colonized and still remains. And as she is telling the story about the connection to land and she was making the links. Displacements. When Americans come to the Naqab, these are reservations [for them].[627]

Here, she uses the situation of the Bedouin in the Negev to frame the discussion on Palestinians, and glides in and out of indigenous peoples' rights (of the First Nations inhabitants of Turtle Islands) and national rights (of Palestinian who seek to exercise the right to self-determination) in order to frame the discussion and draw parallels between both groups. For Ben-Youssef, 'the history of bringing the First Nations framework […] is useful for activists. What is continuing to change. We are learning very much [that] it is comprehensive.'[628] Rather than

[626] Nadia Ben-Youssef, Interview, December 2, 2014.
[627] Ben-Youssef.
[628] Ben-Youssef. See also, Lee Maracle and Nadia Ben-Youssef, "Land Rights: From Turtle Island to Palestine" (Toronto, Ontario, November 21, 2013).

viewing the cross-translation of human rights frameworks as troublesome, Ben-Youssef sees the benefit of contextualized comparisons and rights-based intersections.

Ben-Youssef demonstrates the creative force and chameleon-like qualities of international human rights at work,[629] and the ways that, because of these features, rights translators can switch between different international rights frameworks—civil, political, women, indigenous peoples, and so on. Irrespective of the type of human rights framework, rights never lose their fundamental character and meaning; they always remain inherently human. Having explored human rights advocacy as one of the key activities of the rights translator in civil society in the Israeli/Bedouin context, the next half of the inquiry focuses on a different type of rights translator: the UN Special Rapporteur on the Rights of Indigenous Peoples. This central rights translator is based in the UN arena, but as discussed below, their involvement with the Bedouin in the Negev is not necessarily limited to UN activities.

3. Special Rapporteurs as Rights Translators and International Recognizers

One key factor behind the introduction of the Special Rapporteur into the UN system is the shift from a universal human rights approach to a tailored approach that is sensitive to groups facing a history of discrimination and marginalization. Specific to indigenous groups not situated in traditional European settler colonies, the last few decades of the 20th century saw the intervention of UN Special Rapporteurs, who wrote reports on groups left behind in the UN decolonization process.[630] It took until 2001 for the UN Commission on Human Rights (replaced by the UNHRC in 2006) to appoint the special mandate of the Special Rapporteur on

[629] Here, I play with Bourdieu's notion of the force of law by including the *creative* component that can be associated with law, specifically law's practice. In this way, law can be seen as a canvas where it can be theorized and practice simultaneously. 'Create' is an active verb, which attaches agency law, and the creative force of law also feeds into the idea that international (human rights) law has transformative and jurisgenerative qualities. (See the Introduction). On the force of law, see Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field," *Hastings Law Journal* 38 (1987 1986): 805.

[630] Most vocal on this point, Miguel Alfonso Martínez believed that decolonized states would subsume indigenous peoples. This ultimately ruled out decolonization and self-determination for indigenous peoples in the newly-independent states. In other words, the solidification of postcolonial states through the UN came at the expense of indigenous worlds. UN Committee on Economic, Social and Cultural Rights, "Final Report by Miguel Alfonso Martínez, Special Rapporteur: Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations, UN Doc E/CN.4/Sub.2/1999/20," June 22, 1999.

the Rights of Indigenous Peoples.[631] This appointment, as part of the UN special procedures, marks an institutional watershed at the UN.

In many ways, there is a strong resemblance between Special Rapporteurs and CSO rights translators; the main difference is their professional status (UN vs. grassroots) and place of work (Geneva vs. the Negev).[632] Like rights translators, this particular UN actor has global access to local sites and UN settings,[633] and can communicate with local communities and international stakeholders. The Special Rapporteur is the primary—and arguably the only—identifiable UN official acting as a rights translator across realms of activity. As Naples-Mitchell comments, in order to operationalize rights, or translate rights, the Special Rapporteur is often required to freely move in domestic space and time:

> In practice, universal scope means that thematic rapporteurs cannot go *everywhere*, but they can go *anywhere*. Through carefully selected visits, rapporteurs have the opportunity to familiarise themselves with the process of translating universal principles into localisable frameworks for change, giving them a platform on which to advance the principles themselves at the global level. Special rapporteurs make a unique contribution to the international human rights system, then, by identifying human rights crises as they unfold and shaping human rights norms as they emerge. They define rights *in real time*.[634]

As a rights translator in Merry's model, the Special Rapporteur is transdimensional and influences all cultural flows in the rights-translation process: drafting and advancing the UNDRIP (transnational consensus-building around indigenous peoples' rights), issuing reports that take the form of human rights advocacy (transnational program transplants), and visiting the countries where they interact with indigenous groups (localization of transnational knowledge of indigenous peoples' rights).

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[631] The Mandate is set down by Human Rights Council resolution 15/14, which lists the activities. See, "Mandate of the Special Rapporteur on the Rights of Indigenous Peoples," http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/Mandate.aspx.

[632] On the overlap and differences between the Special Rapporteur and NGOs, see Paulo Sergio Pinheiro, "Musings of a UN Special Rapporteur on Human Rights," *Global Governance* 9 (2003): 10–11.

[633] Scholarship on Special Rapporteurs is scant, and Subedi speaks of a 'dearth of literature examining this institution from a legal perspective.' Surya P. Subedi, "Protection of Human Rights through the Mechanism of UN Special Rapporteurs," *Human Rights Quarterly* 33, no. 1 (February 13, 2011): 205. In other words, 'there is limited systematic scholarly examination of the nature and impact of the role of the special rapporteur in international law.' Surya P. Subedi et al., "The Role of the Special Rapporteurs of the United Nations Human Rights Council in the Development and Promotion of International Human Rights Norms," *The International Journal of Human Rights* 15, no. 2 (February 1, 2011): 155.

[634] Joanna Naples-Mitchell, "Perspectives of UN Special Rapporteurs on Their Role: Inherent Tensions and Unique Contributions to Human Rights," *The International Journal of Human Rights* 15, no. 2 (2011): 244.

Ultimately, the Special Rapporteur amounts to a 'powerful tool for the powerless.'[635] Expertise is one of the principal defining qualities of Special Rapporteurs,[636] and they are also a symbol of independence, objectivity, and impartiality.[637] Subedi cites Kofi Annan, who called the Special Rapporteur 'the crown jewel' of the UN human rights system,[638] and Burgenthal considers their appointments to be an effort by the UN 'to pierce the veil of national sovereignty of states to handle serious cases of violations of human rights worldwide.'[639] As noted, 'agents of rights discourse within domestic politics, rapporteurs serve to advance a countervailing logic in contexts in which other discourses (national security, economic efficiency) threaten to dominate.'[640] It is therefore not surprising that a schism has emerged between the UN world and the nation-state. In the Special Rapporteur's examination of the situation of the Bedouin in southern Israel, questions concerning state sovereignty, the rule of law, and the principle of non-interference in internal affairs are never far away. The Special Rapporteur/Bedouin interface in the UN setting must be weighed against state/minority relations in the domestic setting. Despite having to toe a fine line between powerful/powerless forces, the Special Rapporteur is deemed the official international arbiter, who makes the final decision on who is indigenous, or not.

Previous Special Rapporteurs have recognized the Bedouin in the Negev as an indigenous peoples who are entitled to indigenous peoples' rights, and that recognition has been implicitly echoed by other UN bodies. For example, irrespective of the treaty body, concluding observations on the State of Israel often discuss the situation of the Bedouin in the Negev and they do not refrain from employing the indigenous descriptor in these UN reports.[641] UN

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[635] Pinheiro, "Musings of a UN Special Rapporteur on Human Rights," 12.

[636] United Nations Human Rights - Office of the High Commissioner, "Human Rights Bodies - Special Procedures - Nomination, Selection and Appointment of Mandate Holders," n.d., http://www.ohchr.org/EN/HRBodies/SP/Pages/Nominations.aspx. While not addressing their academic credentials, Sally Engle Merry states that the first rapporteurs to be appointed were usually diplomats and so refrained from interfering in domestic affairs or criticizing governments, which contrasts to contemporary times when many rapporteurs have a CSO background and so are willing to intervene and to criticize governments. Engle Merry, *Human Rights and Gender Violence*, 57. See also, Philip Alston, *The United Nations and Human Rights : A Critical Appraisal* (Oxford: Clarendon Press, 1992), 167.

[637] Subedi, "Protection of Human Rights through the Mechanism of UN Special Rapporteurs," 204.

[638] UN News Centre, "Annan Calls on Human Rights Council to Strive for Unity, Avoid Familiar Fault Lines," November 29, 2006, http://www.un.org/apps/news/story.asp?NewsID=20770#.VrBumbLhCUk.

[639] Thomas Buergenthal, "Remarks by Thomas Buergenthal: New Customary Law: Taking Human Rights Seriously?," in *Proceedings of the ASIL Annual Meeting*, vol. 87 (Cambridge University Press, 1993), 201.

[640] Naples-Mitchell, "Perspectives of UN Special Rapporteurs on Their Role: Inherent Tensions and Unique Contributions to Human Rights," 244.

[641] The Special Rapporteur is one of three UN bodies mandated to deal specifically with indigenous peoples' issues. The others are the Permanent Forum on Indigenous Issues, and the Expert Mechanism on the Rights of

recognition of the Bedouin as indigenous, resulting from the work of the Special Rapporteur (and other rights translators discussed above), has translated into almost total international consensus.

The evolution of the role of the Special Rapporteur is closely aligned with the development of a legal/normative framework stipulating the rights of indigenous peoples, namely the UNDRIP adopted in 2007. These UN actors and UN instruments are mutually constitutive, interacting and overlapping. The resolution establishing the mandate requires the Special Rapporteur to promote 'the United Nations Declaration on the Rights of Indigenous Peoples and international instruments relevant to the advancement of the rights of indigenous peoples, where appropriate'.[642] In particular, Special Rapporteurs have drawn on the UNDRIP to solidify the relationship between the UN and indigenous peoples. Hailed as a legal/normative breakthrough, the UNDRIP has provided indigenous peoples with a UN platform for global communication, social mobilization, and political change. While a soft law instrument, the UNDRIP is fortified by hard law instruments drafted by other IGOs,[643] and the Special Rapporteur's country reports and thematic reports reference articles of the UNDRIP. Although the UNDRIP does not define the rights-holders of the guarantees and protections contained therein, the Special Rapporteurs have not shied away from tackling definitional issues in their UN reports and other documents, including academic writings.[644]

In pioneering legal developments, the Special Rapporteur has a global mandate that can affect contexts around the world, and the rest of this section explores how Special Rapporteurs have translate *up* from local sites (i.e., the Negev) to international settings (the UN). The two previous Special Rapporteurs on the Rights of Indigenous Peoples—namely Rodolfo Stavenhagen (2001–2008) and S. James Anaya (2008–2014)—and their interaction with the

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Indigenous Peoples. On these three bodies, see "Indigenous Peoples at the UN," n.d., https://www.un.org/development/desa/indigenouspeoples/about-us.html.

[642] The inclusion of 'where appropriate' could be seen as acting like a limiting clause.

[643] The two key instruments are: ILO Convention on the Right of Indigenous and Tribal Peoples in Independent Countries No. 169 - 1989 and No. 107 - 1957. For these and other instruments, see United Nations Human Rights - Office of the High Commissioner - Special Rapporteur on the Rights of Indigenous Peoples, "Normative Framework,"http://www.ohchr.org/EN/Issues/IPeoples/SRIndigenousPeoples/Pages/NormativeFramework.asp.

[644] For example, the first Special Rapporteur Rodolfo Stavenhagen wrote extensively on the subject of the definition. In addition, in "Index of reports of the Special Rapporteur on the rights of indigenous peoples, James Anaya, by theme and by region", section G deals with 'Definition and recognition of indigenous peoples' which covers indigenous peoples in Asia, Thailand, Thailand and Tanzania. UN Human Rights Council, "Report of the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya Addendum- Consultation on the Situation of Indigenous Peoples in Asia*, UN Doc A/HRC/24/41/Add.3," July 31, 2013, paras. 6–10, 31–32, 38–39.

Bedouin serve to illuminate how the internationally-created indigenous status and rights have become active and effective in this setting. Anaya and Stavenhagen provide important insight into UN rights translation in the Israel/Bedouin context, and highlight their role in defining the Bedouin as an indigenous peoples.

Several other UN Special Rapporteurs have been engaged with the Bedouin (e.g., those on Adequate Housing and Freedom of Expression, as discussed with regard to the village of al-Araqib in Chapter 1). The country visits of these other Special Rapporteurs produced reports on the situation regarding their respective mandates, adequate housing and freedom of expression. What these Special Rapporteurs demonstrate is that they are close to the ground, and remake UN law in domestic settings and local sites of action. It is also important to underscore that the Bedouin in the Negev are a focal point elsewhere at the UN, namely in the UNPFII, formerly the UNWGIP.[645] The Bedouin participate in the UNPFII by sending representatives, and all but two of those have been Bedouin women.[646] Despite these UN developments, the centrality of the UN Special Rapporteur on the Rights of Indigenous Peoples (Special Rapporteur) cannot be underestimated in the Bedouin's indigenous turn in international human rights law and the translation *down* and *up* of indigenous rights and recognition in different realms of activity. As a result, the focus of the Bedouin's indigenous turn is on the two previous Special Rapporteurs who engaged with the Bedouin: Professor Rodolfo Stavenhagen initiated UN engagement with the Bedouin, and Professor S. James Anaya continued this engagement, which not only involved the Bedouin but also the Israeli government. The latest Special Rapporteur, Victoria Tauli-Corpuz, has also met with Bedouin representatives but her engagement falls outside the timeframe and scope of this study.[647]

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[645] A number of treaty body committees, including CERD, ICCPR and CESCR, have addressed Bedouin issues. However, it is important to point out that these committees do not specifically refer to the Bedouin as indigenous peoples even though the committees tend to use local nomenclature to refer to such groups, rather than specially defining them as "indigenous." See, Stavenhagen and Amara, "International Law of Indigenous Peoples and the Naqab Bedouin Arabs," 183.

[646] NCF, "International Lobby - UN Permanent Forum on Indigenous Issues."

[647] NCF, "NCF's Statement at the EMRIP Session in Geneva," July 11, 2017, http://www.dukium.org/ncfs-statement-emrip-session-geneva/. See also, Vicky Tauli-Corpuz, "Meetings the Whole Day with Crimea Tatars, FENAMAD, Bedouin People in Negev-Naqab, Indigenous Persons with Disabilities, Asia Indigenous Peoples. All These after a Side-Event Which Launched the Books on Extractive Industries by the African Commission on Human and Peoples Rights and the Inter-American Commission on Human Rights. In between Was an Update on the Situation in Brazil.," July 11, 2017, https://www.facebook.com/photo.php?fbid=10156225602634460&set=pcb.10156225927774460&type=3&theater.

a. Rodolfo Stavenhagen: A Translator with Multiple Hats

UN Special Rapporteur Rodolfo Stavenhagen's story illustrates the interrelatedness of the rights translation processes and the UN rights translator as an authoritative and legitimate voice in the Israeli/Bedouin context. As related in his bio in Chapter 1,[648] Rodolfo Stavenhagen is by education and profession a sociologist and anthropologist, which is reflected in his interests in and extensive scholarship on the topic of indigenous peoples.[649] His UN work has been focused on culture and research activities, particularly in Latin America, where indigenous peoples have made significant gains in their struggle for recognition and rights, most significantly land rights. Stavenhagen was the first Special Rapporteur on the Rights of Indigenous Peoples, whose mandate began in 2001 and concluded in 2008. It is worth mentioning that as a Special Rapporteur, Stavenhagen encountered difficulties concerning the definition of *indigenous* from the very beginning, reflected in his first official report as Special Rapporteur.[650] Stavenhagen sees the role of the UN in the formulation of a UN definition as follows: 'In its continuing activities surrounding indigenous issues, the United Nations system is contributing to the clarification of the issue of definition of indigenous peoples.'[651] In other words, the role of the UN is to facilitate the interpretation of the concept and category of indigenous peoples, which is given content and meaning through UN work. This statement suggests that the definition of indigenous peoples is an ongoing work in progress at the UN.

Stavenhagen was the first UN official to write about the Bedouin as 'indigenous'. As discussed in Chapter 1, Stavenhagen's connections with the Bedouin began toward the end of his 2001–2008 tenure as Special Rapporteur, when the threat of the demolition of al-Sira brought the situation to his attention in September 2006. On foot of the urgent appeal sent to him by the al-Sira village committee and the NCF, Stavenhagen sent a communication to the Israeli

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[648] David Barton Bray, "Rodolfo Stavenhagen: The UN Special Rapporteur on Indigenous Peoples," *American Anthropologist* 113, no. 3 (September 1, 2011): 502–4.

[649] He has also been a prolific writer of seminal works on Latin American rural development and indigenous issues, including Stavenhagen, *Ethnic Conflicts and the Nation-State*.

[650] The report states: 'One of the more widely debated topics concerning the character and scope of the human rights of indigenous peoples as well as the specific areas in which their protection may be ensured by State action is *the ambiguity surrounding the definition of the term "indigenous"*.' The report notes that 'There is no internationally agreed upon definition of indigenous peoples […] Yet the absence of an international definition should not prevent constructive action in the promotion and protection of the human rights of indigenous peoples.' E/CN.4/2002/97. Section III is entitled "The Questions of Definitions". UN ECOSOC Commission on Human Rights, "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Mr. Rodolfo Stavenhagen, Submitted Pursuant to Commission Resolution 2001/57," February 4, 2002, paras. 92–100.

[651] UN ECOSOC Commission on Human Rights, 99.

government in October 2006,[652] to which the government responded belatedly in August 2007.[653] Stavenhagen's subsequent report to the UNHRC, which details the communication received, is interesting because it states that: 'By letter of 9 August 2007, the Government responded to the letter sent on 19 October 2006, providing information on the issue of housing in al-Sira, *but not the overall status of the Bedouin of the Negev*.'[654] Stavenhagen's words suggest that the Special Rapporteur's concern encompasses the Bedouin as a group and not solely the situation of al-Sira residents, the particular subjects of the urgent appeal.

Moreover, between the initial appeal in September 2006 and Stavenhagen's second report to the UNHRC in November 2007, the Special Rapporteur received new information about home demolitions in Atir-Umm al-Hiran, twin unrecognized villages[655] in the Negev and cases of forced evictions of the Bedouin in the neighboring territories.[656] In Stavenhagen's documents that report on the Bedouin, the term *indigenous* is consistently employed.[657] In his report to the Israeli government, the Special Rapporteur draws the government's attention to relevant articles of the UNDRIP, which underscores the legal/normative dimensions attached to his UN role.[658] In addition to this, his report raises the issue of forced evictions facing indigenous peoples as a worldwide issue,[659] situating the al-Sira villagers—and the Bedouin more generally—within the global struggle of indigenous peoples.

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[652] UN Human Rights Council, "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen UN Doc A/HRC/4/32/Add.1," March 19, 2007, paras. 262–270.

[653] UN Human Rights Council, para. 271. The Special Rapporteur regrets not having received a reply to his communication sent on 19 October 2006 at the date the report was finalized.

[654] UN Human Rights Council, "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, A/HRC/6/15/Add.1," November 20, 2007, https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/149/42/PDF/G0714942.pdf?OpenElement.

[655] The two villages are Atir and Umm el-Hieran. Umm al-Hiran is about 30km from the city of Be'er Sheva; it is so close to Atir that they are regarded as twin villages and are sometimes called Atir-Um al-Hiran.

[656] See "Allegation letter concerning Bedouin indigenous communities in territories under Israeli occupation", concerning the Jahalin Bedouin, East of Jerusalem. UN Human Rights Council, "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, A/HRC/6/15/Add.1," paras. 280–285. There is further information received regarding the "Bedouin communities of the Jordan Valley". UN Human Rights Council, paras. 289–292.

[657] UN Human Rights Council, "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, A/HRC/6/15/Add.1," para. 265. Of note is the use of the Arabic term *Naqab*. See, UN Human Rights Council, para. 286. Also worth pointing out is that the report refers to 'Jewish settlers'. See, UN Human Rights Council, para. 287.

[658] UN Human Rights Council, "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen UN Doc A/HRC/4/32/Add.1," para. 270.

[659] UN Human Rights Council, para. 270.

In contrast to the legal/normative and transnational dimensions raised by Stavenhagen, the State of Israel reports through the domestic lens, emphasizing the domestic legal framework. In its August 2007 response, the Israeli government states:

> The Bedouin residents claiming ownership of that land are now very old or have passed away. As those who built illegally were more often distant relatives, rather than the ownership claimant themselves, it has proved almost impossible to ascribe alleged illegal buildings to specific persons. Efforts were made to identify building owners and initiate proceedings against them using available resources via other inspections units, such as the Bedouin Administration and the Green Police. According to the State, both bodies also encountered difficulties in proving ownership of illegal building.[660]

From a state-centric perspective, it is not the fault of the Israeli government but rather the Bedouin, who are not the legal landowners and whose construction activities are illegal, being contrary to domestic law. State benevolence and official procedure are suggested through the establishment of special bodies domestically, like the Bedouin Education Authority, the Bedouin Development Authority, or the Green Patrol, which are left with the challenge of identifying the landowners and prosecuting law-breakers for illegal building.

As his mandate as Special Rapporteur was about to conclude, Stavenhagen did not have any further opportunity to engage with the case. Afterwards, however, and in his civil society capacity, he undertook an international fact-finding mission in the Negev under the auspices of Habitat International Coalition's Housing and Land Rights Network (HIC-HLRN) and its local member, the RCUV. Stavenhagen was one of four 'renowned international experts in complementary fields'[661] who formed the investigative team. The three other international experts were Anthony Coon, former head of urban planning at Strathclyde University, Glasgow; Steve Kahanovitz, member of South Africa's public interest law group, the Legal Resources Centre; and Miloon Kothari, the former Special Rapporteur on Adequate Housing who had also received the urgent appeal regarding al-Sira. The fact-finding mission was conducted after the publication of the recommendations of the Goldberg Commission, one of several government committees established to resolve the dispute of land ownership between the Bedouin and the State of Israel (see Chapter 5). The purpose of the fact-finding mission was to urge the Israeli government to implement the Goldberg recommendations, which were

[660] UN Human Rights Council, "Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People, Rodolfo Stavenhagen, A/HRC/6/15/Add.1," para. 275.
[661] Coon et al., "The Goldberg Opportunity: A Chance for Human Rights-Based Statecraft in Israel," viii.

generally viewed as positive, and to implement additional recommendations resulting from the mission.[662]

Although the Bedouin are described as indigenous in the fact-finding mission's report, the international framework employed was based on universal human rights law, the right to adequate housing, and the right to equality and non-discrimination as well as the international framework of indigenous peoples and its application to the Bedouin.[663] Reference is made to the UNDRIP and the case law recognizing the rights of indigenous peoples in Canada, Australia, the US, Nicaragua, Botswana, Malaysia, South Africa, and Kenya.[664]

As well as connecting the UN and civil society worlds, Stavenhagen makes an interdisciplinary connection between law and anthropology. He contributed to the edited volume entitled *Bedouin (In)Justice: Human Rights Law and Bedouin Arabs in the Naqab/Negev*, as co-author of the chapter, "International Law of Indigenous Peoples and the Naqab Bedouin Arabs". As its title suggests, his chapter puts international law and the Bedouin into conversation with one another.[665] In a collection of articles forming part of a trilogy,[666] Stavenhagen does not write directly about the question of indigenous peoples in Israel—but a picture of Stavenhagen and a group of Bedouin men, one of whom is Shaykh al-Uqbi from al-Araqib, is included in the book[667] and captioned, 'With displaced indigenous Bedouins in Naqab (Negev) Israel.' Besides his activities on international lawmaking and knowledge production, Stavenhagen is the first Special Rapporteur to employ his expertise on the Bedouin in the Negev as indigenous peoples in the domestic setting. Here, Stavenhagen submitted an amicus brief on behalf of the

[662] For example, Justice Eliezer Goldberg stated that the Bedouin are not "squatters," but rather citizens entitled to equal rights, and that the unrecognized villages should be recognized "to the extent possible." Justice Eliezer Goldberg, "Final Report of the Commission to Propose a Policy for Arranging Bedouin Settlement in the Negev" (Ministry of Housing, 2008), para. 110.
[663] Coon et al., "The Goldberg Opportunity: A Chance for Human Rights-Based Statecraft in Israel," 26, 35.
[664] Coon et al., 33–35.
[665] For a discussion on this article, see Chapter 5.
[666] The three publications are: Rodolfo Stavenhagen, *The Emergence of Indigenous Peoples* (Heidelberg: Dordrecht: London: New York: Springer Science & Business Media, 2013); Rodolfo Stavenhagen, *Pioneer on Indigenous Rights* (Heidelberg: Dordrecht: London: New York: Springer Verlag, 2013); Rodolfo Stavenhagen, *Peasants, Culture and Indigenous Peoples: Critical Issues* (Heidelberg: Dordrecht: London: New York: Springer Verlag, 2013).. Originally, the chapter in *The Emergence of Indigenous Peoples* was an article. Both the chapter and the article display the photograph. It is also interesting to note that on the same page, there is a picture of Stavenhagen with members of the Maasi tribe in Kenya.
[667] Stavenhagen, *The Emergence of Indigenous Peoples*, 43. In an interview, I questioned Stavenhagen on his use of the photograph. It took him some time to think of the publication, and he seemed quite unaware of the actual picture. Rodolfo Stavenhagen, November 7, 2014.

petitioners in the *al-Uqbi* case,[668] participating in the petitioner's attempt to claim an indigenous peoples' status and rights Be'er Sheva District Court (discussed in Chapter 5).

With displaced indigenous Bedouins in Naqab (Negev) Israel

Source: *The Emergence of Indigenous Peoples*, p. 43. Stavenhagen wears a beige hat and a beige jacket. Also in this picture is Sheikh Sayyah al-Turi of al-Araqib.

Based on the information he received about the Bedouin when he was Special Rapporteur, his visit to the Negev as part of the fact-finding mission, his scholarly contributions, and his judicial engagement, Stavenhagen considers the Bedouin to be an indigenous peoples in international human rights law. In a conversation, Stavenhagen maintains that 'the Naqab Bedouin—being Israeli citizens, being Bedouins, being Arabs, being Muslims—and are therefore *in a minority situation* in the State of Israel. Besides that, I argue, we might consider them as *indigenous peoples*.'[669] He comments that he is not alone in this conclusion, and points to scholarship on the topic, adding: 'That is their own perception and the perception of many academics that have studied the situation of the Naqab Bedouin for years and years; Israelis or people from other countries who know the situation very well. I think there is general

[668] Amara Ahmad and Mansour Nasasra, "Bedouin Rights under Occupation: International Humanitarian Law and Indigenous Rights for Palestinian Bedouin in the West Bank" (Norwegian Refugee Council, November 2015), 28.
[669] Stavenhagen, interview.

consensus that the concept of indigenous peoples applies in the case of the Bedouin.'[670] In arriving at this conclusion, Stavenhagen aligns himself with rights translators in the academic arena. In Stavenhagen's opinion, based on his work with and research on indigenous peoples worldwide, the relationship between indigenous peoples and land is the most important criterion that differentiates indigenous groups from other marginalized groups,[671] and he argues that the Bedouin in the Negev are no different. Stavenhagen is not blind to the challenges encountered by the concept and category of indigenous peoples when applied in practice, acknowledging that 'this [indigenous recognition] is not accepted very widely in the Israeli context as it is in some other countries.'[672]

Professor Stavenhagen's engagement with the Bedouin can be characterized for its diversity and his ability to wear multiple hats. In the Israeli/Bedouin context, we see the diverse roles played by Stavenhagen: first, as the Special Rapporteur; second, in his civil society capacity, as part of an internationally led fact-finding mission; third, as a scholar interested in questions concerning indigenous peoples, including the Bedouin; and fourth, as a legal expert for the court. Demonstrating an ability to shift roles and change fields, Stavenhagen's involvement with the Bedouin in the UN, civil society, academic, and even judicial worlds transcends the different realms of (rights) activity. His involvement with the Bedouin was predominantly outside his UN work, and many of his activities were carried out after his Special Rapporteur mandate ended. Subedi observes that the Special Rapporteur is 'expected simultaneously to become a human rights activist, a rallying point for human rights, an international diplomat, and academic, and a government adviser.'[673] Based on his impressive scholarly credentials, CSO activism, and international experience, Stavenhagen can be viewed as a global rights translator in the Israeli/Bedouin context.

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[670] Stavenhagen.

[671] For the Bedouin, as for many other groups of indigenous peoples, the connection to the land goes deeper than Western conceptions of property ownership. Ismael Abu-Saad, Bedouin scholar, echoes these sentiments in 'Spatial Transformations and Indigenous Resistance'. See, Abu-Saad, "Spatial Transformation and Indigenous Resistance: The Urbanization of the Palestinian Bedouin in Southern Israel," 1727.

[672] Stavenhagen, interview.

[673] Subedi, "Protection of Human Rights through the Mechanism of UN Special Rapporteurs," 212. United Nations Human Rights - Office of the High Commissioner, "Special Procedures of the Human Rights Council," n.d., http://www.ohchr.org/EN/HRBodies/SP/Pages/Welcomepage.aspx.

b. S. James Anaya: A Translator and Interlocutor

Similar to his predecessor, international jurist S. James Anaya dealt with the Bedouin in Israel during his mandate as UN Special Rapporteur; unlike Stavenhagen and his multiple hats, however, Anaya's work on Bedouin issues was confined to his UN work until 2014.[674] Anaya formed the opinion that the Bedouin are an indigenous peoples according to international human rights law, based on the information he received and his meetings with several Bedouin representatives.[675] Two communications Anaya received are particularly important for this discussion: the communication from 2011 concerned an 'allegation that Bedouin people are being removed from their traditional land' ,[676] and the other from 2013 concerned 'alleged plans to enact the '"Law for the Regulation of Bedouin Settlement in the Negev-2013" also known as the Prawer-Begin bill'.[677] Based on the initial communication in 2011, the Special Rapporteur requested a country visit in order to assess the situation; but official permission was not forthcoming.[678] Owing to the fact that the Israeli government did not respond to his initial communication in a timely manner,[679] and his request for a country visit was denied,[680] Anaya

[674] S. James Anaya is one of the most prolific writers on the subject of indigenous peoples and his scholarship spans books and articles preoccupied with legal questions. In addition, Anaya has been actively involved in a number of cases in the Inter-American Courts. One of the most renowned, in which he was the lead lawyer, was *Mayagna (Sumo) Community of Awas Tingini v Nicaragua*, viewed by many as precedent-setting for granting land rights to indigenous peoples and holding the state responsible. The Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of August 31, 2001, Inter-Am. Ct. H.R., (Ser. C) No. 79 (2001). See also, S. James Anaya and Claudio Grossman, "The Case of Awas Tingni v. Nicaragua: A New Step in the International Law of Indigenous Peoples," *Arizona Journal of International and Comparative Law* 19, no. 1 (2002): 1–15; S. James Anaya and S. Todd Crider, "Indigenous Peoples, the Environment, and Commercial Forestry in Developing Countries: The Case of Awas Tingni, Nicaragua," *Human Rights Quarterly* 18, no. 2 (May 1, 1996): 345–67.

[675] Mansour Nasasra, previously a CSO representative and now a lecturer at BGU; Rawia Abu Rabia, previously an attorney at ACRI, an NCF volunteer, and now a doctoral researcher at the Hebrew University; and Khalil Al-Amour, a teacher and attorney; and Sanaa Ibn Bari, an attorney at ACRI. NCF, "International Lobby - UN Permanent Forum on Indigenous Issues."

[676] UN Human Rights Council, "Report by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, UN Doc A/HRC/18/35/Add.1."

[677] UN Human Rights Council, "Report on Observations to Communications Sent and Replies Received by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, UN Doc A/HRC/27/52/Add.4," September 3, 2014, paras. 112–113.

[678] The request was made on 1 September 2010, but the Special Rapporteur did not receive a response to his communication from February 1, 2011 from the Israeli Government. See, UN Human Rights Council, "Report by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, UN Doc A/HRC/18/35/Add.1," 24. The fact that Anaya was denied entry to Israel is unremarkable. According to Pinheiro, based on his own experience as special rapporteur, "To perform their duties, special rapporteurs must secure invitations from member states. Too many governments do not reply or delay responding to requests for a mission." Pinheiro, "Musings of a UN Special Rapporteur on Human Rights," 8. Subedi sums it up, 'While trying to give a voice to the voiceless and defending the defenders of human rights, the special rapporteurs themselves have often been denied entry into some countries, or have been harassed, detained in, and deported from them.' Subedi, "Protection of Human Rights through the Mechanism of UN Special Rapporteurs," 204.

[679] On communications, see Subedi, "Protection of Human Rights through the Mechanism of UN Special Rapporteurs," 214.

[680] On country visits, see, Subedi, 215.

compiled his report based on domestic sources complied by the CSOs he deemed credible and relevant.[681] The Special Rapporteur's report is a public document and is available to read online. The Israeli government received the report on 16 June 2011, and responded to it on 15 August 2011. This interface between the Special Rapporteur and the government of Israel moves the situation from a standstill to dialogue,[682] but the exchange underscores how the internationally-created status and rights of indigenous peoples applied to the Bedouin generate friction and tension between the UN rights translator and the government authorities, and create new legal and political dynamics between the Israeli government and the UN bodies addressing indigenous peoples' issues.[683] It is therefore worthwhile to cite key paragraphs of Anaya's country report in order to understand the UN translation of indigenous peoples' rights, and in particular, the UN recognition of the indigenous peoples' status and rights of the Bedouin.[684] In his report,[685] Anaya indirectly answers the question concerning the indigenous status of the Bedouin:

> The Special Rapporteur considers there to be strong indications that Bedouin people have rights to certain areas of the Negev based on their *longstanding land use and occupancy*, *under contemporary international standards*. It is undisputed that the Bedouin have used and occupied lands within the Negev desert *long before the establishment of the State of Israel* and that they have continued through the present to inhabit the Negev, maintaining their *culturally-distinctive land tenure and way of life*.[686]

[681] It is interesting to note that "They are not required to inform those who provide information about any subsequent measures they have taken, but are supposed to take all feasible precautions to ensure that sources of information are not subjected to retaliation." Subedi, 214.

[682] Special rapporteurs perform a delicate balancing act. They must discharge their duties with thoroughness and sobriety, bearing in mind their essential role of protecting the interests of victims. At the same time, they must avoid high-profile appearances that draw excessive attention to their office. However, discretion sometimes has its advantages. Pinheiro, "Musings of a UN Special Rapporteur on Human Rights," 8.

[683] Moreover, it was during Anaya's mandate that a representative of the Jerusalem Bedouin Cooperative Committee, which works on the West Bank in Area C, went before the 10th session of the UNPFII, seeking indigenous recognition as a "displaced indigenous group living as refugees under occupation." UNRWA, "West Bank Bedouin Refugee Appeals for Recognition and Protection," May 26, 2011, https://www.unrwa.org/newsroom/press-releases/west-bank-bedouin-refugee-appeals-recognition-and-protection. Emphasizing the commonalities between these two groups, Adalah links the villages of Susiya in the West Bank and al-Araqib in the Negev. Ben-Youssef, Bishara, and Rosenberg, "From Al-Araqib to Susiya. Forced Displacement of Palestinians on Both Sides of the Green Line."

[684] According to Lindroth 'their [special rapporteurs'] reports are considered more independent than reports by individual states. These reports are used by many actors in their work, for example, governments, UN agencies, development institutions, civil society, human rights activists and donor agencies (Smith, 2011; Subedi, 2011).' Marjo Lindroth, "Paradoxes of Power: Indigenous Peoples in the Permanent Forum," *Cooperation and Conflict* 46, no. 4 (December 1, 2011): 343.

[685] Special rapporteurs report on their activities to the relevant UN bodies, see, Subedi, "Protection of Human Rights through the Mechanism of UN Special Rapporteurs," 215.

[686] UN Human Rights Council, "Report by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, UN Doc A/HRC/18/35/Add.1," para. 5 (Annex VI).

Thus, the central components that constitute the Bedouin as an indigenous peoples for Anaya are as follows: first, their pre-state occupancy; second, their landedness; and third, their (cultural) distinctiveness.

The subsequent back-and-forth between Anaya and the State of Israel demonstrates how 'the SRIP [Special Rapporteur] exercises definition-making power over populations whilst seeking to clarify and assert indigenous rights.'[687] The state's response to the Special Rapporteur's report can be viewed as an act of counter-translation, and makes the following argument: 'The State of Israel does not accept the classification of its Bedouin citizens as an indigenous people. Historically, Bedouin tribes arrived to the Negev area late in the Ottoman era, mainly from Saudi Arabia and Egypt, to an already existing legal regime.'[688] In a rejoinder, Anaya rejects Israel's position, which is largely grounded on the absence of the Bedouin's 'historical continuity with pre-invasion and pre-colonial societies.'[689] Specifically, Anaya contends as follows in his response to the State:

> 25. First, the Special Rapportuer [*sic*] acknowledges the position of the State of Israel that it does not accept the classification of its Bedouin citizens as an indigenous people given that ["]Bedouin tribes arrived to the Negev area late in the Ottoman era, mainly from Saudi Arabia and Egypt, to an already existing legal regime.["] The Special Rapporteur notes, however, *the longstanding presence of Bedouin people throughout a geographic region that includes Israel, and observes that in many respects, the Bedouin people share in the characteristics of indigenous peoples worldwide,* including a *connection to lands* and the *maintenance of cultural traditions* that are distinct from those of majority populations. Further, the grievances of the Bedouin, stemming from their distinct cultural identities and their connection to their traditional lands, can be identified as representing the types of problems to which the international human rights regime related to indigenous peoples has been designed to respond. Thus, the Special Rapporteur considers that the concerns expressed by members of the Bedouin people are of relevance to his mandate and fall within the ambit of concern of the principles contained in international instruments such as the United Nations Declaration on the Rights of Indigenous Peoples.
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> 26. In addition, the Special Rapporteur cannot avoid making principled assessments about the scope of his mandate in relation to particular groups in the course of addressing human rights concerns that are brought to his attention. In this connection,

[687] Marjo Lindroth, "Indigenous Rights as Tactics of Neoliberal Governance: Practices of Expertise in the United Nations," *Social & Legal Studies* 23, no. 3 (September 1, 2014): 347. On international experts, see Fleur Johns, *Non-Legality in International Law: Unruly Law* (New York: Cambridge University Press, 2013).

[688] UN Human Rights Council, "Report by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, UN Doc A/HRC/18/35/Add.1," para. 25 (Annex VI).

[689] Anaya's frankness can be understood, as UN Special Rapporteurs enjoy a high degree of autonomy and 'because they are not part of an intergovernmental body, they have greater freedom of action, greater flexibility, and fewer political constraints on speaking their mind. Their authority does not derive directly from the consent of states party to an international human rights treaty.' Subedi, "Protection of Human Rights through the Mechanism of UN Special Rapporteurs," 209.

> consistent with the terms of his mandate, the Special Rapporteur cannot simply accept without independent inquiry general assertions that particular groups are not within his mandate. *Nor does he consider that the question of whether or not a particular group is indigenous and related considerations can be left entirely to the subjective determination of States.*

In specifying the reasons the Bedouin constitute an indigenous peoples, Anaya incorporates elements that are beyond the scope of the national setting. First of all, the Special Rapporteur situates the Bedouin among indigenous peoples around the world, transforming their domestic issues into a global concern. Secondly, he uses the example of the Bedouin to underscore how indigenous peoples, like the Bedouin in the Negev, are in fact constitutive of the international law of indigenous peoples—in other words, the Bedouin are participants in law-making efforts.

c. UN Special Rapporteurs Translating Rights and Status in the Israeli/Bedouin Context

These UN actors recognize the Bedouin as an indigenous peoples under UN law, as well as according to their individual understandings of the concept and category that reflect their educational backgrounds. We can detect the Special Rapporteur's active and effective involvement in the translation of an indigenous peoples' status and rights in this context on two levels: firstly, direct engagement with the Bedouin, and secondly, recognition of the Bedouin as indigenous under UN law that in turn entitles them to a corresponding set of UN rights. Hence, we can say that the UN rights translator unifies two worlds—the Bedouin world and the UN world—and draws the domestic world into the fold. In his role as UN rights translator, Stavenhagen managed to move across the realms—global, international, transnational, national, and local—and connect different disciplines—law, and sociology and anthropology.

Ultimately, this section shows that 'by grounding themselves in situations of moral urgency, rapporteurs hold the potential to operationalize abstract human rights norms in specific domestic contexts, giving those norms practical meaning.'[690] The most discernible difference between these two Special Rapporteurs is their educational and professional background: Anaya is an international lawyer, and Stavenhagen is a sociologist and anthropologist. Both Special Rapporteurs encountered hurdles in relation to the definition and recognition of

[690] Naples-Mitchell, "Perspectives of UN Special Rapporteurs on Their Role: Inherent Tensions and Unique Contributions to Human Rights," 243.

indigenous peoples in the countries covered by their reports and visits. In the Israeli/Bedouin context, they independently agreed that the Bedouin are an indigenous peoples according to their understandings of the international human rights law of indigenous peoples.

Anaya's exchange with the State of Israel over why the Bedouin are (or are not) indigenous reveals the protean and complex nature of the translation of indigenous status and rights on the UN level. Moreover, Anaya highlights the power of the Special Rapporteur's translation lens that allows for UN interpretation and meaning. Here, the UN rights translator dialogues with the domestic counter-translator. In other words, the UN rights translator must spell out in clear terms why the Bedouin are entitled to recognition as an indigenous peoples, according to the criteria of indigenous peoples laid down in UN law. In the process of indigenous peoples' recognition, the Special Rapporteur can be seen as a checks-and-balances mechanism for the 'subjective determination' of states.[691] Such UN assessments are driven by human rights principles, which are the bedrock of international human rights law.

The Special Rapporteur's 'conversance with both the abstract and the concrete positions them to define human rights in real time'.[692] Anaya's defining of the Bedouin as an indigenous peoples takes into account the spatiotemporal factors and the political, social, and historical contingencies of the Israeli/Bedouin setting. Moreover, 'porous boundaries between the universal and the particular' enables the Special Rapporteur to translate rights between realms of activity and, if permitted, to physically travel between those realms.[693] However, the rights-translation process comes with a caution, which Lindroth hints at when he observes: 'In this search for legal clarity, the special rapporteur creates possibilities for more protection and rights for indigenous peoples but also mandates closer scrutiny of indigeneity and "authenticity" in order to determine the populations that "qualify" for indigenous rights.'[694] The UN Special Rapporteurs on the Rights of Indigenous Peoples have created a world of opportunity for the Bedouin to be recognized as an indigenous peoples under UN conditions, but claiming their rights as an indigenous peoples in the domestic context is another matter altogether.

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[691] UN Human Rights Council, "Report by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, UN Doc A/HRC/18/35/Add.1," para. 26 (Annex VI).
[692] Naples-Mitchell, "Perspectives of UN Special Rapporteurs on Their Role: Inherent Tensions and Unique Contributions to Human Rights," 233.
[693] Naples-Mitchell, 233.
[694] Lindroth, "Paradoxes of Power," 354.

4. Between Realms of Activity: Moving from the Civil Society Realm toward the Legal-Academic Realm

This chapter investigated how global ideas about indigenous peoples are appropriated and translated across different realms in a particular context, namely, the Israeli/Bedouin context. The appropriation and translation of the concept and category of indigenous peoples attracts a range of actors who, like the concept and category itself, are relational and interconnected. This constellation of actors is situated within ideological agendas and power relations, which obviously affect the appropriation and translation processes of international human rights law generally, and indigenous peoples' rights specifically. Nonetheless, in my judgment, a degree of engineered socio-legal construction is required for indigenous peoples' status and rights to be translated, which is not solely due to these actors but primarily owing to the fault-line between the theory and practice of the concept and category.

The rights translator fits the Israeli/Bedouin context but it does not tell the whole story and can only go so far in making sense of the practice of the concept and category of indigenous peoples in this particular setting. In the case of the Bedouin in the Negev, the concept and category requires a degree of *extra* interpretation and *extra* meaning-giving when the international definition undergoes contextualized appropriation and cultural translation. This extra-dimensional element amounts to an 'engineered construction' that underscores the role of law and non-law in the vernacularization of rights, and that speaks directly to the constructivist legal approach discussed in Chapter 4. Such engineered construction has less to do with the actors involved—whether rights translators, counter-translators, non-translators, or even the Bedouin themselves—but with the inbuilt fault-lines of the concept and category of indigenous peoples. The international definition, in my opinion, lends itself to appropriation and translation, but owing to its fundamental character, something of an engineered construction is required for it to fit the particular context.[695] To grasp the main tenets of engineering, Mrázek, who borrowed from Karl Marx,[696] describes how:

> Engineers believe in their language [...] More than the rest of us, however, engineers believe that their language and everything else can be taken apart and reassembled (and taken apart again) for the language's and everything's benefit. Engineers dream and plan as often as and as intensely as the rest of us. More than the rest of us, however,

[695] Kingsbury distinguishes between key requirements and relevant indicia, a maneuver that enables not only appropriation and translation but also engineering in places where the definition would be a bad fit otherwise.
[696] Karl Marx describes engineers as a 'superior class of workers'. Karl Marx, *Capital: Critique of Political Economy*, trans. Ben Fowkes, vol. 1 (London; New York: Penguin Classics, 1990), 546.

> they believe that there is a calculated sameness between the planning and the dreaming… Engineers, in their essence, remain unchanged when they carry their beliefs to the limits. They merely become more impressive to the rest of us, more tragic, or more dangerous.[697]

In the vernacularization of indigenous peoples' rights, engineer-like rights translators play a key role in the socio-legal construction of the concept and category, producing further terrains of opportunity, risk, and opposition.

A distinction between the theory and practice of the concept and category of indigenous peoples is not a deterrent in context; to the contrary, rights translators are active and effective in the translation through human rights activities, which also unearth the curious pathways of the concept and category in context (see also Chapter 5). The rights translator makes us aware of the disjuncture that arises when the concept and category of indigenous peoples transits from the international/UN arena to other places. Put differently, when the international definition or theory of *indigenous* migrates to domestic and local sites where it is practiced or made active and effective, something happens to the concept and category. In the case of CSOs, the legal transplant and cultural translation have been conducted mainly through human rights advocacy, which uses the concept and category instrumentally and strategically, especially in international advocacy work. On occasion, rights translators use the concept and category in legal advocacy in the domestic courts, which can have far-reaching consequences not only for the petitioner but also for the concept and category of indigenous peoples itself. The UN rights translator is like an international arbiter, and has the final say on whether or not the Bedouin are indigenous. In the Israeli/Bedouin context, however, the UN's conclusions are not final, especially from the standpoint of the state's government, judiciary, and CSOs targeting political warfare and lawfare,[698] which act as counter-translators for the application of indigenous peoples' status and rights to the Bedouin. Despite the contestation and friction in rights translation processes, which influences the definition in practice, the concept and category in translation hints at transformative and jurisgenerative character of international indigenous peoples' rights.

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[697] While it would seem that engineering is elitist and professionalized, Mrázek adds, 'Of course, there is an engineer in each of us.' Rudolf Mrázek, *Engineers of Happy Land: Technology and Nationalism in a Colony* (Princeton, NJ: Princeton University Press, 2002), xvii.

[698] Comaroff, Symposium Introduction: Colonialism, Culture, and the Law: A Foreword (2001). On lawfare in the Israeli/Palestinian context, see Perugini and Gordon, *The Human Right to Dominate*, 54–59.

To conclude, this chapter is to be seen as the first half of a rhyming couplet that unravels ways in which the international definition is appropriated and translated by CSOs and Special Rapporteurs. Chapter 4 presents the second half of the couplet by exploring global knowledge production of the concept and category of indigenous peoples by academics: a different group of rights translators in a different sphere of influence.

'Do you understand how there could be any writing in a spider's web?' 'Oh, no,' said Dr. Dorian. 'I don't understand it. But for that matter I don't understand how a spider learned to spin a web in the first place. When the words appeared, everyone said they were a miracle. But nobody pointed out that the web itself is a miracle.'
'What's miraculous about a spider's web?' said Mrs. Arable. 'I don't see why you say a web is a miracle—it's just a web.'
'Ever try to spin one?' asked Dr. Dorian.

Charlotte's Web, E.B. White

IV. The Concept and Category of Indigenous Peoples: Theoretical and Contextualized Accounts

The purpose of this chapter is to unpack the conceptual and theoretical puzzles in an attempt to arrive at a contemporary understanding of the concept and category of indigenous peoples which does not have a clear legal definition. Scholars remain puzzled by the concept and category of indigenous peoples in international law. While acknowledging the challenges for theoretical analysis,[699] most commentators argue against 'a rigorous definition, one that in effect tries to close the intellectual borders where they were still porous.'[700] From another corner, although slightly dated, scholars have criticized what they consider 'the heavy reliance on the still relatively controversial category of "indigenous peoples" [which] is difficult to understand and, frankly, it smacks of nominalism and a sort of snobbery.'[701] Even if unanimous consensus existed among scholars, there remain complex empirical questions when determining the indigenous status of a group,[702] in which a 'web of ethical, political and epistemological considerations' is at work.[703] Both legal practitioners and scholars agree that once their legal status as indigenous is recognized, the group is entitled to set of tailor-made

[699] The framework for indigenous peoples is one of several competing frameworks to analyze indigenous peoples' claims. Kingsbury lists five other conceptual frameworks that are applicable to indigenous peoples: (i) human rights and non-discrimination; (ii) minority rights; (iii) self-determination; and (iv) historic sovereignty (v) claims as indigenous peoples, including claims based on treaties or other agreements between indigenous peoples and states. See, Benedict Kingsbury, "Reconciling Five Competing Conceptual Structures of Indigenous Peoples' Claims in International and Comparative Law," in *Peoples' Rights*, ed. Philip Alston (Oxford; New York: Oxford University Press, 2008), 69–110.
[700] Ronald Niezen, *The Origins of Indigenism: Human Rights and the Politics of Identity* (Berkeley: University of California Press, 2003), 19.
[701] Ian Brownlie, *Treaties and Indigenous Peoples: The Robb Lectures 1991* (Oxford: New York: Oxford University Press, 1992), 62.
[702] Anthony J. Connolly, *Indigenous Rights* (Farnham: Ashgate Publishing Company, 2009), xvi.
[703] Patrick Thornberry, *Indigenous Peoples and Human Rights* (Manchester: Manchester University Press, 2002), 35–39.

rights, also known as 'special rights'.[704] The indigenous peoples' status and rights consequently sharpen the focus on the role of international law, specifically human rights law, in the conceptualization and categorization of indigenous peoples and the reasons justifying indigenous recognition, or non-recognition. On this point, Kingsbury maintains that the reasons used to justify indigenous recognition pose the greatest obstacle for the concept and category of indigenous peoples.[705] I would add that the legal consequences of recognition also pose a major hurdle in domestic settings. The question warrants a fresh look, since globalization[706] (glocalization included[707]) continues to influence and shape the concept and category in global contexts as well as in efforts to apply the concept and category to Africa and Asia.[708]

In light of the above and given the state of play of indigenous conundrums in the Israeli/Bedouin context, this chapter has four goals. Firstly, it examines how the concept and category of indigenous peoples has evolved, focusing on etymological, conceptual, and institutional developments. Secondly, it surveys the divergent theoretical approaches that have emerged: positivist and constructivist. Thirdly, it interrogates the definition in international law, focusing on the IGOs that engage with indigenous peoples or work on indigenous peoples' issues. Fourthly, it problematizes the concept and the category of indigenous peoples by situating the controversial criteria of the international definition in context.

Two caveats and one clarification are necessary. Firstly, this study is not explicitly preoccupied with the equally complex and contested term 'peoples', which has significant legal

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[704] Similar to S. James Anaya and Siegfried Wiessner, I favor the term *tailor-made collective rights* as an alternative to special rights. While noting the long-standing universalism/relativism debate, I contend that this particular set of special rights does not emanate from the rights themselves, but pre-exists the rights of indigenous peoples, who share a common set of problems related to the denial of universal human rights. In other words, such groups have an existential distinctiveness that sets them apart from mainstream society and the human rights regime. Indigenous rights, as tailor-made rights, endeavor to protect indigenous peoples and to guarantee their basic survival and sustainability—a position at odds with the universalist approach, according to which rights are universal and serve all of humanity. S. James Anaya and Siegfried Wiessner, "The UN Declaration on the Rights of Indigenous Peoples: Towards Re-Empowerment," Academic Commentary, *Jurist*, October 3, 2007. See also, S. James Anaya, *International Human Rights and Indigenous Peoples* (New York, NY: Aspen Publishers, 2009), 193, footnote 101.

[705] See, Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy," *The American Journal of International Law* 92, no. 3 (July 1998): 444.

[706] Globalization is interrelated and interdependent trends: the growth of modern communications and the development in transportation. Falk, "The Rights of Peoples (in Particular Indigenous Peoples)," 19.

[707] Zygmunt Bauman, "On Glocalization: Or Globalization for Some, Localization for Some Others," *Thesis Eleven* 54, no. 1 (August 1, 1998): 37–49.

[708] Eve Darian-Smith, *Laws and Societies in Global Contexts: Contemporary Approaches* (Cambridge: New York: Cambridge University Press, 2013).

consequences for groups and nation-states.[709] Scholars, especially international jurists, have grappled with this question to some degree, which is only be touched upon here. Secondly, this chapter studies the concept and category of indigenous peoples on the international level, and only marginally addresses regional and domestic frameworks.[710] This is not to say that the question of indigenous peoples is either less relevant, or less active in these settings; to the contrary, some domestic legal systems pursue progressive or pragmatic agendas through legal recognition and the enactment of substantive rights and procedural guarantees,[711] and the issue of indigenous peoples has gained traction regionally,[712] especially in Africa[713] and Latin America.[714] In terms of the clarification, this chapter amounts to a critical analysis of the

[709] Maivan Clech Lam, "Making Room for Peoples at the United Nations: Thoughts Provoked by Indigenous Claims to Self-Determination," *Cornell International Law Journal* 25 (1992): 603. See also, Timo Makkonen, *Identity, Difference and Otherness: The Concepts of "People", Indigenous People' and "Minority" in International Law* (Helsinki: University of Helsinki, 2000).

[710] International law I generally understand according to Bentham's definition coined in 1780, according to which international law 'is calculated to express, in a more significant way, the branch of law which goes commonly under the name of the law of nations.' Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, ed. J.H. Baker, H.L.A. Hart, and F. Rosen (Oxford: Clarendon Press, 1996), 296.

[711] For example, the Canadian Constitution Act 1982 makes explicit reference to Aboriginal peoples of Canada, including the Indians, Métis, and Inuit, and has constitutionally recognized and affirmed 'existing aboriginal and treaty rights.' "Section 35 of the Constitution Act, 1982" (1982). Further examples of domestic recognition include the Russian Federation and the Philippines. It is a caveated recognition, however: domestic legislation recognizes ethnic groups as indigenous groups in Russia but recognition depends on their lifestyle, livelihoods, ethnic identity, and most importantly, if they amount to "small-numbered peoples of the North, Siberia and the Far East." Article 17 of the new Constitution of Philippines enacted in 1987 recognizes indigenous peoples. Often, constitutional recognition is enshrined in law, which judicial decisions subsequently reinforce. Although Aboriginal and Torres Strait Islander peoples are without formal constitutional recognition, the Australian courts have increasingly upheld indigenous peoples' legal claims. The *Mabo* case is considered a jurisprudential breakthrough for Indigenous Peoples. Alternatively, the courts hand down decisions, often in cases involving indigenous peoples' land rights or friendly settlements between indigenous and non-indigenous parties, which then have an effect on constitutional or legislative reform. For example, in Canada there was the James Bay and Northern Quebec Agreement of 1975 and the Inuvialuit (Western Artic) Agreement of 1984.

[712] To a certain extent, regional bodies have galvanized and even bypassed the accomplishments of international bodies. The judicial-led pragmatism of regional tribunals has been crucial.

[713] The African Commission on Human and Peoples' Rights has set up a Working Group of Experts on the Rights of Indigenous Populations/Communities in Africa, which examines the issue of indigenous peoples on the African continent. The Working Group of Experts on the Rights of Indigenous Populations/Communities in Africa has written a report entitled 'Report of the African Commission's Working Group on Indigenous Populations/Communities' on the conceptual framework for the application of indigenous peoples in Africa, and has also conducted missions to countries in Africa to compile reports on the human rights records of indigenous peoples. "Resolution 65 on the Adoption of the Report of the African Commission's Working Group on Indigenous Populations/Communities. Adopted by the African Commission on Human and Peoples' Rights, Meeting at Its 34th Ordinary Session, in Banjul, The Gambia (6-20 November 2003)," n.d., http://www.achpr.org/sessions/34th/resolutions/65/.

[714] In 1938, the Pan-American Union, predecessor of the Organization of American States (OAS), announced: 'Indigenous populations, as descendants of the first inhabitants of the lands which today form America, and in order to offset the deficiency in their physical and intellectual development, have a preferential right to the protection of the public authorities.' Resolution XI of 21 December 1938, the Eighth International Conference of American State. In November 1989, the General Assembly of the OAS submitted a request to the Inter-American Commission on Human Rights to draft a legal instrument on the rights of indigenous populations. A central feature in the drafting process is the participation of indigenous peoples. The American Declaration on the Rights of Indigenous Peoples was adopted in June 2016. Article 1 contains a definition and places an emphasis on self-identification, which states are required to respect. Regional innovation in the Americas, including legislative

concept and category of indigenous peoples in its various formulations by academic commentators and international bodies. I intentionally refrain from creating a new definition; as an array of definitions exists already (discussed below), adding another would be a redundant exercise. In my judgment, studying practical processes and theoretical approaches applied to the concept and category of indigenous peoples offers consequential and disruptive insight into international human rights law, both in its thinking and practice.

1. The Etymological Evolution of the Concept and Category of Indigenous Peoples

The word *indigenous* derives etymologically from the Latin word meaning *native* or *born within*, and made its earliest appearance in the 1940s and 1950s as an English translation in official documents of the Spanish *indígena* and the French *indigène*.[715] In plain language, the term *indigenous* depicts a given people, ethnic group, or community that resides in a particular region or location over a period of time. The term *indigenous* is subject to different interpretations and gives rise to different meanings in different settings, with a range of groups evoking it in a variety of contexts.[716] However, the term *indigenous* does not translate easily or non-pejoratively from English into different languages.

In Asia, for instance, the Alliance of Taiwan Aborigines (ATA) made a case before the United Nations Working Group on Indigenous Peoples (UNWGIP), a subsidiary organ to the Sub-Commission on the Promotion and Protection of Human Rights, challenging the UN translation of indigenous peoples as *tuzu renim,* which connotes 'primitive' and 'low cultural level.' The ATA argued for the use of *yuanzu minzu* and *yuanzu min* (indigenous people) as a more appropriate alternative.[717] Not only does this case highlight the ambiguity surrounding the term, but it also hints at the weight of its proper and accurate allocation. For groups such as the

innovation, has seen several nation-states in Latin America advance the indigenous peoples' rights agenda through constitutional reform. For example, in 1992 an additional paragraph was inserted to Article 4 of the Mexican Constitution to read: 'Mexico's pluricultural composition originally based on its indigenous peoples.' Similarly, the 1998 Constitution established Ecuador as a pluricultural and multiethnic country and recognized many indigenous rights. Despite constitutional recognition, there is often a lack of legislative reform and many indigenous peoples remain marginalized and discriminated against.

[715] Chris Tennant, "Indigenous Peoples, International Institutions, and the International Legal Literature from 1945-1993," *Human Rights Quarterly* 16, no. 1 (February 1994): 5.

[716] James Clifford, *Returns: Becoming Indigenous in the Twenty-First Century* (Harvard University Press, 2013), 14.

[717] Kingsbury, "'Indigenous Peoples' in International Law," 432.

Taiwan Aborigines, indigenous identification is 'an expression of identity, a badge worn with pride, revealing something significant and personal about its wearer's collective attachments.'[718] This pride and collective attachment differ from the historical labeling and treatment of indigenous peoples as 'the Other,'[719] which has been illustrated by the stereotypes and prejudices of Western thought over the centuries. The term *indigenous*, and other variations such as 'noble', 'ignoble', 'savage', and 'barbarian,'[720] can be considered a linguistic measure to 'mark the boundaries of a space and a time for the West to inhabit.'[721] Consequently, European colonialists and colonizers employed such terminology in order to keep the colonized in a specific space, separate from the dominating powers physically, discursively and legally.

It was only during the late twentieth century, around the mid-1980s,[722] that *indigenous peoples* evolved into a distinct legal concept and category in contemporary international human rights law.[723] Notwithstanding its indeterminacy and inconsistency, this quintessential modern term has gained theoretical, legal, and political leverage for collective mobilization, regional and international standard-setting, transnational networking, and programmatic activity.[724] A major turning point for indigenous peoples is how the concept and category once 'featuring extreme localism has come denote a global array' today.[725] Nonetheless, the concept and category of indigenous peoples continues to be an emerging area of legal development, with the potential for further transformation. Attempts to grasp how it has been internationally conceptualized

[718] Niezen, *The Origins of Indigenism*, 3.
[719] Otherness underscores the perceived weaknesses of marginalized groups while simultaneously stressing the alleged strength of those in positions of power. Said says Orientalism is 'the corporate institution for dealing with the Orient—dealing with it by making statements about it, authorizing views of it, describing it, by teaching it, settling it, ruling over it.' Edward W Said, *Orientalism: Western Conceptions of the Orient* (London: Penguin Books, 1978).
[720] The use of these terms date back in history, see for example, Anthony Pagden, "Introduction," in *A Short Account of the Destruction of the Indies*, ed. Nigel Griffin (London, England; New York, N.Y.: Penguin Books, 1992), xxix–xxx; Sharon Helen Venne, *Our Elders Understand Our Rights: Evolving International Law Regarding Indigenous Peoples* (Penticton, B.C.: Theytus Books, 1998); Wright, *International Human Rights, Decolonisation and Globalisation*, 46–60. See also, S. James Anaya, *NO Indigenous Peoples in International Law* (Oxford University Press, 2004).
[721] Tennant, "Indigenous Peoples, International Institutions, and the International Legal Literature from 1945-1993," 6.
[722] See Section V and the discussion on the development of the indigenous peoples at the ILO.
[723] It should be noted that the subject of indigenous peoples as well as their involvement in international law has a longer history. Bilateral agreements between indigenous peoples and the European settlers—for example, The *Treaty* of *Waitangi* between Tāngata Whenua and the British Crown—formalized relations between them. Churches and civil society were also actively involved with indigenous peoples, which set the stage for indigenous peoples' participation in the international forum in the early twentieth century. In 1923, Cayuga Chief Deskaheh attempted to meet with the League of Nations as the representative of the Six Nations of the Iroquois. In his petition, he sought to challenge the Canadian encroachment onto Iroquois territory. Thornberry, *Indigenous Peoples and Human Rights*, 82.
[724] Kingsbury, "'Indigenous Peoples' in International Law," 414.
[725] Clifford, *Returns: Becoming Indigenous in the Twenty-First Century*, 14. Maybe include Shane Greene here.

and categorized highlight '[t]he malleability of the concept of "indigenous" [which] is part of a muddy, but productive, and an ambivalent, but creative, terrain through which and with which indigenous delegates act to make radical claims to culture and territory at the UN.'[726] Underscoring the legal/political significance of such recognition, Kingsbury remarks:

> If 'indigenous peoples' are deemed in international practice to have particular entitlements to land, territory and resources, based on historical by connections, customary practices, and the interdependence of land and culture, the question whether a particular group is indigenous people may take on great political and legal importance.[727]

In practice, *indigenous peoples* seems to be a socio-legal construct that is legally complex and highly politicized because 'so much hinges on being formally identified as indigenous at international and domestic law'—formal identification ultimately admits or denies access to a regime of indigenous peoples' rights.[728] Interestingly, non-indigenous circles (mainly scholars) and legal systems have led the development of the concept and category.[729]

The legal evolution of the concept and category of indigenous peoples must be understood in the chronology of international lawmaking processes. The nascent days of international law saw lawmakers, country delegates representing their governments, draft legislation on behalf of indigenous peoples.[730] Owing to the centrality of the nation-state in international law, the nation-state was considered the only legitimate subject with the capacity and authority to make law by means of consent or agreement.[731] In the aftermath of World War II, which gave rise to the establishment of the UN,[732] indigenous peoples were treated as objects in the embryonic days of international human rights lawmaking at the UN. This statist or state-centric approach has since changed, as demonstrated by the involvement of indigenous peoples in international

[726] Andrea Muehlebach, "What Self in Self-Determination? Notes from the Frontiers of Transnational Indigenous Activism," *Identities* 10, no. 2 (2003): 244.
[727] Kingsbury, "'Indigenous Peoples' in International Law," 444.
[728] Connolly, *Indigenous Rights*, xiii.
[729] Lindroth, "Paradoxes of Power," 556.
[730] The ILO's two conventions on indigenous workers reflect a state-centric approach (see discussion below).
[731] See, Miranda, "Indigenous People as International Lawmakers."
[732] It would be an error in judgment to believe that the UN is the first international IGO to come into existence. The League of Nations was established in 1920 following the Paris Peace Conference, which concluded WWI, only to be replaced by the UN in 1946. While its primary focus was to create world peace, Articles 22 and 23 of the Covenant of the League of Nations make specific reference to 'natives' and 'native inhabitants.' Josef L. Kunz, "Chapter XI of the United Nations Charter in Action," *American Journal of International Law* 48, no. 1 (January 1954): 103–10. On the League of Nations and indigenous peoples, see S. James Anaya, *Indigenous Peoples in International Law* (Oxford: New York: Oxford University Press, 2004), 33, 57.

lawmaking, norm-building and standard-setting activities.[733] The shift in international law can be traced back to the emergence of the indigenous peoples' movement during the 1960s and 1970s,[734] which prompted indigenous peoples' activity at the UN starting in the early 1980s, the growth of indigenous transnational networks, and programmatic activity for indigenous collectives.

The concept and category of indigenous peoples is partially constituted through 'the dynamics of opposition and resistance' because of the shift of lawmaking to include non-state entities and actors that employ a multitude of techniques and discourses.[735] Through a bottom-up approach, or 'globalization from below,'[736] indigenous peoples themselves have 'employed a multi-layered approach to international human rights lawmaking that included participation in both informal mechanisms of knowledge production and norm-production in parallel to more formal decision-making structures.'[737] Illustrative of the indigenous momentum in international lawmaking is their input in drafting the UNDRIP, work that began in the early 1980s and peaked in September 2007 when the Declaration was adopted by the UN General Assembly. The active participation of indigenous peoples in the drafting process sets the UNDRIP apart from previous multilateral treaties governing indigenous peoples.[738] This transformation from objects of international law to indigenous subjects and lawmakers of international law, together with the process of recognizing groups, has enabled the appropriation of universally understood terms from which a particular legal status is granted and a particular set of rights flow. This internationally-created status and rights is accompanied

[733] Miranda, "Indigenous People as International Lawmakers," 205.
[734] In the early 1970s, the indigenous peoples movement began because of several interrelated factors, including the decolonization of Western empires in the African and Asian continent resulting in new nation-states entering the international arena that challenged the Western-centric perspective; the US civil rights movement in the 1960s followed by the women's movement, labor movement, and environmental movement, the latter of which gave rise to alliance-making with indigenous peoples; the center-staging of universal initiatives and standard-setting following the end of the Cold War; the introduction of development, which neglected indigenous peoples; the presence of non-state actors in international forums; and the growth of international human rights law, with a focus on peace, welfare, and development. Ellen Desmet, *Indigenous Rights Entwined with Nature Conservation* (Cambridge: Portland: Intersentia Publishers, 2011), 66.
[735] Tennant, "Indigenous Peoples, International Institutions, and the International Legal Literature from 1945-1993," 38. Richard Falk discusses the rights of resistance. See also, Falk, "The Rights of Peoples (in Particular Indigenous Peoples)," 18.
[736] Boaventura de Sousa Santos and César A. Rodríguez-Garavito, *Law and Globalization from below: Towards a Cosmopolitan Legality* (Cambridge University Press, 2005).
[737] Miranda, "Indigenous People as International Lawmakers," 213. Miranda goes on to explain the reasons for this indigenous-led lawmaking trend comes down to four key factors, which include: (i) an ideological change in the concept of indigeneity (ii) the emergence of globalization (iii) the emergence of participatory democracy and (iv) national and international advocacy and lobbying by indigenous peoples. Miranda, 219.
[738] A variety of agents were involved including: indigenous peoples, national governments, international organizations, academics and the media.

by a 'language for the pursuit of aspirations and grievances that may otherwise struggle for purchase or vocabulary.'[739] Sounding a cautionary word, however, Brownlie contends that '[i]n order to obtain recognition of the claim to cultural identity, or to statehood, the claimant must accept the terms of the dialogue.'[740] And indeed, the terms of the dialogue and the concept and category itself have been much debated, especially among academic commentators across disciplines.

2. A Survey of Definitions of Indigenous Peoples across Disciplines

The definitions devised by scholars from various disciplines introduce the reader to the theoretical and conceptual issues surrounding a definition of indigenous peoples. For one of the most inclusive definitions, anthropologist John Bodley defines indigenous people as simply 'a group of people who identify themselves with specific, small-scale cultural heritage.'[741] In contemporary anthropology, indigenous peoples has become 'a protean word' and 'a work in progress,' which therefore requires a broad definition.[742] Narrowing the scope somewhat following over-generalization in an earlier definition, political scientist Franke Wilmer, together with Gerald R. Alfred, defines indigenous peoples to be: 'the original inhabitants of a given geographic area they continue to occupy', living 'according to their evolving cultural tradition', and have 'no control of their political destiny and experience policies by cultural hegemony originally imposed by an "outside" force'.[743] Other political scientists have drafted a definition based on the notion of peoplehood.[744] In the discipline of law, the preoccupation

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[739] Kingsbury, "'Indigenous Peoples' in International Law," 428.

[740] Ian Brownlie, "The Rights of Peoples in Modern International Law," in *The Rights of Peoples*, ed. James Crawford (Oxford: Clarendon Press, 1988), 6.

[741] John H Bodley, *Victims of Progress* (Lanham: Altamira Press, 2008), 4.

[742] Clifford, *Returns: Becoming Indigenous in the Twenty-First Century*, 14. According to Clifford, '[t]he term "indigenous" typically refers to societies that are relatively small-scale, people who sustain deep connections with a place. Applied to diverse communities, the name does not presume cultural similarity or essence but rather refers to comparable experiences of invasion, dispossession, resistance, and survival.' Clifford, 15. See also, Sidsel Saugestad's definition which focuses on four criteria. Sidsel Saugestad, *The Inconvenient Indigenous: Remote Area Development in Botswana, Donor Assistance and the First People of the Kalahari* (Uppsala: Nordic Africa Institute, 2001), 43. For an anthropological perspective against the theoretical soundness and practical utility of the concept and category, see Adam Kuper, "The Return of the Native," *Current Anthropology* 44, no. 3 (June 1, 2003): 389–402.

[743] Gerald R. Alfred and Franke Wilmer, "Indigenous Peoples, States and Conflict," in *Wars in the Midst of Peace: The International Politics of Ethnic Conflict*, ed. David Carment and Patrick James (Pittsburgh: University of Pittsburgh Press, 1997), 27. Wilmer's earlier definition placed a heavy emphasis was placed on the process of colonization and decolonization, which was seen as problematic. See Franke Wilmer, *The Indigenous Voice in World Politics: Since Time Immemorial* (Newbury Park, Calif.: Sage, 1993), 97.

[744] Edward Spicer develops his concept of peoplehood on the three main criteria, which are the relationship to the land, a common spiritual bond and language use. Robert Thomas adds the fourth factor of a sacred history. Building upon the work of previous scholars, Jeff Corntassel formulates his definition, which is a 'cumulative

of jurists is how to identify, or define, the properties that render a group indigenous within a legal framework, or under legal standards. In other words, jurists are more interested in articulating the necessary and sufficient criteria that identify, or should identify, indigenous peoples as such in law.[745] As noted already, any legal definition must consider potential claims and outcomes because 'in the end, definitional questions become truly important only if inclusion or exclusion from a particular definition has legal implications.'[746] Thornberry identifies three components that he considers decisive; firstly, the association of people 'with a particular place… a locality, a region, a country, a State; secondly, the groups status as the "original or first inhabitants;" and thirdly, the groups are viewed as "distinctive societies."'[747] Thornberry's minimalist definition emphasizes the importance of location, time and societal distinctiveness. According to Anaya, indigenous peoples in international human rights law encompasses:

> The living descendants of pre-invasion inhabitants because their ancestral roots are imbedded in the lands in which they live, or would like to live, much more deeply than the roots of more powerful sectors of society living on the same lands of in close proximity. Furthermore, they are peoples to the extent they comprise distinct communities with a continuity of existence and identity that links them to communities, tribes or nations of their ancestral past.[748]

Most of these definitions, which emanate from academic commentators, are deficient in one way or another but nonetheless are considered generalizable theoretical approaches and allow for maximum inclusivity and flexibility. These academic approaches do not fully coincide with the formulations of IGOs (discussed shortly), which have the task of operationalizing the definition of indigenous peoples in practice. The IGO definitions have to balance practical fluidity and open-endedness against legal stability and consistency,[749] which ultimately caters to the sensibilities of two contrasting, and usually competing, positions about how to view ethnicity, including indigeneity as a genre of ethnicity, in law.[750] Indeed, Maybury-Lewis

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integration with previous research by fusing the literature on nationalism, international law and indigenous rights into a comprehensive conceptual framework.' See, Jeff Corntassel, "Who Is Indigenous? 'Peoplehood' and Ethnonationalist Approaches to Rearticulating Indigenous Identity," *Nationalism and Ethnic Politics* 9, no. 1 (2003): 92.

[745] Connolly, *Indigenous Rights*, xiii.

[746] Hurst Hannum, *Autonomy, Sovereignty, and Self-Determination: The Accommodation of Conflicting Rights* (Philadelphia: University of Pennsylvania Press, 1996), 90.

[747] Thornberry, *Indigenous Peoples and Human Rights*, 35–39.

[748] Anaya, *Indigenous Peoples in International Law*, 3.

[749] Characteristic of this open-endedness is an ILO report from 1946, which states: 'It is… difficult to find any specific characteristics which justify classifying indigenous people as Indians.' ILO, "Director's Report at Third Conference of American States Members of the International Labour Organization" (Mexico City, 1946), 121.

[750] As a concept and category, ethnic groups are extremely inclusive. Because of the overlap and high-level of inclusivity which encompasses ethnic groups and potentially indigenous groups, a problem emerges in how to

remarks: 'there is no hard and fast distinction between indigenous peoples and other kinds of localized ethnic groups. Who then are peoples generally considered as "indigenous"?' [751] There are those, on the one hand, who consider ethnicity or identity to be dynamic and multiple. From this perspective, it is possible that a group can negotiate and re-fashion an identity, while an individual person can present different identities in different settings.[752] Against such fluidity and multiplicity, Kingsbury maintains:

> Many arguments based on indigenous peoples' rights presume, with good reason, a fixity of the group and a continuity of its identity and sense of place over time, and this may be of great importance to the persons themselves and their understandings of their ancestors, divinities, territories, future generations, and responsibilities.[753]

Acknowledging such dichotomy between the fluidity and multiplicity of identity and ethnicity, and continuity and homogeneity, legal scholars pursue theoretical approaches as to the legal status and rights of indigenous peoples that either embrace or disregard these contrasting positions. Hence, two distinct legal approaches have emerged when addressing the question of indigenous peoples in law and in practice. Although the two approaches leave the impression that a strict separation exists between them, a better view is to see these approaches on a sliding scale or continuum.

a. Theoretical Approaches: Between Legal Positivism and Socio-Legal Constructivism

One of the main motivations behind examining theoretical approaches to the concept and category of indigenous peoples is to figure out how scholars, primarily jurists, approach the

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distinguish ethnic groups and indigenous groups, and by extension how to differentiate indigenous claims from other kinds of claims. The important point to note here, which will be discussed at greater length in the section on self-identification, is that groups are far from homogenous but rather are dynamic and are constituted by heterogeneous associations of individuals. Chandran Kukathas, "Are There Any Cultural Rights?," *Political Theory* 20, no. 1 (February 1, 1992): 105–39; Chandran Kukathas, "Liberalism, Multiculturalism, and Oppression," in *Political Theory: Tradition And Diversity*, ed. Andrew Vincent (Oxford: Cambridge University Press, 2010), 132–53. See also, taken from Manuhuia Barcham, "(De)Constructing the Politics of Identity," in *Political Theory and the Rights of Indigenous Peoples*, ed. Duncan Ivison, Paul Patton, and Will Sanders (Cambridge: Cambridge University Press, 2000), 6.

[751] David Maybury-Lewis, *Indigenous Peoples, Ethnic Groups, and the State* (Boston: Allyn and Bacon, 2002), 9.

[752] Jerome M. Levi and David Maybury-Lewis, "Becoming Indigenous: Identity and Heterogeneity in a Global Movement," in *Indigenous Peoples, Poverty, and Human Development in Latin America*, ed. Gillette Hall and Harry Anthony Patrinos (Houndmills, Basingstoke, Hampshire; New York: Palgrave Macmillan, 2006); James C Scott, *The Art of Not Being Governed: An Anarchist History of Upland Southeast Asia* (New Haven: Yale University Press, 2009).

[753] Benedict Kingsbury, "Indigenous Peoples," Max Planck Encyclopedia of Public International Law (Oxford: Oxford University Press, 2012), 3.

definition that lacks clear contours and can lead to a differentiated, disorderly, conflicted and conflictual understandings and applications. The two approaches scrutinized here are the legal positivist approach and the socio-legal constructivist approach. In legal positivism, formal definitions are deemed axiomatic and mandatory, and on the most basic level, they serve to establish and preserve certainty and consistency. By way of simple example, the English jurist William Blackstone defined a legal person to be an individual or group that is allowed by law to take legal action, as plaintiff or defendant. It may include natural persons as well as fictitious persons (such as corporations).[754] From a positivist perspective, such legal definition is clear and undisputed; however, although indigenous peoples are legal subjects, a strict legal definition in the Blackstonian/legal positivist sense does not exist. Such domestic definitions tend to be state-centric, resistant to change, and immune to context, and therefore underemphasize contingencies and social relations.[755] Brownlie best sums up the position of the necessity of a formal definition of indigenous peoples in law and in accordance with a 'stable and equitable legal regime':

> The legal ramifications of indigeneity remain to be teased out. The lawyer must first call up a definition of the beneficiaries. At this point the non-lawyer grows impatient. Lawyers sometimes seem like the lady who did not know what an elephant was until she was told it was a herbivorous pachyderm. Moreover, in the case of indigenous peoples there is the feeling that the only acceptable procedure is that of self-identification. However, definition is not simply the satisfying of arid formalism but helps to round up certain difficult questions of purpose. In particular, the question of whether it is necessary to distinguish indigenous peoples from other ethnic groups. In this context the purpose, whatever it be, in identifying the beneficiaries of any special legal regime, which may be required, must be to link the entitlement with the beneficiaries. If the regime involves a *reciprocal* relationship between an indigenous people *and other groups within the State*, it becomes necessary to have an objective definition of the groups involved, because otherwise it is difficult to envisage a stable and equitable legal regime.

In its simplest form, an official prescriptive definition of indigenous peoples would regulate their legal status, set of rights and obligations. For Thornberry, 'conventional approaches to the concept and the definition involve recourse to subjective (the will to survive) and objective factors (possession of distinct 'characteristics'),' which does not account for the epistemological, political and ethical factors at work or justify the use of indigenous status.[756] Overall, having a settled concept and category of indigenous peoples (in law) serves as an

[754] Sir William Blackstone, *Commentaries on the Laws of England: In Four Books* (Callaghan, 1872).
[755] Corntassel, "Who Is Indigenous?," 76.
[756] Thornberry, *Indigenous Peoples and Human Rights*.

interpretive tool (for lawyers) to determine the scope of the application of the set of rights, all the while maintaining legal stability, consistency, and continuity.

Less enamored, Anaya warns that a legal positivist approach 'attempts to arrive at a prescriptive definition are fraught with obvious problems, given the wide diversity of groups that from one standpoint or another may be considered indigenous and the exclusionary line-drawing that such a definition implies.'[757] From this we can understand that a positivist definition promulgated into law could lead to a situation of over- or under-inclusivity that ignores spatiotemporal fluctuations and the heterogeneous nature of (ethnic) groups. Indigenous scholar Taiaiake points out: 'Demands for precision and certainty disregard the reality of the situation: that group identity varies with time and place.'[758] In a similar vein, Kingsbury argues: 'It is impossible at present to formulate a single globally viable definition workable and not grossly under- or over-inclusive. Any strict definition is likely to incorporate justifications and referents that make sense in some societies but not in others. It will tend to reduce the fluidity and dynamism of social life to distorted and rather static formal categories.'[759] In other words, a formal definition is caught in a legal vacuum, begging the question of whether legal formalism is practically workable, since circumstances are subject to change over time and place, and groups range and vary from place to place. It follows that any attempt to define a group as an indigenous peoples must take into account three significant factors that can exist, independently and inter-relatedly: (i) the spatial matrix, (ii) temporal factors, and (iii) the group involved. As noted already, these factors echo the three-pronged test put forward by Thornberry in his definition of indigenous peoples.

Thus far, the more flexible socio-legal constructivist approach has held more sway at the international level, backed by IGOs, indigenous peoples' organizations, and indigenous peoples themselves.[760] In particular, socio-legal construction can approach a more realistic

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[757] Anaya, *International Human Rights and Indigenous Peoples*, 28.
[758] Gerald Taiaiake Alfred, *Peace, Power, Righteousness: An Indigenous Manifesto* (Don Mills, Ont.; New York: Oxford University Press, 2009), 85.
[759] Kingsbury, "'Indigenous Peoples' in International Law," 414.
[760] Constructivism and instrumentalism can be used interchangeably. Constructivism is a term borrowed from political science and international relations to describe "circumstantial" and "modernist" approaches. The benefit of such an interdisciplinary approach to examine the content of legal rules, and institutions, is that it helps explain why and how legal rules and institutions came to be and why they are effective. Moreover, it has heavily influenced scholars in re-conceptualizing international law generally, and international indigenous law particularly. In the case of ethnic groups, which overlaps with indigenous groups, constructivists working on nationalism claim that ethnonationalist movements are formed in reaction to state dominance of a particular group of people. In other words, ethnicity is capable of being reinvented. Moreover, from the

understanding of human rights in context. If *social construction* refers to how a social reality is constructed,[761] then *socio-legal construction* amounts to constructing a socio-legal reality that is embedded in law and society. This would imply that the interplay between law and society is inherently relational and dialectical, and that implicit in the socio-legal dialect are, *inter alia*, cultural and discursive as well as institutional aspects. On this point, McCann states, 'the very meanings and power of legally-constituted practices are contingent on their interaction with various extralegal discourses, institutional norms, and social relations'.[762] Socio-legal construction plays a fundamental role in the creation of any *abstract entity*; examples of such abstract constructs include 'race', 'gender', 'rape', 'transitional justice', 'a legitimate target of attack', and in this instance, 'indigenous peoples' as a subcategory of 'human rights'.[763] Notwithstanding, a socio-legal construction is also wholly immersed in epistemology. In other words, construction can also be understood as way to *interpret and explain* how our world works.[764] The socio-legal construction of a concept or category serves as the boundaries around possible practices and meanings in reality as well as possible ways of making sense of reality.[765] Therefore, the socio-legal construction of 'indigenous peoples'

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constructivist/instrumentalist viewpoint, context matters when discussing ethnic-nationalist identity. It is worth noting that political scientists and international relations scholars recognize the limit of this approach. See, Corntassel, "Who Is Indigenous?," 83–84.

[761] Peter L. Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (New York: Anchor, 1967).

[762] Michael McCann, "Causal versus Constitutive Explanations (or, On the Difficulty of Being so Positive…)," *Law & Social Inquiry* 21, no. 2 (April 1, 1996): 467. See also, Alan Hunt, *Explorations in Law and Society: Toward A Constitutive Theory of Law* (New York: Routledge, 1993).

[763] For example, Jack Donnelly, "The Social Construction of International Human Rights," *Relaciones Internacionales*, no. 17 (2011).

[764] Originally, *Verstehen* (to understand) and *Erklärgung* (explanation) was introduced by German philosopher Johann Gustav Droysen, who distinguished history and nature in terms of categories of time and space whereby the method of history is understanding (*verstehen*) and the method of natural sciences is explanation (*erklären*). See, Johann Gustav Droysen, *Historik. Vorlesungen über Enzyklopädie und Methodologie der Geschichte* (München: Oldenbourg Wissenschaftsverlag, 1977). On interpretative understanding (verstehen) in sociology, see Georg Simmel, *Die Probleme der Geschichtesphilosophie: Eine erkenntnistheoretische Studie* (Leipzig: Duncker & Humblot, 1907); Max Weber, *Economy and Society: An Outline of Interpretive Sociology*, ed. Guenther Roth and Claus Wittich (Berkeley, CA: University of California Press, 1978). Often there is a distinction made in construction that differentiates between the construction of a physical object, which is metaphysical, and the construction of beliefs about that object, which are epistemological. Berger and Luckmann, *The Social Construction of Reality*.

[765] Borrowing from McCann, 'institutional forces are manifest in, and to a great degree "work" through, the culturally defined intersubjective knowledges, conventions, and norms that people carry around in their heads and act on in everyday practice.' Social life and knowledge are constitutive, which means they are not independent and exogenous, which cumulatively are key factors in how we can make and give meaning. McCann, "Causal versus Constitutive Explanations (or, On the Difficulty of Being so Positive…)," 463–64.. See also, Charles Taylor, "Interpretation and the Sciences of Man," in *Interpretive Social Science: A Reader*, ed. Paul Rabinow and William M. Sullivan (Berkeley: University of California Press, 1979), 25–71. Developments of this approach in legal studies are vast in number. See, in particular, Christine B. Harrington and Barbara Yngveson, "Interpretive Sociolegal Research," *Law & Social Inquiry* 15, no. 1 (January 1, 1990): 135–48; Patricia Ewick and Susan S. Silbey, "Conformity, Contestation, and Resistance: An Account of Legal Consciousness," *New England Law Review* 26 (1992 1991): 731; Austin Sarat and Thomas R. Kearns, "Beyond the Great Divide: Forms of Legal

not only sheds light on international human rights law as a conceptual/theoretical exercise, but also reveals the act of socio-legal construction beyond epistemological considerations to the sites where it is practiced and meanings are given.

As the socio-legal constructivist approach's emphasis on context allows both legal and other, non-legal factors, the concept and category of indigenous peoples in practice can be viewed as renewable, transformative, and jurisgenerative, which facilitates a range of interpretation and meanings in different settings. The socio-legal reformulation of the abstract concept and category in context not only implies fluidity and flexibility but also suggests limitation, tension, and friction. Following on from these remarks, Connolly contends that defining indigenous peoples amounts to a social construction, and further postulates: 'Given the often diverse nature of individual and collect beliefs and values within such communities, conceptual thought and practice is in fact often argumentatively dynamic. […] Where important consequences follow for the peoples within conceptual communities in relation to the content of a concept, this dynamism may become inherently investment-ridden.'[766] This argument follows the contention put forward by instrumentalists, arguing that groups are social constructs, which are a result of peoples' needs and their intra-relationships.[767]

The socio-legal constructivist approach is not limited to the concept and category of indigenous peoples, and in fact has been extended to other concepts and categories, such as minorities. For example, Asbjörn Eide, Chairperson Rapporteur of the UN Working Group on Minorities, notes, 'Rather than define a minority, it might be more appropriate to adopt constructive approaches based on the differences in the needs of minorities and the situation they were facing.'[768] Kingsbury's explanation of the constructivist approach *vis-à-vis* the concept and category of indigenous peoples,

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Scholarship and Everyday Life," in *Law in Everyday Life*, ed. Austin Sarat and Thomas R. Kearns, The Amherst Series in Law, Jurisprudence, and Social Thought (Ann Arbor: University of Michigan Press, 1995); Elizabeth Mertz, "Conclusion: A New Social Constructionism for Sociolegal Studies," *Law & Society Review* 28, no. 5 (1994): 1243–65. Anthony Giddens conceptualizes how context is at once exogenous and internalized in terms of the "duality of structure" in his provocative, brilliant *Constitution of Society*. See, Anthony Giddens, *The Constitution of Society: Outline of the Theory of Structuration* (Berkeley, CA: University of California Press, 1984).

[766] Connolly, *Indigenous Rights*, xiii.

[767] Corntassel, "Who Is Indigenous?," 84.

[768] UN ECOSOC Commission on Human Rights, "Report of Mr. Asbjørn Eide, the Working Group on Minorities on Its Second Session (30 April-3 May 1996), UN Doc E/CN.4/Sub.2/1996/28" (Geneva, July 8, 1996), para. 155. See also, Asbjørn Eide, "Minority Situations: In Search of Peaceful and Constructive Solutions," *Notre Dame Law Review* 66, no. 5 (April 2014): 1311–46.

> takes the international concept of 'indigenous peoples' not as one sharply defined by universally applicable criteria, but as embodying a continuous process in which claims and practices in numerous specific cases are abstracted in the wider institutions of international society then made specific again at the moment of application in the political, legal and social process of particular cases and societies.[769]

The constructivist approach would suggest that the abstract concept and category of indigenous peoples is subject to ongoing appropriation and translation processes (see Chapters 1 and 3), which gives rights to a vernacular form of the abstract concept and category in domestic and local settings.[770] In his own words, Kingsbury describes: 'The abstract international concept of "indigenous peoples" has potential to be drawn from international society back into national society; the abstract is worked out and made particular in a specific context.'[771]

Of course, the constructivist approach is not without its detractors—not only adherents of the legal positivist approach but also country delegates. Nation-states, specifically those with sizeable indigenous peoples, resist lawmaking processes that unsettle the legal certainty and coherence of the domestic regime. Calls for international organizations to formalize a definition, they argue, would not only help assuage legal incoherency but also prevent legal fragmentation,[772] which is considered acute in an era of globalization.[773] During the drafting process of the UNDRIP, such statements on the need for a clear definition were repeatedly made by state delegates. The overriding concern was the legal implications of indigenous peoples' recognition, which would entitle the recognized group to indigenous peoples' rights, including the right of self-determination as a peoples.[774] Thus, recognition is seen as

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[769] Kingsbury, "'Indigenous Peoples' in International Law," 415.
[770] Engle Merry, *Human Rights and Gender Violence*; Goodale and Engle Merry, *The Practice of Human Rights*.
[771] Kingsbury, "'Indigenous Peoples' in International Law," 450.
[772] Martti Koskenniemi and Päivi Leino, "Fragmentation of International Law? Postmodern Anxieties," *Leiden Journal of International Law* 15, no. 03 (2002): 553.
[773] Besides the economic and cultural consequences of globalization, which 'tends to force people and peoples into a homogenous mould,' Peter Leuprecht adds that 'globalization and a related sense of powerlessness have probably contributed to a longing for identity, and a fear of losing one's own identity. People are asking, 'Who are we? What are we?" And they want to be recognized with their identity.' Peter Leuprecht, "Minority Rights Revised," in *Peoples Rights*, ed. Philip Alston (Oxford; New York: Oxford University Press, 2001).
[774] It has been noted repeatedly that the majority of indigenous peoples' groups have no intention to secede, and consider themselves part of the nation-state in which they reside and usually have citizenship status. Rather, their objective is to obtain greater self-rule and autonomy. Nonetheless, some scholars and practitioners have indicated that there is the possibility of and even the right to secession. In the observations by the Chairperson of the UN Working Group, Erica-Irene A. Daes:

> Self-determination and the right of secession cannot be denied any people that meet the basic criteria of being a distinct people and occupying a territory that is geographically separate and ethnically or culturally distinct. Ordinarily it is the right of the citizens of an existing, independent state to share power democratically. However, a state may sometimes abuse this right of its citizens so grievously and

incompatible with the totalizing views of the nation-state and represents 'a competing nationalism within the boundaries of the State,' which poses a threat to its territorial sovereignty and 'a unified "nationality" juridically administered by governmental organs.'[775]

Scholars in support of the constructivist approach, and who believe the approach's fluidity and flexibility outweighs its definitional shortcomings, contend that 'definitional technicalities [should not] stand in the way of addressing the problems admittedly faced by indigenous populations.'[776] Addressing the fear of a floodgate of indigenous claims and demands for self-determination, it is argued that to attribute this fear to the constructivist approach is reactionary and misguided. They draw attention to difference between external self-determination and internal self-determination, arguing that the latter is contained within the territorial boundaries of the nation-state, and therefore excludes indigenous peoples' secession.[777]

Having reviewed academic definitions of indigenous peoples and the two main theoretical approaches to legal definitions, the following section unpacks the definitions of indigenous peoples used by three prominent IGOs, examining the main features of each definition as well as their points of contention. Tying with the socio-legal constructivist approach discussed above, the IGO definitions underscore that role of context when applying the definition to different groups.

> irreparably that the situation is tantamount to classic colonialism, and may have the same legal consequences. The international community discourages secession as a remedy for the abuse of fundamental rights, but as recent events around the world demonstrate, does not rule out this remedy completely in all cases. The preferred course of action, in every case but the most extreme, is to encourage the state in question to share power democratically with all groups, under a constitutional formula that guarantees that it is effectively representative.

"Explanatory Note Concerning the Draft Declaration on the Rights of Indigenous Peoples, Erica-Irene A. Daes, Chairperson of the Working Group on Indigenous Populations, UN Doc E/CN.4/Sub.2/1993/26/Add.1," July 19, 1993, para. 23. According to Daes' view, an indigenous people does not automatically have a right to secede at will; it can only separate from an existing state if the government is so unrepresentative as to be, in effect, a colonial government. In all other situations, the indigenous people have the right to demand constitutional reforms in order to share power democratically.

[775] Falk, "The Rights of Peoples (in Particular Indigenous Peoples)," 18.

[776] Hannum, *Autonomy, Sovereignty, and Self-Determination*, 91.

[777] Patrick Thornberry, "Self-Determination, Minorities, Human Rights: A Review of International Instruments," *International & Comparative Law Quarterly* 38, no. 04 (1989): 867–89; Erica-Irene A. Daes, "Some Considerations on the Right of Indigenous Peoples to Self-Determination," *Transnational Law & Contemporary Problems* 3 (1993): 1; Antonio Cassese, *Self-Determination of Peoples a Legal Reappraisal* (New York: Cambridge University Press, 1995).

3. Definition of Indigenous Peoples in International Law

This section explores the concept and category of indigenous peoples as defined by the International Labor Convention (the ILO), the World Bank, and the United Nations (the UN). Overall, there are several general statements or working definitions distinguishable by certain criteria as well as by a statement of coverage or scope that 'represent[s] key indicators of international law and practice.'[778] As such, these definitions avoid the risk of being incomplete from a historical, cultural, political, and economic perspective and they avoid reifying groups in a 'continued subordination of difference to identity.'[779]

a. The ILO's Statement of Coverage

The ILO was the first international organization to take up indigenous peoples as an issue,[780] and therefore was one of the earliest to wrestle with a formal definition of the concept and category of indigenous peoples. In 1921, the ILO started to address the working conditions of native workers living in European colonies.[781] Following the establishment of the UN in 1946, the ILO took part in the deliberations of UN agencies and bodies on issues concerning indigenous and tribal peoples, with one main objective to protect indigenous workers from discrimination and oppression. In 1953, the ILO compiled a study, 'Indigenous Peoples: Living and Working Conditions of Aboriginal Populations in Independent Countries', an entire chapter of which was devoted to the definition of 'indigenous'.[782] According to this study, national efforts to formulate a definition range from 'the stereotypical, patronizing and racist accounts of "exotic" peoples among the national community.'[783] In the end, the ILO decided to 'lay aside the complex problem of a priori definition of indigenous peoples.' As a substitute, the study provided a description to act as a guide, which states:

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[778] Thornberry, *Indigenous Peoples and Human Rights*.
[779] Barcham, "(De)Constructing the Politics of Identity," 346–48.
[780] Established in 1919 after WWI for the purpose of peace and social justice, the ILO is a UN agency dealing with labor issues, particularly international labor standards and decent work for all. Moreover, it is the 'only tripartite UN agency that where governments, employers and workers shape policies and program that promote decent work'. ILO, "About the ILO - Origins and History," http://www.ilo.org/global/about-the-ilo/history/lang--en/index.htm.
[781] The ILO's key instruments include: Convention No. 29 Concerning Forced or Compulsory Labour 1936, Convention No. 50 concerning the Regulation of Certain Special Systems of Recruiting of Indigenous Workers 1936, Convention No. 65 Concerning Penal Sanctions for Breaches of Contracts of Employment by Indigenous Workers 1939, the Labour Inspectorates (Indigenous Workers) Recommendation 1939: Conventions and Recommendations Adopted by the International Labour Conference 1919-1966 (Geneva, ILO, 1966).
[782] ILO, "Indigenous Peoples, Living and Working Conditions of Aboriginal Populations in Independent Countries" (International Labour Office, Geneva, 1953).
[783] Thornberry, *Indigenous Peoples and Human Rights*.

> Indigenous persons are descendants of the aboriginal population living in a given country at the time of settlement or conquest… by some of the ancestors of the non-indigenous groups in whose hands political and economic power presently lie. In general, these descendants tend to live more in conformity with the social, economic and cultural institutions, which existed before colonization of conquest… than with the culture of the nation to which they belong; they do not fully share in national economy and culture owing to barriers of language, customs, creed, prejudice… and other social and political factors. When their full participation in national life is not hindered by one of the obstacles mentioned above, it is restricted by historical influences producing in them an… overriding loyalty to their position as member of a given tribe.[784]

The first multilateral treaty on indigenous peoples was the Convention No. 107, the *Indigenous and Tribal Populations Convention, 1957*,[785] which has been ratified by African, Asian, American, and European states. The original purpose was to assimilate and integrate indigenous peoples into mainstream society, which resonated with the development discourse of the time.[786] Assimilation was a key goal in national projects that favored the unity of the nation-state.[787] Echoing the practical guide of the 1953 study, Article 1 of the Convention No. 107 defines the scope of its application to cover the following:

i. Members of tribal or semi-tribal populations in independent countries whose social and economic conditions are at a less advanced stage than the stage reached by the other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
ii. Members of tribal or semi-tribal populations in independent countries which are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization and which, irrespective of their legal status, live more in conformity with the social, economic and cultural institutions of that time than with the institutions of the nation to which they belong.

This statement of coverage categorizes the populations into three separate groups, ranked in a loose hierarchy. The first group is tribal, considered to be the least advanced and the most 'primitive' and culturally distinct. Semi-tribal follows in second place, which according to Article 1(2) 'includes groups and persons who, although they are in the process of losing their tribal characteristics, are not yet integrated into the national community.' This wording captures the assimilationist spirit of the treaty. Thornberry describes these semi-tribal groups

[784] ILO, "Indigenous Peoples, Living and Working Conditions of Aboriginal Populations in Independent Countries," 26.
[785] Convention No. 107 was ratified by 27 countries but was subsequently denounced by ten 10 states. While Convention No. 107 is no longer open for ratification, it remains in force in 17 countries, a number of which have significant populations of indigenous peoples. It remains a useful instrument. (Entry into force: 02 Jun 1959).
[786] The Preamble describes 'progressive integration into their respective national communities and the improvement of their living and working conditions'.
[787] Kingsbury, "'Indigenous Peoples' in International Law," 424.

as 'living out an existence on the margins of conurbations great and small in a kind of cultural half-light.'[788] Indigenous populations, the third category, were on the land before conquest or colonization and for this reason, they enjoy historical priority. As noted, 'the source of rights [according to the Convention] is not… a people's history of being conquered or oppressed, but its history of being distinct as a society or nation.'[789] In this hierarchy, the tribal and semi-tribal categories dominate and subsume the indigenous category.

More than three decades later, a new ILO Convention marks a watershed for groups claiming collective rights, especially the collective right of self-determination.[790] In 1989, the ILO adopted the *Indigenous and Tribal Peoples Convention (No. 169)*,[791] with ratifications from countries in the America, Europe, and Oceania.[792] Convention No. 169 explicitly broke away from the paternalistic approach of Convention No. 107 and the assimilative/integrationist agenda previously shown toward these groups.[793] More significantly, it replaced the term 'populations' with 'peoples'. Article 1(1) of ILO Convention No. 169 applies to the following categories:

i. Tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;
ii. Peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who

[788] Thornberry, *Indigenous Peoples and Human Rights*.
[789] UN ECOSOC Commission on Human Rights, "Working Group on Indigenous Populations, Working Paper by the Chairperson-Rapporteur, Erica-Irene A Daes. On the Concept of 'Indigenous People', UN Doc E/CN.4/Sub.2/AC.4/1996/2, 10 June 1996," n.d., para. 22.
[790] It was decided during the discussions leading up to the adoption of Convention No. 169 that this term was the only one which could be used to describe indigenous and tribal peoples: 'there appears to be a general agreement that the term "peoples" better reflects the distinctive identity that a revised Convention should aim to recognize for these population groups.' ILO, "Partial Revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107)" in International Labour Conference, 75th Session. (Geneva: International Labour Office, 1988). However, it should be noted that the inclusion of "peoples" was not unproblematic. It was preceded by a protracted debate over replacing "populations" with "peoples," which lasted over three years. Although it may appear that "peoples" won over in the end, Article 1(3) of the Convention No. 169 serves as a proviso, stating: "The use of the term 'peoples' in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international." Lee Swepston, "The Adoption of the Indigenous and Tribal Peoples Convention, 1989 (No. 169)," *Law and Anthropology* 5 (1990): 221–35.
[791] ILO Convention No. 169 was adopted on June 27, 1989 by the General Conference of the ILO at its 76th session. Its entry into force was September 5 1991. It has been ratified by it has been ratified by 22 countries.
[792] Thornberry, *Indigenous Peoples and Human Rights*.
[793] In contrast to the Preamble of the ILO Convention No. 107 geared towards 'the protection and integration of indigenous and other tribal and semi-tribal populations', the Preamble of the ILO Convention No. 169 focuses on the new international standards and seeks to remove the assimilationist nature of previous standards.

> irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

Not only does Convention No. 169 not pursue an assimilationist agenda, but it also has two distinguishing features that set it apart from its predecessor. Firstly, by including 'independent countries,' Convention No. 169 broadens the geographic scope of the Convention's application. Secondly, it makes a significant modification to the categories of peoples: the semi-tribal category is deleted. Article 1(1)(b) deals with indigenous peoples and Article 1(1)(a) deals with tribal peoples.[794] The two categories are treated separately. The category of tribal peoples no longer subsumes the category of indigenous peoples. In the case of tribal peoples, emphasis is placed on the social and culture distinctiveness based on traditions, and not their stage of advancement, which was the approach in ILO Convention No. 107.

This new language and organization expresses the ILO's overall transformation: the change is from a 'vertical and hierarchical' approach to 'horizontal, equality-with-difference' approach.[795] Indigenous peoples are considered distinct by virtue of their 'own social, economic, cultural and political institutions.' Conquest and colonization remain relevant, but 'present state boundaries' are also seen to be significant, which implies situations not necessarily involving conquest or colonization, and suggests a more nuanced approach for understanding the contemporary situation of indigenous peoples. It is also important to note that Article 1(2) includes the self-identification of indigenous and tribal peoples as one of the key criteria—thus attaching fundamental importance to whether a given group considers itself indigenous or tribal under the Convention, and to whether a person identifies herself or himself as belonging to this group. Convention No. 169 was the first international instrument to consider the criterion of self-identification, which has becoming increasingly decisive and powerful.[796] In sum, the ILO definition of the concept and category of indigenous peoples is a

[794] For practical purposes, the terms indigenous and tribal are synonymous in the UN system when the peoples concerned identify themselves under the indigenous agenda. An example would be Afro-descended tribal peoples in Central America; or tribal peoples in Africa such as the San or Maasai who may not have lived in the region they inhabit longer than other population groups; nevertheless, many of these peoples refer to themselves as indigenous in order to fall under remit of international law and specifically the UN law.
[795] Thornberry, *Indigenous Peoples and Human Rights*.
[796] According to Stavenhagen and Amara, 'A recent ILO study describes the term "indigenous and tribal peoples" as a general denominator for distinct peoples who have been pursuing their own concept and way of human development in a given geographical, socio-economic, political, and historical context. Throughout history, these peoples have struggled to maintain their group identity . . . and the control of their lands, territories, and natural resources. (2007:3) The ILO further points out that globalization has placed growing pressure on indigenous peoples' lands and resources (International Labour Organization, 2007:4).' Stavenhagen and Amara, "International Law of Indigenous Peoples and the Naqab Bedouin Arabs," 181.

combination of objective criteria and a single subjective criterion. While there is no normative hierarchy between the criteria, the fact that the criterion of self-identification stands apart from the rest is significant, and arguably elevates its decisiveness.

b. The World Bank's Operational Indicators

Acknowledging the indigenous imprint in a variety of legal and quasi-legal fields, and suggesting that reflection on those rights is becoming systemic, bodies and agencies with a connection to indigenous peoples' issues include the Commission for Sustainable Development, the World Health Organization, UNICEF, the UN Population Fund, UNDP, the UN Environment Programme, and the Centre for Human Settlements and the World Bank. Activities include meetings on indigenous issues, policy guidelines and research activities related to indigenous peoples, programs and projects.[797] The World Bank policies contain a number of indicators regarding what constitutes an indigenous peoples. Although the World Bank and indigenous peoples have not shared mutual interests historically, which was especially evident during the 1980s,[798] the former has become increasingly involved with client countries to address the poverty and social exclusion of indigenous peoples. In light of this new development, the World Bank has drafted a number of Operational Policies on indigenous peoples, which have set in motion a number of processes and considerations in the design and implementation of World Bank projects that affect indigenous peoples. As required by the World Bank's original Operational Directive 4.20, the Tasks Manager identified indigenous peoples through an assessment of the degree of a group's indigenousness.[799] In its revised Operational Policy 4.10, on which indigenous delegations and academics commented, there is no substantial change. Article 4 states:

> For purposes of this policy, the term "Indigenous Peoples" is used in a generic sense to refer to a distinct, *vulnerable*, social and cultural group possessing the following

[797] Thornberry, *Indigenous Peoples and Human Rights*, 28.

[798] The World Bank adopted Operational Manual Statement 2.34 on Tribal Peoples in Bank Financed Projects in early 1982. While the statement acknowledged that "tribal peoples are more likely to be harmed than helped by development projects that are intended for beneficiaries other than themselves," the World Bank did not actively safeguard the rights of tribal peoples but rendered them beyond their development projects. Similar to the integrationist approach adopted by the ILO in its early days, the World Bank's objective was "to ensure the integration and adaptation of tribes into the wider political economies and rural societies of their countries." See, Sia Spiliopoulou Akermark, "The World Bank and Indigenous Peoples," in *Minorities, Peoples, and Self-Determination Essays in Honour of Patrick Thornberry*, ed. Nazila Ghanea-Hercock and Alexandra Xanthaki (Leiden: Boston: Martinus Nijhoff Publishers, 2005).

[799] The Operational Directive 4.20 requires the World Bank to identify if there are indigenous peoples in the affected territory, and then requires the contracting national government to prepare an Indigenous Peoples' Plan (IPP), which will create a platform for negotiations and monitoring the impact of the World Bank funded project.

characteristics in varying degrees:

i. Self-identification as members of a distinct indigenous cultural group and recognition of this identity by others;
ii. Collective attachment to geographically distinct habitats or ancestral territories in the project area and to the natural resources in these habitats and territories;
iii. Customary cultural, economic, social, or political institutions that are separate from those of the dominant society and culture; and
iv. An indigenous language, often different from the official language of the country or region.
v. A group that has lost "collective attachment to geographically distinct habitats or ancestral territories in the project area"; (paragraph 4 (b)) because of forced severance remains eligible for coverage under this policy.

Ascertaining whether a particular group is considered as "Indigenous Peoples" for the purpose of this policy may require a technical judgment (see paragraph 8).

Paragraph 8 addresses the required 'technical judgment' as part of a 'screening' process:

> Early in project preparation, the Bank undertakes a screening to determine whether Indigenous Peoples (see paragraph 4) are present in, or have collective attachment to, the project area. In conducting this screening, the Bank seeks the *technical judgment* of qualified social scientists with expertise on the social and cultural groups in the project area. The Bank also consults the Indigenous Peoples concerned and the borrower. The Bank may follow the borrower's framework for identification of Indigenous Peoples during project screening, when that framework is consistent with this policy.

The World Bank's report indicated that 'Improved screening to capture Indigenous Peoples' presence in the project area and the impacts of the project on their interests is needed from the outset, and should include a thorough understanding of their land- and resource-based cultures and livelihoods.'[800]

Unlike the ILO definitions, the World Bank does not place weight on social and cultural distinctiveness, and it dispenses with the criterion of territorial priority—but what really sets this definition apart is that the World Bank employs the criterion of vulnerability as one of the key indicators. The focus is on the way the distinctive indigenous identity makes and increases a group's vulnerability. While at first blush, it seems that Article 4(a) acknowledges self-identification as important, as the ILO does, the Task Manager should consult 'qualified social

[800] The World Bank Inspection Panel, "Indigenous Peoples - Emerging Lessons Series No. 2" (Washington DC, October 2016), iv, 19, http://ewebapps.worldbank.org/apps/IP/IPPublications/Emerging%20Lessons%20Learned%20No.%202%20-%20Indigenous%20Peoples.pdf.

scientists' to in fact verify and make the final determination. Therefore, self-identification requires external recognition, which goes against, and arguably negates, the subjective quality of the criterion.

c. The UN Working Definition: The Cobo Definition or International Definition

The UN working definition remains the most controversial and politically-loaded description of the concept and category of indigenous peoples, because of what is at stake for the nation-state (which was historically the only entity to constitute the UN order, the only subject and lawmaker of international law). Although the principle of universalism is a cornerstone in the UN system, which grants human rights to all human beings,[801] groups are a prominent feature confirmed in the evolution of human rights law.[802] Following the UN treaties that guaranteed generic rights such as civil and political together with social, economic, and cultural rights, UN treaty-making has recently become person-centric rather than issue-centric, with group identity and group-based claims granted to certain groups in society. The UN treaties for women, children, and disabled persons have guaranteed them tailor-made rights and protections.[803]

A core concern for the UN has been how to identify and define groups that share common characteristics, concerns, and needs.[804] For example, since the before the 1970s, UN officials have grappled with how to distinguish minorities from indigenous groups, given the overlap between these marginalized groups and the difficulties in setting the two types of groups apart.[805] Thornberry argues, 'it would be a mistake to think of minority rights and indigenous

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[801] The Preamble of the Charter of the United Nations is written in the name of "we the peoples of the United Nations." The Universal Declaration of Human Rights (UDHR) guarantees the fundamental rights of all human beings, according to which all human beings are "equal in dignity and rights." (Article 1) Moreover, everybody is entitled to the rights in the Declaration, "without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." (Article 2). On the distinction the distinction between universal rights and tailor-made rights, see Anaya and Wiessner, "The UN Declaration on the Rights of Indigenous Peoples: Towards Re-Empowerment."

[802] Philip Alston, ed., *Peoples' Rights* (Oxford: New York: Oxford University Press, 2001).

[803] The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC) do not define women or the child.

[804] Brownlie points to how the former UN Commission on Human Rights has commissioned various studies with different Special Rapporteurs, covering a vast range of groups and issues including Capotorti's report on the rights of persons belonging to ethnic, religious, and linguistic minorities; Cobo's and Eide's report on indigenous populations and discrimination; Espiell's report on the implementation of UN Resolutions concerning the rights to self-determination of persons under colonial and alien control; and Cristescu's report on the right to self-determination. See, Ian Brownlie, "The Rights of Peoples in Modern International Law," 15.

[805] Erica-Irene A. Daes and Asbjørn Eide, "Working Paper on the Relationship and Distinction between the Rights of Persons Belonging to Minorities and Those of Indigenous Peoples in Accordance with Sub-Commission Resolution 1999/23, UN Doc E/CN.4/Sub.2/2000/10 (19 July 2000)".

rights as belonging to the same family but rather their origins and their development in international law, specifically the substantive rights, are markedly distinct and individual' adding that they share things in common and constitute the human rights narrative.[806] On the back of these reports that set out to categorize and differentiate indigenous peoples from minority groups, working definitions were introduced for the concept and category of indigenous peoples.[807]

The issue of discrimination and inequality experienced by indigenous peoples led the UN to address indigenous groups,[808] leading to the first official UN definition in 1972. In his first report, called 'The Study of the Problem of Discrimination against Indigenous Populations', Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities José Martínez Cobo drafted the following definition in 1972:

> Indigenous populations are composed of the existing descendants of the peoples who inhabited the present territory of a country wholly or partially at the time when persons of a different culture or ethnic origin arrived there from other parts of the world, overcame them, by conquest, settlement or other means, reduced them to a non-dominant or colonial condition; who today live more in conformity with their particular social, economic and cultural customs and traditions than with the institutions of the country of which they now form part, under a state structure which incorporates mainly national, social and cultural characteristics of other segments of the population which are predominant.[809]

This paragraph, and specifically the phrase 'from other parts of the world,'[810] evokes the settler-colonial model by which European colonizers invaded and colonized the uncivilized Others. Purposely including 'from other parts of the world' eliminated any possibility for the definition

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[806] Thornberry, *Indigenous Peoples and Human Rights*, 34.

[807] Key UN officials working on minorities and indigenous peoples in international law include Francesco Capotorti, the Special Rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities; José Martínez Cobo, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (1971); and Erica-Irene Daes, Chair of the United Nations Working Group on Indigenous Populations (1984–2001). See Chapter 3 for the establishment of the mandate of the Special Rapporteur on Indigenous Peoples in 2001, and details on the first three Special Rapporteurs.

[808] Nettheim also underlines how the basis of the first UN report written on Indigenous Peoples centered on the question of discrimination and not minorities. Garth Nettheim, "'Peoples' and 'Populations'-Indigenous Peoples and the Rights of Peoples," in *The Rights of Peoples*, ed. James Crawford (Oxford: Clarendon Press, 1988), 119.

[809] "Study of the Problem of Discrimination Against Indigenous Populations, Special Rapporteur, José R. Martínez Cobo, UN Doc E/CN.4/Sub.2/L.566 (June 25, 1972)," para. 34.

[810] This phrase echoes the "salt water thesis", or the "blue water thesis," which amounts to a limited form of decolonization, under the guise of Generally Assembly's Resolution 637, adopted on December 16, 1952. Some nation-states argued that salt or blue water must exist between the colonizing country and the colony. In other words, only external colonies, geographically separate from the colonial power, could exercise the right to self-determination. This thesis was deployed to withhold the right to self-determination. In a countermove, the Belgian thesis proposed to expand the right of indigenous peoples in external and internal territories.

to cover situations between indigenous groups, thus ensuring that certain regions no longer experiencing settler colonialism, (e.g., Africa and Asia, where UN decolonization freed the continent of its European colonial past) would fall outside the scope of his definition. In an effort to reconcile this lacuna, Cobo goes on to include 'isolated or marginal populations' in his working definition, which are not indigenous according to the aforementioned paragraph, but should be treated as such. Cobo describes the predicament of these indigenous-like groups as follows:

> Although they have not suffered conquest or colonization, isolated or marginal population groups existing in the country should also be regarded as covered by the notion of "indigenous populations" for the following reasons: (a) they are descendants of groups which were in the territory of the country at the time when other groups of different cultures or ethnic origins arrived there; (b) precisely because of their isolation from other segments of the country's population they have preserved almost intact the customs and traditions of their ancestors which are similar to those characterized as indigenous; (c) they are, even if only formally, placed under a State structure which incorporates national, social and cultural characteristics alien to theirs.

Clearly, this inclusion goes beyond settler colonialism and conquest.

In this vein, Cobo's 1972 report noted that many groups in Africa ought to be considered indigenous but due to a lack of information they were precluded from consideration. Because of this omission, the report included a recommendation to carry out a special study of indigenous peoples in the African region.[811] However, the expansion of Cobo's definition requires a word of caution. Firstly, it states that these indigenous-like peoples 'should also be regarded,' which means that it is not a mandatory requirement but discretionary and therefore an optional consideration. Secondly, the isolated and marginalized populations have customs and traditions similar to but not the same as those of the indigenous peoples. To a certain extent, 'isolated or marginalized populations' are comparable to the 'semi-tribal populations' in ILO Convention No. 107.

A decade later, in his 1986 'Study on the Problem of Discrimination against Indigenous Populations' to the UN Sub-Commission on the Prevention of Discrimination of Minorities,"[812]

[811] Wilmer, *The Indigenous Voice in World Politics*, 182.

[812] The study was launched in 1972 and completed in 1986, making it the most voluminous study of its kind, with a total of 37 monographs. The report contains 301 paragraphs, which describe the conditions of indigenous peoples as well as the UN history, as well as 332 conclusions and recommendations geared toward governments and international and regional organizations for the protection and promotion of indigenous peoples' rights and

Cobo diverges from his previous definition and identifies indigenous peoples from an international law perspective. The resulting 'international definition' of indigenous peoples is also called the 'Cobo definition', and is the most cited definition by indigenous peoples, scholars, and civil society organizations.[813] The 1986 definition reads:

> Indigenous communities, peoples and nations are those which, having *a historical continuity with pre-invasion and pre-colonial societies* that developed on their territories, consider themselves *distinct from other sectors of the societies* now prevailing in those territories, or parts of them. They form at present *non-dominant* sectors of society and are determined to preserve, develop and transmit to future generations their *ancestral territories*, and their *ethnic identity*, as the basis of their continued existence as peoples, in accordance with their *own cultural patterns, social institutions and legal systems*.
>
> This historical continuity may consist of the continuation, for an extended period reaching into the present, of one or more of the following factors:
>
> i. Occupation of ancestral lands, or at least of part of them;
> ii. Common ancestry with the original occupants of these lands;
> iii. Culture in general, or in specific manifestations (such as religion, living under a tribal system, membership of an indigenous community, dress, means of livelihood, lifestyle, etc.);
> iv. Language (whether used as the only language, as mother-tongue, as the habitual means of communication at home or in the family, or as the main, preferred, habitual, general or normal language);
> v. Residence in certain parts of the country, or in certain regions of the world;
> vi. Other relevant factors.[814]

The main elements to extract from this international definition are the emphasis on historical continuity with pre-invasion and pre-colonial societies, distinctiveness; non-dominance, ancestral territories, ethnic identity, and unique cultural patterns, social institutions, and legal systems.

From 1972 to 1986, the UN understanding of the concept and category of indigenous peoples

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remedies. José Martínez Cobo, "The Study of the Problem of Discrimination against Indigenous Populations, UN Doc E/CN.4/Sub.2/1986/7 and Add 1–4".

[813] The main indigenous peoples' organizations, such as the International Work Group for Indigenous Affairs (IWGIA) and the World Council of Indigenous Peoples (WCIP), have drafted their own definitions. They bear a marked resemblance to the UN definition. However, it is important to note that although a definition was argued against, indigenous non-governmental organizations have defined the claims of indigenous peoples by categorization which covers the following: physical survival, cultural survival and cultural identity, sovereignty, self-determination, self-government, land rights, control of land and its resources, compensation, non-discrimination, and affirmative action. See, Nettheim, "'Peoples' and 'Populations'-Indigenous Peoples and the Rights of Peoples," 116–25.

[814] Cobo, "The Study of the Problem of Discrimination against Indigenous Populations, UN Doc E/CN.4/Sub.2/1986/7 and Add 1–4," para. 379.

has experienced a terminological shift from indigenous 'populations' to 'communities, peoples, and nations.' In the updated version, the emphasis lies on the group's historical continuity until the moment of its disruption through invasion and colonization. A non-conclusive list of indicators of what constitutes historical continuity supplements this criterion, which differs from the previous focus on descent and on tracing the ancestry of the group. Anaya interprets this working definition to mean that the task 'is not so much about identifying which groups *should* be or are *entitled* to be considered indigenous, as it is about understanding which groups in fact share in the common characteristics of those groups that both call themselves indigenous and have this common agenda.'[815] The significance of 'common characteristics' of indigenous peoples and '[having a] common agenda' emphasizes the relational quality of the definition, which implies that indigenous groups are defined through likeness—shared attributes, self-perception, and a joint plan—making the task of defining indigenous peoples a comparative exercise.

d. The UN Declaration on the Rights of Indigenous Peoples, Undefined, Non-binding

The UN *Declaration on the Rights of Indigenous Peoples* (the 'Declaration' or 'the UNDRIP')[816], is considered 'a triumph for justice and human dignity following more than two decades of negotiations between governments and indigenous peoples' representatives',[817] but it only adds to the complex context around definitions of 'indigenous peoples'. Mirroring its

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[815] Anaya, *Indigenous Peoples in International Law*, 28.

[816] Declaration covers various international instruments. International human rights declarations are non-legally binding; the term is often deliberately used to indicate that the parties do not intend to create binding obligations but merely want to declare certain aspirations. Hence, it allows considerable deference on the part of the signatories to implement and enforce the instrument at the domestic level. The 1948 UDHR did not originally have binding force, but its provisions have since gained binding character as customary international law. Anaya remarks:

It is possible, at least arguably, to understand the Declaration as related to legal obligation within standard categories of international law. First, the Declaration is a statement of rights proclaimed by the vast majority of U.N. member states, through the General Assembly, within the framework of the general human rights obligations established for state by the U.N. Charter, a multilateral treaty. With this status, the Declaration can be seen as embodying or providing an authoritative interpretation of norms that are already legally binding and found elsewhere in international law, including in various human rights treaties.

See, Anaya, *International Human Rights and Indigenous Peoples*, 79. Wiessner adds that 'to the extent that the Declaration reflects preexisting customary international law or engenders future such law, it is binding on states that do not qualify as persistent objectors.' Siegfried Wiessner, "Indigenous Sovereignty: A Reassessment in Light of the UN Declaration on the Rights of Indigenous People," *Vanderbilt Journal of Transnational Law* 41 (2008): 1165.

[817] United Nations Human Rights - Office of the High Commissioner, "Declaration on the Rights of Indigenous Peoples," http://www.ohchr.org/EN/Issues/IPeoples/Pages/Declaration.aspx. See also, United Nations Human Rights - Office of the High Commissioner, "The Declaration on the Rights of Indigenous Peoples," April 2008, http://www.ohchr.org/EN/NewsEvents/Pages/DeclarationIP.aspx.

predecessors in many respects, the Declaration identifies indigenous peoples as its sole beneficiaries. The Declaration does not attempt to define who those beneficiaries are in legal positivist terms; it is often the case that UN treaty bodies do not expressly define beneficiaries, whether they are collective or individual, in their instruments. The UNDRIP, discussed below, is no exception—it is a UN instrument that does not identify or define its beneficiaries.[818] The omission of a definition has not been crucial to the 'successes or failures in those domains nor to the promotion, protection or monitoring of the rights recognized for these entities.'[819]

Established by the UN Economic and Social Council (ECOSOC) in 1982 as result of Cobo's study on the problem of discrimination faced by indigenous peoples in the world (discussed above), the UNWGIP was tasked to develop international human rights standards that protect indigenous peoples. The UNWGIP chose to leave the definition of 'indigenous peoples' open-ended so that it might apply as widely as possible, which is reflected in its decision at the first session: '[t]here was general agreement that the Working Group should not rush into a definition [of "indigenous populations"], but should keep the matter constantly under discussion.'[820]

During the drafting process of the Declaration, however, an incident re-opened the question of the necessity to formulate an official UN definition. In 1992, the Rehoboth Basters and the Boers participated in the UNWGIP, asking for recognition as indigenous peoples but without acknowledging their role in colonization. The Rehoboth Basters, a Namibian ethnic group who descended from European settlers, considered themselves to be indigenous, rather than ethnically different, but the UNWGIP viewed them as non-indigenous.[821] What is noteworthy is the fact that it was external recognition, or lack thereof, which was decisive for the Rehoboth Basters' indigenous claim. These events marked a turning point that resulted in several UN studies contributing to discussions on the definition of 'indigenous peoples', which included

[818] Thornberry, *Indigenous Peoples and Human Rights*.
[819] UN Department of Economic and Social Affairs - PFII, "Workshop on Data Collection and Disaggregation for Indigenous Peoples (New York, 19-21 January 2004), UN Doc PFII/2004/WS.1/3," n.d., 4.
[820] "UN ECOSOC Commission on Human Rights, "Study of the Problem of Discrimination against Indigenous Peoples. Report of the 1st Session of the Working Group on Indigenous Populations, UN Doc E/CN.4/Sub.2/1982/33," para. 42.
[821] Niezen remarks, that the 'Working Group on Indigenous Populations has, since its inception in 1982, maintained an open-door policy toward participation in its annual two-week gathering of indigenous peoples and organizations,' which ties in with the practical approach of the WGIP. See, Niezen, *The Origins of Indigenism*, 21.

the 'UN Study in Treaties, Agreements and Other Constructive Arrangements'.[822] While this report deliberately refrains from formulating a definition of 'indigenous peoples' in the Asian and African context, it is significant because its focus on indigeneity points to 'the upsurge of the politics of recognition, which is not restricted to indigenous peoples but also includes other minority groups.'[823]

The UNWGIP's draft Declaration, which was submitted to and approved by the Sub-Commission on the Prevention of Discrimination and Protection of Minorities in 1994, provided some indications of what constitutes an indigenous peoples.[824] The closest attempt in arriving at a definition appeared in the draft, which made an explicit reference to the requirement of self-identification. Draft Article 8 is salient: 'Indigenous peoples have the collective and individual right to maintain and develop their distinctive characteristics, including the right to self-identify as indigenous and to be recognized as such.'[825] This purely subjective test in no way caters to the concerns and objections raised by country delegates (discussed below). Other articles in the draft declaration that addressed indigenous identity and nationality include Article 5 on the right to nationality, Article 9 on the right to belong to an indigenous community or nation, and Article 32 on the collective right to determine indigenous group membership criteria.[826]

The extended negotiations and the divergent opinions between indigenous representatives and state delegations not only compounded the definitional controversy but also reaffirmed the ongoing indeterminacy and vulnerability of the definition in international law and practice. On the one hand, indigenous representatives have from the outset continuously argued that a definition might be used to deny certain groups the rights contained in the Declaration: 'We,

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[822] In his comprehensive "Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations," Martínez contends that given the different colonial and treaty-making contexts in Africa and Asia versus other peoples in the world, peoples in Africa and Asia should pursue their rights as minority populations rather than indigenous. For Martínez, the term only referred to those who were direct victims of European conquest and colonization and therefor 'in post-colonial Africa and Asia, autochthonous groups/minorities/ethnic groups/peoples cannot claim for themselves… the 'indigenous' status in the United nations context.' UN Committee on Economic, Social and Cultural Rights, "Final Report by Miguel Alfonso Martínez, Special Rapporteur: Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations, UN Doc E/CN.4/Sub.2/1999/20," para. 88. The report was criticized, especially by indigenous peoples' organizations, for its selective reading and limited understanding of Western colonialism.

[823] Thornberry, *Indigenous Peoples and Human Rights*, 33–34.

[824] "Draft Declaration on the Rights of Indigenous Peoples, UN Doc E/CN.4/Sub.2/1994/2/Add.1 (1994)".

[825] "Draft Declaration on the Rights of Indigenous Peoples, UN Doc E/CN.4/Sub.2/1994/2/Add.1 (1994)."

[826] Jeff J. Corntassel and Tomas Hopkins Primeau, "Paradox of Indigenous Identity: A Levels-of-Analysis Approach, The," *Global Governance* 4 (1998): 155.

the Indigenous Peoples present at the Indigenous Peoples Preparatory Meeting on Saturday, 27 July 1996, at the World Council of Churches, have reached a consensus on the issue of defining Indigenous Peoples and […] categorically reject any attempts that Governments define Indigenous Peoples'.[827] From a state-centric standpoint, the omission of a definition for 'indigenous peoples' is a serious shortcoming. Notwithstanding the concern raised over the absence of a definition throughout the drafting process, and objections raised by some state parties with sizeable indigenous populations (i.e., in Africa and Asia), the UNHRC adopted the final version of the Declaration in June 2006.[828]

In the final document adopted by the UN General Assembly on September 13, 2007, instead of a definition,[829] a handful of basic indigenous characteristics are scattered throughout the text.[830] 'Different', 'difference', and 'identity' are expressed in the Preamble, Article 2, and Article 33 of the Declaration. Articles 2 and 33 cover the right to be free from any discrimination based on indigenous origin or identity, and the right of indigenous peoples to determine their own identity or membership in accordance with their customs and traditions. The Declaration reflects earlier drafts and for the most part mirrors the principles laid down in ILO Convention No. 169.[831] Summarizing the main tenets of the Declaration and its beneficiaries, Kingsbury contends: 'First, a group's self-identification is a fundamental consideration in determining its status and scope. Second, non-recognition or misrecognition by the territorial State does not alter the applicable international law. Third, matters of membership are to be determined by the group itself, within some limits.'[832]

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[827] UN ECOSOC Commission on Human Rights, "Report of the Working Group on Indigenous Populations of Chairperson-Rapporteur, Ms. Erica-Irene A. Daes, UN Doc E/CN.4/Sub.2/1996/21," August 16, 1996, para. 31.
[828] The first session of the HRC adopted the Declaration on 29 June 2006 by a vote of 30 in favor, 2 against, and 12 abstentions. United Nations Human Rights - Office of the High Commissioner, "Declaration on the Rights of Indigenous Peoples." On 28 November 2006, the Third Committee of the UN General Assembly adopted the amendments proposed by Namibia, on behalf of the Group of African States to the draft resolution on the Declaration. On 30 January 2007, the Assembly of the African Union adopted a decision on the Declaration. The Assembly chose to maintain a united position in the negotiations on amending the Declaration and constructively work alongside other UN Member States in finding a solution to African states' concerns about, *inter alia*, the definition of indigenous peoples, self-determination, ownership of land and resources, and national and territorial integrity.
[829] The US mission, for example, issued a floor document that stated its objections and drew attention to the failure to provide a clear definition of exactly who the term is intended to cover United States, "Position of the United States on the Rights of Indigenous Peoples: Explanation of Vote by Robert Hagen, U.S. Advisor, on the Declaration on the Rights of Indigenous Peoples, to the UN General Assembly, #204(07)," September 13, 2007. look up for the history)
[830] Anaya, *International Human Rights and Indigenous Peoples*, 29.
[831] Unlike the UNDRIP, ILO Convention No. 169 is an international treaty, a formally concluded and ratified agreement between states, that is binding at international law. Therefore, the Declaration read with Convention No. 169 "may well reflect customary international law." Kingsbury, "Indigenous Peoples," 3.
[832] Kingsbury, 3.

Equality and non-discrimination remain cornerstone principles in the provisions of the UNDRIP, anchoring the international indigenous peoples' framework within the existing framework of international human rights law. A golden thread running through each IGO definition is that they are all issue-oriented, apply a pragmatic approach, and favor context over abstraction. As the next section discusses, however, controversy arises when particular criteria of the international/UN/Cobo definition are applied in context, specifically in Africa and Asia, and in the Middle East.

4. Controversial Criteria of the International Definition in Context

Given that the international or Cobo definition of 1986 continues to be the most widely used, an examination of its understanding of the concept and category of indigenous peoples is appropriate here. In particular, I consider the controversial criteria in that definition, because of the challenges that arise when these criteria are applied in context. While the concept and category of indigenous peoples as used by IGOs is composed of criteria that can vary numerically and substantively but uphold a common principle, somewhat surprisingly, none of the definitions has a benchmark on the minimal amount or to what degree the particular criteria must be met. The lack of a quantitative or qualitative yardstick implies that the criteria are not hierarchical and yet some scholars have attempted to differentiate the criteria or to develop a loose order among them. For instance, Kingsbury divides the criteria into 'essential requirements' and 'relevant indicia', where the former is mandatory and the latter are to be considered discretionary.[833]

Two criteria of the 1986 UN definition stand out from the rest because of their political weight, legal merits, and theoretical ambiguity. The first criterion is 'historical continuity with pre-

[833] Postulating a definition for maximum flexibility, Kingsbury generates four "essential requirements" coupled with "other relevant indicators." The essential four include the following:
Self-identification as a distinct ethnic group;
Historical experience of, or contingent vulnerability to, severe disruption, dislocation or exploitation;
Long connection with the region;
The wish to retain a distinct identity.
The other relevant factors include: "non-dominance," "historical continuity," "socioeconomic and sociocultural differences," "characteristics such as language, race, and material or spiritual culture," and "regarded as indigenous." This definition is not without critique. It can be viewed as weak and wishful, especially because it neglects the issue of self-determination or autonomy. Also, the reference to "ethnic group" is considered to diminish the group's identity and runs the risk of undermining indigenous peoples' claims to their homeland and culture. Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy," *The American Journal of International Law* 92, no. 3 (July 1998): 455.

invasion and pre-colonial societies', as expressed in the 1986 UN definition. This criterion appears in multiple formulations in academic commentaries, such as territorial precedence, territorial priority, and prior habitation before invasion, conquest, or colonization. In this study I employ the condensed version 'historical continuity before colonialism or invasion' or 'historical continuity', also referred to as such in the 1986 UN definition. The second criterion is 'self-identification as a distinct ethnic group', which focuses on how a specific group self-identifies as indigenous (the internal component or self-ascription) as well as how they are being identified as indigenous (the external component or recognition). The umbrella term for this criterion is 'self-identification.' Prior to the rise of this second criterion, 'historical continuity' was arguably the most decisive one for recognition as an indigenous group, but Kingsbury relegates historical continuity to 'relevant factor' status and prioritizes the criterion of self-identification as an 'essential requirement'.[834] Practically speaking, these two criteria stress the substantive and procedural hurdles facing groups that seek indigenous peoples' recognition—the success, or failure, of indigenous recognition usually hinges on historical continuity and self-identification.

The other aspects of the working definition are generally uncontested, and thus are addressed only briefly here. Arguably, the criteria of cultural distinctiveness, marginalization, non-dominance, and attachment to ancestral lands can be considered relevant but not essential. For example, the connection to ancestral lands is often viewed as the most important criterion to show how indigenous peoples differ from other groups; while it is indeed important for indigenous peoples, I contend that the connection to ancestral lands is not problematic and is often shared among groups that are not necessarily making a claim to be indigenous peoples. I would further argue that this criterion could be read together with the criterion of 'historical continuity with pre-invasion and pre-colonial societies,' especially considering that invasion and colonization often contain a land component. As this example illustrates, these criteria of the 1986 UN definition are more or less clear-cut, open to less contestation and dispute, and not restricted solely to indigenous peoples. Hence, these criteria are overlapping, interchangeable, and open-ended, and serve to buttress a claim to indigenous peoples' recognition. These additional non-decisive, relevant criteria are less contentious and contested in domestic settings, and the context in which they are applied does not matter to the same

[834] Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy," *The American Journal of International Law* 92, no. 3 (July 1998): 455.

extent as in the case of the controversial criteria discussed below.[835] Notwithstanding their less controversial and uncontested nature, an interesting feature of these criteria is the tendency to exercise a higher degree of flexibility when applying these criteria in practice. This differs significantly from the more inflexible or cautious reading of 'historical continuity' and 'self-identification', which are applied strictly and privilege spatiotemporal fixity and homogeneity of the group.

A brief look at the criterion of non-dominance demonstrates how flexibility is permissible, and even desirable, in practice.[836] According to Kingsbury, non-dominance falls into the category of 'other relevant factors',[837] while Scheinin asserts that 'there must be another ethnic group and a power relationship involved before the descendants of the original inhabitants are understood as indigenous in the legal meaning of the term.'[838] When the condition of non-dominance is applied, an emphasis is placed on the co-existence of another ethnic group, which is 'dominant' (often calculated in numerical terms) in the country or area where the indigenous-claiming group is located. When the indigenous peoples outnumber the non-indigenous peoples, the emphasis must be placed on power relations rather than the numerical strength of the group.[839] Put differently, the focus is on the distance between the group and the sites of

[835] However, there is a strong case to be made that these other criteria play a significant role after the initial indigenous recognition, when it comes to determining the degree of indigeneity. To illustrate this point more clearly, take the example of the Maori in Aotearoa/New Zealand and their cultural distinctiveness. Urban Maori are viewed as less indigenous than traditional Maori. And because they are seen as less genuine, they are denied access to resources and other benefits. Barcham, "(De)Constructing the Politics of Identity," 10.

[836] The 1986 Cobo definition expressly states that indigenous peoples 'form at present non-dominant sectors of society.' The ILO and World Bank make no explicit reference to dominance, but it can be easily inferred, as discussed above. See, Cobo, "The Study of the Problem of Discrimination against Indigenous Populations, UN Doc E/CN.4/Sub.2/1986/7 and Add 1–4."

[837] Brownlie contends: 'This criterion of non-dominance is not very apt, as it is not a necessary condition of indigenous peoples. In any event, a more significant criticism is that the issue is not dominance but equality, and equality within the principles and standards of the law concerning human rights. The emphasis on dominance/non-dominance is unhelpful and inimical to the application of legal principles to establish equity.' Brownlie, *Treaties and Indigenous Peoples*, 60.

[838] Martin Scheinin, "The Right to Enjoy a Distinct Culture: Indigenous and Competing Uses of Land," in *The Jurisprudence of Human Rights Law: A Comparative Interpretive Approach*, ed. Theodore S Orlin, Allan Rosas, and Martin Scheinin (Institute for Human Rights, Åbo Akademi University; Syracuse, NY: Syracuse University Press, 2000), 161.

[839] The international criterion, focusing on the indigenous/non-indigenous power dynamics, can differ from the definitional condition at the national level. The Federation of Russia is a straightforward example where population size restrictions are placed on the group. According to Russian law, only groups of fewer than 50,000 people are eligible to be recognized as "small-numbered peoples of the North, Siberia and the Far East." As a result, groups that are larger and non-Russian—the Chechens, Komi, or Sakha, for example—are excluded because they count too many members. These larger groups can be recognized as indigenous in the broader Russian sense (*korennye*), but they are denied the set of rights granted to small(er)-numbered peoples in Russia—and, moreover, are denied the rights granted to indigenous peoples on the international level. See, Elana Wilson Rowe, *Russia and the North* (Ottawa: University of Ottawa Press, 2009), 168.

power when the indigenous-seeking group has a majority in numerical terms. Consistent with this approach, Castellino and Cavanaugh contend that this consideration of dominance is particularly important in Africa or the Middle East, where smaller groups have successfully seized and maintained political power.[840] While the criterion of non-dominance amounts to a strong indication, or a 'relevant factor' according to Kingsbury, this alone cannot conclusively identify an indigenous or non-indigenous group.[841]

Context directly affects the practice of international human rights law, and since indigeneity seems to run along a gradient (epitomized by the notion that 'some people are more indigenous than others'[842]), the question of who qualifies as indigenous peoples underscores the role played by context. With regard to the criterion of 'historical continuity', it can be difficult or impossible to identify an indigenous peoples if the domestic or local context did not experience settler colonialism (or other forms of colonialism)—or if, after decolonization, all the people automatically became indigenous. In order to overcome these hurdles, the group seeking indigenous status may sideline this particular criterion and instead rely more heavily on the other, more flexible criteria that incorporate spatiotemporal factors and other contingencies.

The African and Asian contexts, which diverge and challenge the classical settler-colonial model, raise specific definitional conundrums that scholars, the UN, and regional bodies have discussed and attempted to address. Some Asian indigenous peoples have advocated for a local definition, such as the Alliance of Taiwan Aborigines who appeared before the UN to change the local language used for 'indigenous' (i.e. *yuanzu minzu* and *yuanzu min*) (see the discussion on the etymological development of the concept and category above). Several UN studies like the 'UN Study in Treaties, Agreements and other Constructive Arrangements',[843] which concluded that in Africa and Asia it makes little theoretical or practical sense to apply the UN definition because 'in post-colonial Africa and Asia autochthonous groups/minorities/ethnic groups/peoples who seek to exercise rights presumed to be or actually infringed by the existing autochthonous authorities in the States in which they live cannot, in the view of the Special

[840] Castellino and Cavanaugh, *Minority Rights in the Middle East*, 15.
[841] Benedict Kingsbury, "'Indigenous Peoples' in International Law: A Constructivist Approach to the Asian Controversy," *The American Journal of International Law* 92, no. 3 (July 1998): 455.
[842] Jim Igoe, "Global Indigenism and Spaceship Earth: Convergence, Space, and Re-Entry Friction," *Globalizations* 2, no. 3 (December 2005): 377–90.
[843] See, UN Committee on Economic, Social and Cultural Rights, "Final Report by Miguel Alfonso Martínez, Special Rapporteur: Study on Treaties, Agreements and Other Constructive Arrangements between States and Indigenous Populations, UN Doc E/CN.4/Sub.2/1999/20."

Rapporteur, claim for themselves, unilaterally and exclusively, the "indigenous" status in the United Nations context.'[844] Since context matters for the concept and category to operate, indigenous peoples in Africa and Asia can facilitate a contextualized understanding of the situation of indigenous peoples generally, which can be useful for grasping the situation of indigenous peoples in the Middle East. Africa and Asia reveal the puzzling tenets that underlie the 1986 UN definition—challenges that are borne out by the criteria of historical continuity and self-identification as applied in practice.

a. 'Historical Continuity with Pre-Invasion and Pre-Colonial Societies' in Context

The criterion of 'historical continuity' highlights the importance of conquest and colonization, and feeds into the general assumption that an indigenous peoples 'were first and are still there, and so have right of prior occupancy to their lands.'[845] However, it would be incorrect to automatically equate first occupancy and prior occupancy,[846] since the difference between them is important when indigenous status is disputed by more than one group. Notwithstanding these differences, most academic commentators agree that the prior-occupancy principles have been generally accepted in international definitions of 'indigenous'; in other words, an indigenous peoples is only required to show that they occupied the territories at the time of colonization or invasion. Hence, in the classical cases of indigenous peoples—such as the Native Americans and First Peoples in the Americas, the Maori in Aotearoa/New Zealand, and the Aborigines in Australia—the application of the 1986 UN definition poses no particular problem. In these contexts, the settlers—characterized by their race (white), gender (mainly male), and place of origin (Europe)—came and never left. The devastating impact of the European conquest and colonization includes genocide, massacres, epidemic diseases, exploitation, mass displacement, and dispossession. On this point, scholars acknowledge that the indigenous peoples' definitions 'in most common usage arise out of the European colonial experience, [that] originated in western industrial nations, and reflect the historical and contemporary realities of these social relationships.'[847] The application of the definition is murky when the territory has been de-colonized (i.e., when the white, mainly male European

[844] UN Committee on Economic, Social and Cultural Rights, para. 88. See also, Patrick Thornberry, *Indigenous Peoples and Human Rights* (Manchester: Manchester University Press, 2002), 33-34.
[845] Maybury-Lewis, *Indigenous Peoples, Ethnic Groups, and the State*, 19–20.
[846] On the distinction between prior occupancy and first occupancy, see Jeremy Waldron, "Indigeneity - First Peoples and Last Occupancy," *New Zealand Journal of Public and International Law* 1 (2003): 63.
[847] Coates, *A Global History of Indigenous Peoples*, 8–9.

settlers left, but the situation of indigenous peoples within the boundaries of these independent states did not alter) or when other forms of colonialism (e.g., internal colonialism) occurred.[848] Its application is also suspect when the history of the indigenous-seeking group is non-linear or incomplete, or when multiple versions of history emerge. Scholars, particularly those preoccupied with post-colonial and cultural studies, have scrutinized these questions.[849]

There have been efforts to address the situation of indigenous peoples and to expand the 1986 UN definition requirement to include places where colonialism or invasion was absent, with outcomes that are relevant to the indigenous turn in the context of the Bedouin in Israel. As far back as the 1960s (at the height of UN decolonization), an attempt was made to encompass the rights of indigenous peoples by including non-colonial settings.[850] This maneuver, spearheaded by Belgium, sought to bring back the League of Nations Covenant article 23(b), 'which bound members to secure just treatment of the native inhabitants of territories under their control.'[851] In the 2000s courts and tribunals, at the regional level especially, have ruled on matters where colonialism and invasion did not occur. For example, in its jurisprudence on collective land rights, the Inter-American Court of Human Rights ('Inter-American Court') shifted focus away from pre-colonial continuity.[852] The decision in *Moiwana Village v. Suriname*,[853] in which the Inter-American Court considered tribal peoples who are not pre-colonial, is of particular relevance to this study.

Setting aside the colonial requirement, the courts based their decision on the 'all-encompassing relationship' to traditional lands and the concept of communal land ownership.[854] The African

[848] See Brownlie's five models of colonization and settlement in Brownlie, *Treaties and Indigenous Peoples*, 3.
[849] Clifford, *Returns*.
[850] Following the UN General Assembly Resolution 637 (VII), adopted on 16 December 1952, which recognized that 'every Member of the United Nations, in conformity with the Charter, should respect the maintenance of the right of self-determination', Belgium, which had given up its own colonial possessions under the new decolonization mandates, then further attempted to secure human rights and self-determination for native peoples. The 'Belgium thesis', as it came to be known, would have 'extended the concept of 'Non-Self-Governing Territories' to include disenfranchised indigenous peoples living within the borders of independent states, especially if the race, language, and culture of these peoples differed from those of the dominant population.' Michla Pomerance, *Self-Determinación in Law and Practice: The New Doctrine in the United Nacions* (Martinus Nijhoff Publishers, 1982), 114, footnote 112.
[851] A. Rigo Sureda, *The Evolution of the Right of Self-Determination: A Study of United Nations Practice* (Leiden: Sijthoff, 1973), 103.
[852] First demonstrated in The Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Judgment of August 31, 2001, Inter-Am. Ct. H.R., (Ser. C) No. 79 (2001).
[853] Moiwana Village v. Suriname Judgment of June 15, 2005, Inter-Am Ct. H.R., (Ser. C) No. 145 (2005).
[854] Moiwana Village v. Suriname Judgment of June 15, 2005, Inter-Am Ct. H.R., (Ser. C) No. 145 (2005) paras. 132–133.

Commission on Human and Peoples' Rights ('African Commission') demonstrated a yet more flexible approach to the criterion of historical continuity in the case of the Tuareg of the Sahara and Shale regions, who are relatively new to the areas they inhabit. The African Commission recognized the Tuareg's status as an indigenous peoples because of their marginalization in nation-states dominated by sedentary agriculturalists. According to the African Commission's Working Group on Indigenous Populations/Communities, a body established to examine the relevance of indigenous peoples' in Africa,

> "Indigenous Peoples" has come to have connotations and meanings that are much wider than the question of "who came first." It is today a term and a global movement fighting for rights and justice for those particular groups who have been left on the margins of development and who are perceived negatively by dominating mainstream development paradigms, whose cultures and ways of life are subject to discrimination and contempt and whose very existence is under threat of extinction.[855]

The complexity of invasion and colonialism in the Middle East suggests that the Inter-American Court's or African Commission's approach is more suitable, and arguably would strengthen the Bedouin claim to an indigenous peoples' status and rights, including land rights.

Expanding the criterion of 'historical continuity' to include non-colonial settings fails to address the 'romanticized continuity demanded by Western history'[856] that is also inscribed in the criterion—a problem that invites reconsideration.[857] History, especially a thorny history often linked to a colonial past, illuminates the several problems inherent in the act of recording and narrating the past. Firstly, relegating the colonial past of indigenous peoples as 'history' allows the impact of conquest and colonization to be erased or minimalized.[858] As a result of colonization, initiated in Europe more than a thousand years ago and expanded through the beginning of the twentieth century, Eurocentrism[859] has permeated most disciplines including

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[855] "Resolution 65 on the Adoption of the Report of the African Commission's Working Group on Indigenous Populations/Communities. Adopted by the African Commission on Human and Peoples' Rights, Meeting at Its 34th Ordinary Session, in Banjul, The Gambia (6-20 November 2003)."

[856] Benedict Kingsbury, "The Applicability of the International Concept of 'Indigenous Peoples' in Asia," in *The East Asian Challenge for Human Rights*, ed. Joanne R. Bauer and Daniel A. Bell (Cambridge, UK; New York: Cambridge University Press, 1999), 349.

[857] Thornberry, *Indigenous Peoples and Human Rights*.

[858] Some scholars, who recognize the phenomenon of an impaired historical understanding based on a presentist perspective, propose adopting a historical approach instead. Such a historical proposal would entail adding additional historical criteria, such as a "sense of rootedness in the past" and "a conservative attitude towards external influences". Coates, *A Global History of Indigenous Peoples*, 13.

[859] Thornberry remarks:

Through the indigenous lenses, international law can look like a system for the vindication of Eurocentric state practice—the 'apologist' pole of the Koskenniemi characterization. On such a view, it has done little to salvage indigenous societies and much to damage them—though recalling the stances of Vitoria, Las Casas and others

international law.[860] On a more general level, when it comes to groups like women, children, the poor, the colonized, and indigenous peoples, there is a 'disturbing lack within human rights discourse of the histories of those people who have been silenced within and because of the Western "meta-narrative."'[861] According to Eric Wolf, there are 'people without history' or who have not been given a voice in Western histories.[862] History, it is argued, can relegate indigenous peoples to the past and the margins, who are not 'participants and subjects but marginal objects contained within a much broader account of the nation, prominent perhaps as to customs and folk dances but peripheral in national politics and national law.'[863]

Secondly, although colonization is frequently viewed through the lens of history, on a theoretical and practical level the task of piecing together history is difficult, especially considering contingencies and the lapse of time. This difficulty can be traced to the fact that the colonizer fared better in making his own history, than did the colonized.[864] A change has been set in motion since the era of decolonization and the emergence of postcolonial struggles, which enables people to contest the official version of history and to make their own history. Indeed, one commentator remarks that 'by making their own history, people are also engaged in a struggle to make history their own.'[865] Thirdly, each set of peoples has its own particular narrative with its inherent complexities.[866] Shelly Wright contends: 'Because of this, a group's

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reminds us that, in moments of epiphany, system actors managed to grasp the humanity and essential dignity of the non-European peoples. A sense of dispossession and loss still weighs heavily with many peoples.
Thornberry, *Indigenous Peoples and Human Rights*, 62.

[860] *Eurocentrism* is defined to mean:
The imaginative and institutional context that informs contemporary scholarship, opinion, and law. As a theory, it postulates the superiority of Europeans over non-Europeans… On a global scale, this results in a world with a single center—Europe—and a surrounding periphery. Europe, at the center (Inside), is historical, invents, and progresses, and non-Europe, at the periphery (Outside), is ahistorical, stagnant, and unchanging.
Marie Ann Battiste and James (Sa'Ke'j) Youngblood Henderson, *Protecting Indigenous Knowledge and Heritage: A Global Challenge* (Saskatoon: Purich Publishing, 2000).

[861] Eric R. Wolf, *Europe and the People Without History* (Berkeley: University of California Press, 2010), 3.

[862] Wolf, *Europe and the People Without History*. One commentator remarks that it is a mistake to believe the subject of human rights is the white, European, man. Instead, the real subject is the people without history—"those Others whose stories have been totalized or 'universalized' out of existence; whose identity has been subsumed into the project of colonialism; whose difference has been eliminated through appropriation and assimilation; whose future is threatened by the juggernaut of economic globalization." Wright, *International Human Rights, Decolonisation and Globalisation*, 31. See also, Battiste and Henderson, *Protecting Indigenous Knowledge and Heritage*, 21.

[863] Kingsbury, "'Indigenous Peoples' in International Law," 422–23.

[864] J.G.A. Pocock, "Waitangi as Mystery of State: Consequences of the Ascription of Federative Capacity to the Maori," in *Political Theory and the Rights of Indigenous Peoples*, ed. Duncan Ivison, Paul Patton, and Will Sanders (Cambridge: Cambridge University Press, 2000), 35.

[865] Greene, *Customizing Indigeneity*, 21.

[866] Duncan Ivison, Paul Patton, and Will Sanders, "Introduction," in *Political Theory and the Rights of Indigenous Peoples* (Cambridge: Cambridge University Press, 2000), 1.

pluralistic stories or 'histories' about itself are forced into one 'History' that becomes the official version.'[867]

From a legal perspective, history has played a decisive role and has proven critical for any group claiming an indigenous peoples' status and rights in international law. To illustrate the problem of documenting and narrating a homogenous history, Clifford gives the example of a trial concerning a Native American land rights claim. For the claim to succeed under US law, the group needed to establish a simple linear historical continuity over hundreds of years, which is a Western and romanticized continuity that disregards tribal history. Clifford goes on to say that in history,

> [tribal or indigenous] societies are always either dying or surviving, assimilating or resisting. Caught between a local past and a global future, they either hold on to their separateness or 'enter the modern world'… But the familiar paths of tribal death, survival, assimilation, or resistance do not catch the specific ambivalence of life in places like Mashpee over four centuries of defeat, renewal, political negotiation, and cultural innovation.[868]

As this example reflects, in order to prove historical continuity, indigenous cultures are typically—and often simultaneously—denigrated, romanticized, or frozen in time by literate observers with unrealistic and paternalistic views.[869] Tying in with this, Clifford observes, '[w]hen "culture" and "place" are reasserted politically, it will tend to be in nostalgic, commodified forms.' Furthermore, in the process of retelling history, it important to ask the question of *whose* history.[870] Typically, the dominant history is the public or national narrative against which the history of indigenous peoples is read.[871] However, a judicial shift in approach sees courts and tribunals show an openness to the histories of indigenous peoples. Commenting on the *Delgamuukw* case, which concerned aboriginal rights and land title in British Columbia,[872] Thornberry states, 'the reception of oral history in *Delgamuukw* is one pointed to new ways of seeing, new concepts of evidence and space for indigenous narratives in the realm of claim and counter-claim about the "facts" of history.'[873] Hence, understandings of history and 'historical continuity' have witnessed a shift from scientific knowledge and official history

[867] Wright, *International Human Rights, Decolonisation and Globalisation*, 3.
[868] James Clifford, *The Predicament of Culture: Twentieth-Century Ethnography, Literature, and Art* (Cambridge, MA: Harvard University Press, 1988), 342.
[869] Wright, *International Human Rights, Decolonisation and Globalisation*, 106.
[870] Thornberry, *Indigenous Peoples and Human Rights*, 61.
[871] Moreover, the task of finding the 'relevant histories in and beyond the discourses of colonialism' must take note of the introduction to a presumptive universalism. Thornberry, 61.
[872] Delgamuukw v. British Columbia, [1997] 3 S.C.R. 1010.
[873] Thornberry, *Indigenous Peoples and Human Rights*, 428.

to traditional knowledge and local history, which allows for indigenous peoples' narrations and modes of authenticity.

b. 'Self-Identification' in Context

Similar to the criterion of historical precedence, the criterion of self-identification highlights the practical dilemmas in seeking indigenous recognition. While definitional criteria are usually listed separately, they are often difficult to separate in reality, and so are read together—particularly for the criteria of 'historical continuity' and 'self-identification'. On this point, Connolly remarks, 'the group in question has maintained a *continuous* group identity throughout the period since colonization and […] they possess a historical priority in their occupation of the land with the nation-state, as well as an ongoing cultural relationship to that land'.[874] Court decisions handed down in domestic jurisdictions also lend support to merging the two criteria. For instance, in *R v. Powley*, the Supreme Court of Canada ruled in favor of the Métis community and their constitutionally protected right to hunt, but refrained from making a final decision on who are the Métis. Instead, the ruling established a tenfold test to determine Métis rights, emphasizing self-identification and proof of historical continuity with the Métis community prior to European conquest and control.[875] The judgment reads as follows:

> 31. First, the claimant must self-identify as a member of Métis community. This self-identification should not be of recent vintage: While an individual's self-identification need not be static or monolithic, claims that are made belatedly in order to benefit from a s. 35 right will not satisfy the self-identification requirement.
>
> 32. Second, the claimant must present evidence of an ancestral connection to historic Métis community. This objective requirement ensures that beneficiaries of s. 35 rights have a real link to the historic community whose practices ground the right being claimed. We would not require a minimum "blood quantum," but we would require some proof that the claimant's ancestors belonged to the historic Métis community by birth, adoption, or other means. Like the trial judge, we would abstain from further defining the requirement in the absence of more extensive argument by the parties in a case where this issue is determinative. In this case, the Powley's Métis ancestry is not disputed.

In another example, the Rehoboth Basters is an ethnic group who individually and collectively self-identified as indigenous, but failed to meet the external requirements of recognition at the UN. Their case is illustrative of how the self-identification criterion is crucial for admittance

[874] Connolly, *Indigenous Rights*, xv.
[875] R. v. Powley 2003 SCC 43, [2003] 2 SCR 207, paras. 16, 17 and 18.

to or refusal from the international legal regime of indigenous peoples, and access to international venues.[876] As Kingsbury concludes, this criterion is an 'empowering term internationally,' and can result in 'the temptation for outsiders, and for participants… to define it as ethnic, thus clouding analysis and perhaps eventually altering its structures.'[877]

The freedom to be indigenous and to self-identify as such, as well as to possess their own culture and follow their own way of life, has steadily gained global currency since the 1970s.[878] A watershed moment for indigenous peoples and the self-identification was in 1977, when during the second general assembly of the World Council of Indigenous Peoples (WCIP), an international body set up in 1975 and dedicated to having indigenous peoples' rights accepted on a worldwide scale, passed a resolution that 'only indigenous peoples could define indigenous peoples.'[879] This statement ties in with the global component of this criterion and helps substantiate this sense of a global solidarity 'with those who share similar ways of life and histories of colonial and state domination that then grows into the realization that others around the world [also] share the same experiences.' Before the criterion of 'self-identification' was introduced formally in 1989 with ILO Convention 169, indigenous peoples themselves played little role in the identification process—that task was left to non-indigenous actors on the national level and to a lesser extent on the international level. It is not surprising that indigenous peoples themselves supported by indigenous peoples' organizations and international organizations champion the criterion of self-identification, which has steadily gained a foothold over the other criteria.

Global solidarity also has permeated to the regional level to create a regional solidarity in the Americas, as well as in Asia and Africa.[880] For example, in late 2003 the 53 signatory states of the ACHPR African Commission on Human and Peoples' Rights adopted the *Report of the African Commission's Working Group on Indigenous Populations/Communities* and its recommendations.[881] One of the most recent legislative endeavors reflecting the radical shift

[876] For example, Jeff J. Corntassel uses the self-identification framework to re-conceptualize indigenous people to peoplehood. See, Corntassel, "Who Is Indigenous?"
[877] Benedict Kingsbury, "Claims by Non-State Groups in International Law," *Cornell International Law Journal* 25 (1992): 502.
[878] Stuart Kirsch, "Juridification of Indigenous Politics," in *Law against the State: Ethnographic Forays into Law's Transformations*, ed. Brian Donahoe et al., 2012, 23–44.
[879] Bodley, *Victims of Progress*, 146.
[880] Niezen, *The Origins of Indigenism*, 22.
[881] Resolution 65 on the Adoption of the "Report of the African Commission's Working Group on Indigenous Populations / Communities" by the African Commission on Human and Peoples' Rights, meeting at its 34th

toward indigenous peoples' involvement in determining indigenous status, Article 1 of the 2017 OAS Declaration states: 'Self-identification as indigenous peoples will be a fundamental criterion for determining to whom this Declaration applies. States shall respect the right to such self-identification as indigenous, whether individually or collectively, in keeping with the practices and institutions of each indigenous people.'[882] These examples reflect how indigenous peoples have transformed into international law subjects and become actors or agents on a par with the nation-state, the primary lawmaker and designator of indigenous status and rights.

The self-identification criterion is subjective, and that very subjectivity confers power to the indigenous peoples themselves. The IGO definitions of indigenous peoples in international human rights law discussed above are indicative of the global trends that have brought the self-identification criterion to center stage. Anaya acknowledges that indigenous 'is arrived at by identifying and synthesizing the characteristics of the groups under observation, within a starting point being those groups that self-identify as indigenous within a common agenda of claims and aspirations.'[883] This criterion puts the indigenous (legal) identity and subjectivity back into indigenous hands, which reflects the rising agency of indigenous peoples in international law. The eminence of 'self-identification' also aligns with the rise of indigenous activism, transnational networks, and programmatic activity.

The criterion of self-identification highlights the internal and external dynamics in contemporary definitions of 'indigenous peoples' in international human rights law, hinting at the paradoxes in the process and the agency of the actors involved, both indigenous and non-indigenous stakeholders. This criterion involves a two-pronged test: individual and collective recognition by members of the group (self-identification on the intra-level) and recognition by others (nation-states and the international community on the inter-level).[884] These provide

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Ordinary Session, in Banjul, The Gambia from 6th to 20th November 2003. According to Tashi Phunsok, the Declaration of South Asia Regional Peoples on Conflict and Peace, Haflong, India, March 31, 2007, or the Haflong Declaration, was adopted by 68 South-Asian indigenous peoples' organizations in 2007. The preamble affirmed the self-identification of the 68 groups. See, Tashi Phuntsok, "Indigenous Peoples under International Law: An Asian Perspective" (The University of Western Ontario, 2012), 108.

[882] "American Declaration on the Rights of Indigenous Peoples, AG/RES. 2888 (XLVI -O/16) (Adopted at the Third Plenary Session, Held on June 15, 2016),".

[883] Anaya, *International Human Rights and Indigenous Peoples*, 28.

[884] This correlates with the self-identification model of Jeff F. Corntassel and Tomas Hopkins Primeau, which is founded on an analysis at four different levels. This levels-of-analysis approach can be divided into: 'the individual and the right of a group to define its own membership within its host state; the host state and its regulation of groups within its borders; and the UNWGIP (international level) and its unrestricted right of

controls to prevent cases like the Rehoboth Baster community described above.[885] On an individual basis, an indigenous person is one who belongs to these indigenous populations through self-identification as indigenous (group consciousness) and who is recognized and accepted by these populations as one of its members (acceptance by the group).[886] This criterion preserves for these communities the sovereign right and power to decide who belongs to them, without external interference. Their continued existence as peoples is closely connected to their recognition, offering the possibility of influencing their own fate and living in accordance with their own cultural patterns, social institutions, and legal systems. Self-identification also involves the understanding that the group has a distinctive traditional way of life and cultural identity that the group seeks to preserve—at the external level, this means that the group is viewed as indigenous by non-members. The Rehoboth Basters, for instance, failed to meet the external identification threshold, which proved decisive for withholding indigenous peoples' recognition.[887] This external aspect of the 1986 UN criterion can be compared to the World Bank self-identification indicator discussed above: although 'self-identification' is required, it is the World Bank Task Manager or qualified social scientist who ultimately decides whether to designate indigenousness to a group.

There is a backlash to the agency conferred through 'self-identification' since this criterion can create rifts between indigenous and non-indigenous populations. When a group claims an

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recognition of a group's indigenous status.' See, Corntassel and Primeau, "Paradox of Indigenous Identity," 142. Furthermore, Corntassel and Hopkins Primeau make reference to Will Kymlicka's conceptualization of minority rights, which is composed of internal and external dimensions, in which the former is concerned with the regulation of the groups' members while the latter deals with the intergroup relations, such as protecting the group's autonomy and cultural distinctiveness from the host state. Allen Buchanan sees an interrelation between these dimensions and calls them "dual-standing collective rights" in order to protect the rights of the individual and the collective. However, there is not universal agreement over this internal/external dichotomy. Ian Brownlie makes 'the point that the opposition which appears in the sources between the definition of indigenous populations 'by themselves' and their definition 'by others' is a false dichotomy.' See, Ian Brownlie, "The Rights of Peoples in Modern International Law."

[885] Corntassel and Primeau, "Paradox of Indigenous Identity," 144.

[886] While this internal recognition might appear coherent and uncomplicated, this is not the case. The right of self-identification at the individual level presents problems because identity is not easily or uniformly constituted and varies depending on one's own culture —a personal affinity—or alternatively by the larger society. Moreover, a key question is whether this right is an absolute right. Regarding the community level, the issue is one of official membership and by extension the standards of such membership, which often involves a kind of balancing act between permitting prospective members and maintaining cultural integrity. Standards vary from blood quantum requirements to the more acceptable in terms of cultural social indicators. These ideas are developed fully by Jeff J. Corntassel and Tomas Hopkins Primeau in "The Paradox of Indigenous Identity." Corntassel and Primeau, 142–47.

[887] Niezen remarks, that the "Working Group on Indigenous Populations has, since its inception in 1982, maintained an open-door policy toward participation in its annual two-week gathering of indigenous peoples and organizations," which ties in with the practical approach of the WGIP. See, Niezen, *The Origins of Indigenism*, 21.

internationally-created status and rights, members of the group often also hold citizenship in the nation-state, which includes citizenship rights and duties.[888] A situation can arise when internal self-identification is supported by the international community but unsupported by the nation-state. Without formal identification and recognition at the domestic level, it is difficult for a group to have direct access to the international legal frameworks available to indigenous peoples.[889] From a statist perspective at its most extreme, the act of indigenous peoples' self-identification and recognition can be viewed as an act of violence against the integrity and continuity of the state.[890]

5. Contextualizing the Category and Concept of Indigenous Peoples

Both theorizing on the concept and category of indigenous peoples and applying it in practice highlight the role of context and spatiotemporal factors, which should be given weight in considering definitions of 'indigenous peoples'. In Africa and Asia, context indicates that applying 'historical continuity' does not lend itself to a fluid and conclusive determination of whether a group amounts to an indigenous peoples according to the international standards of the UN working definition, the ILO statement of coverage, and the World Bank operational directives. Moreover, 'self-identification' as an indigenous peoples can be claimed by more than one group in a particular context. Therefore, it can be argued that other criteria—such as the elements introduced by a particular local context—should also be considered. Contextualization in practice is permissible under the constructivist theoretical approach discussed above, and allows a broader understanding of how the concept and category of indigenous peoples plays out in different locations at different times and in different groups.

The contextualization of the concept and category of indigenous peoples in real-life situations highlights the texture of the international framework of indigenous peoples in society, and the

[888] Levi and Durham look at the intersection of indigeneity and globality which as a form of global citizenship employing the case studies of the Hadza in Tanzania and the Jews in Israel to show 'globalizing indigenous peoples' and 'indigenizing global peoples'. See, Jerome M. Levi and Elizabeth Durham, "Indigeneity and Global Citizenship," in *Indigenous Education: Language, Culture and Identity*, ed. W. James Jacob, Sheng Yao Cheng, and Maureen K. Porter (Heidelberg: Dordrecht: London: New York: Springer, 2015), 395–427.

[889] This does not mean that the group is without any legal rights at the domestic and international level but it means that they are unable to exercise their indigenous peoples' rights under the international law instruments such as the ILO No. 107 and 169, UNDRIP and World Bank policies. However, non-state bodies often recognize groups as indigenous in various international forums and although this does not amount to official recognition, it does provide support in favor of indigenous recognition.

[890] James Clifford, *Returns: Becoming Indigenous in the Twenty-First Century* (Harvard University Press, 2013), 15.

problems when appropriating and adapting a Western-developed and internationally-defined status and rights to domestic and local settings.[891] When the concept and category transits from the international context to the local context, we see the complex and controversial underpinnings of the concept and category play out to produce limitations, frictions, and hybridities in practice. The chapter that follows explores understandings of the concept and category of indigenous peoples among domestic scholars and courts in the context of the Bedouin in the Negev.

[891] For the most part, it is not unheard of in Asia and Africa to hear "we are all indigenous to the territory", which was repeated by state parties during the drafting of the UNDRIP (discussed above). Indeed, this issue of whether groups were ethnic minorities or indigenous peoples has preoccupied individuals at the UN, including Special Rapporteur Miguel Alfonso Martínez (discussed above).

Would you like to try meet the "deniers"?
You should not say you're staying in Lakiya
if you decide to.[892]

V. The Scholar and the Judge—Knowledge Production of Indigeneity in the Israeli/Bedouin Context

The domestic scholar plays a prominent role in generating unique connotations and shades of meaning of the concept and category of indigenous peoples in the context of the Bedouin in Israel. Established and early-career scholars are directly involved in the debate, with roughly half also educated or trained in law. Both legal and non-legal scholars rely on international human rights law, specifically indigenous peoples' rights, to make the case for or against the Bedouin's status as an indigenous peoples and any related rights.[893] While the international human rights law of indigenous peoples was undergoing transformative and jurisgenerative change at the international level in the last three decades of the 20th century, old perceptions about the Bedouin continued to persist, Bedouin scholars had little influence in the academic establishment in Israel, and the term *indigenous* conveyed a narrower meaning, mainly

[892] "Email Correspondence," November 23, 2015. Lakiya is one of the seven government-planned towns built as part of the state's plan to move the Bedouin into designated areas. Authored by Oren Yiftachel, Sandy Kedar, and anthropologist Batya Roded, 'Between Rights and Denials: Bedouin Indigeneity in the Negev/Naqab' mounts a rejoinder to the multidimensional denials by the state, the law, academic institutions, and in particular the scholar who plays a critical role in the 'denial of state denial'. Ultimately, the authors argue that '*rights should override denials*' and view indigeneity as the most appropriate framework for understanding the Bedouin in Israel and for achieving transitional justice by means of recognition and multiculturalism. This intervention adds another layer to the protracted disagreement in the domestic establishment. Yiftachel, Roded, and Kedar, "Between Rights and Denials," 2130.

[893] I would recommend reading back-to-back: Nasasra, "The Ongoing Judaisation of the Naqab and the Struggle for Recognising the Indigenous Rights of the Arab Bedouin People"; Yahel, Kark, and Frantzman, "Are the Negev Bedouin an Indigenous People? Fabricating Palestinian History." Making the case for the Bedouin's indigeneity, scholars are currently immersed in comparative research between the Ottoman *mewat* land category and the European *terra nullius* doctrine. See, *Terra Nullius in the Negev? Legal Geographies of Settler-Indigenous Encounters* (forthcoming), first published as an article in an Israeli law journal. See also, Oren Yiftachel, Alexandre (Sandy) Kedar, and Ahmad Amara, "Re-Examining the 'Dead Negev Doctrine': Property Rights in Arab Bedouin Regions"," *Mishpat Umimshal* 1, no. 2 (2012): 7–147. Contesting the Bedouin's indigenous status and rights, these scholars are also thinking comparatively; however, they compare and contrast the Bedouin to other groups in the Middle East who are not seeking indigenous recognition or rights. See, Kark and Frantzman, "Empire, State and the Bedouin of the Middle East, Past and Present: A Comparative Study of Land and Settlement Policies."

descriptive or anthropological (see Chapter 2).[894] Due to the escalation in tension over the land dispute between the Bedouin and the State of Israel, a rise in civil society engagement, and the politicization of the Bedouin,[895] scholars began to research and write about the Bedouin differently in the 1990s. Since the 21st century, indigeneity has become one of the primary—and contested—analytical frameworks for the Bedouin and their current situation in Israel.

Two distinct positions, often perceived as hardline and conflicting, have emerged.[896] Detailed theoretical explorations, extensive empirical analyses, and methodological rigor characterize this scholarship, although each side is critical of their counterpart's research agendas and approaches. One side argues that because the Bedouin are indigenous to the Negev, they are entitled to indigenous peoples' recognition and rights under international human rights law. This body of work is also informed by the theoretical model of settler-colonialism, or another subcategory of colonialism (see Chapter 2). Moreover, these scholars usually do not limit themselves to knowledge production and scholarship pursuits, but are also involved in a range of activities outside of the academy and in the public sphere. By contrast, the other side argues that the Bedouin fail to meet the criteria of the international human rights law, which negates any possible claim to indigenous peoples' status and rights and renders the indigenous question moot. This body of work takes the nation-state as its primary unit of analysis. The standard research paradigm belongs largely to the state, since its epistemic authority is pervasive and is embedded in the historic nation-state building processes.

Even if they appear less active than the rights translator in civil society (discussed in Chapter 3), these scholars are knowledge translators who can be equally, or even more, influential in affecting the academic field. It is important to note that scholarly translation and counter-translation, also incorporate engineering for the concept and category of indigenous peoples.[897] Knowledge producers, who appropriate and translate knowledge of the concept and category

[894] For example, Ghazi Falah, a Bedouin scholar who was born in the Galilee in the north, entered into a tempered exchange with Arnon Soffer at Haifa University in 1991. Ishmael Abu Saad describes the review process in one of his articles. See, Ismael Abu-Saad, "Where Inquiry Ends: The Peer Review Process and Indigenous Standpoints," *American Behavioral Scientist* 51, no. 12 (August 1, 2008): 1902–18.
[895] The 1990s can be seen as a political moment for the Arab minority in Israel, and especially among the Bedouin. On the cross-border political activities between the Bedouin and the region under the Palestinian Authority's control, see Parizot, "Gaza, Beersheba, Dhahriyya." See also Amara on the politicization of the Bedouin during the 1990s, Amara, "The Naqab Bedouin and Colonialism," 176–77. For a historical analysis of the Bedouin's political agency see, Nasasra, *The Naqab Bedouins: A Century of Politics and Resistance*; Nasasra, "The Politics of Non-Cooperation and Lobbying: The Naqab Bedouin and Israeli Military Rule, 1948-67."
[896] Ratcliffe et al., "The Naqab Bedouin and Colonialism," 13.
[897] Mrázek, *Engineers of Happy Land*.

of indigenous peoples so as to affect its activity and effectiveness, ultimately contribute to bolstering its legitimacy and sustainability. Similarly, scholars whose knowledge production counters the appropriation and translation of the concept and category of indigenous peoples help to de-legitimize and dilute the legitimacy of Bedouin indigenousness and to make the Bedouin's status as an indigenous peoples unsustainable in the specific setting.

This section focuses on the case through which the status and rights of indigenous peoples in international law entered the courtroom in the domestic setting in the mid-2000s. In *al-Uqbi v. the State of Israel*,[898] the District Court addressed the petition that 17 Bedouin claimants are entitled to land ownership in accordance with the international human rights law of indigenous peoples, specifically in relation to land rights. If we understand rights translation to occur *up* and *down* (see Chapter 3), then scholars can be seen to play a small role in the rights translation by translating *across* disciplines—however, scholars in the Israeli/Bedouin context can be considered key appropriators *and* translators of the international definition. In Merry's vernacularization model, knowledge translators, whose public engagement and intellectual activism have mobilized the internationally-created status and rights in the Israeli/Bedouin context, are involved in all three cultural flows. Academic activists or public intellectuals who are also scholar-authorities can be subject to questions about their motivations and potential bias in their scholarship. Such questions do not arise (or at least not to the same degree) when the scholar's non-academic engagement is in an official capacity, such as serving on a government committee or litigating on behalf of the state. This use of intellectual tradition and authority, real and perceived, necessitates additional remarks about the position of the scholar as the expert of knowledge—a topic at the heart of the *al-Uqbi* decision.

1. Expert Knowledge, Legislation, and the al-Ukbis before the Lowers Courts

The landmark *al-Ukbi* decision undoubtedly warrants a thorough case analysis; however, the *al-Uqbi* case also reveals the ways in which legal ideas, narratives, and discourses about the Bedouin are generated in the courtroom, which has a distinct set of procedures, language, and rules of access.[899] As discussed earlier in this study, the decision reveals the ways in which

[898] Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others.
[899] On the absence of the narrative form in legal scholarship, see Patricia Ewick and Susan S. Silbey, "Subversive Stories and Hegemonic Tales: Toward a Sociology of Narrative," *Law & Society Review* 29, no. 2 (1995): 197–226.. On judicial narratives, see Shamir, "Suspended in Space," 234.

knowledge informs law, and law informs knowledge. In addition, as this was the first time a claim based on the international human rights framework of indigenous peoples was included in a petition in Israel, the judge in the *al-Uqbi* case addresses the foreign rights framework and affects the production (or counter-production and erosion) of indigenous peoples' status and rights for the Bedouin.[900]

The factual background of the *al-Ukbi* case, which supplements the brief history of al-Araqib shared in the introduction and Chapter 1, is the point of departure for examining the law/knowledge nexus in the context of the Bedouin in Israel. In 2006, 17 Bedouin members of the al-Uqbi family, including the late Suleiman Mahmud Salem al-Uqbi, submitted a petition based on six parcels of land, and argued the land on which they had lived for generations was cultivated and owned by the family. In the legal proceedings, the claimants argued that the state's order to expropriate the land in the early 1950s, which roughly coincided with the imposition of military rule, was made on the erroneous assumption that the land was classified as *mewat* under Ottoman law—'dead' land, not adjacent to a settlement, without an owner, and therefore state property. They further argued that the lands had been cultivated and owned by the claimants since antiquity and according to Bedouin tradition and customary law, and so should be classified as *miri* lands under Ottoman law—formal land held by the state but with a right to use the lands for cultivation or pasture granted to allow the revival of the lands. The state counterclaimed that not only were the lands in question *mewat* (i.e., state property) but they were also lawfully confiscated under *Land Acquisition (Validation of Acts and Compensation) Law 5713* in 1953.[901] It is important to note that Article 3 of this legislation stipulates on compensation and alternative lands for those whose lands were expropriated, highlighting the importance of the region for the state as a reservoir of natural resources, a site for industrial and agricultural development, and a valuable area for settling Jewish immigrants and establishing military bases.

In light of the al-Uqbis' claim and the state's counterclaim, the judge had to rule on whether the lands were *mewat* and lawfully confiscated in accordance with Israeli law, or *miri* and lawfully belonging to the Bedouin who were wrongfully dispossessed. In March 2012, Judge

[900] Most studies tend to engage with the jurisprudence of the Supreme Court. Specific to the *al-Uqbi* case, see, Alon Margalit, "The Israeli Supreme Court and Bedouin Land Claims in the Negev: A Missed Opportunity to Uphold Human and Indigenous Rights," *International Journal on Minority and Group Rights* 24, no. 1 (2017): 57–69.. See also, Amara, "The Naqab Bedouin and Colonialism."
[901] Article 2 (a) states the law according to which the Development Authority can expropriate land.

Sarah Dovrat, the presiding judge and vice president of the Be'er Sheva District Court, ruled in favor of the defendant, holding that the lands belonged to the state and were expropriated legally in accordance with the 1953 law. Rejecting the claimant's petition, the court ruled that the land was not assigned to the claimants (*miri*), nor held by them under conditions required by law, and that they were still required to prove their rights to the land by proof of its registration in the *Tabu* [the Land Registry].[902] The court further held that the Bedouin were aware that they were required to register but did not.[903] The decision stated, 'even though the State takes the view that the Plaintiffs are not entitled to compensation, it was prepared to enter into negotiations with them, and it is a pity that such negotiation did not come to fruition in terms of a settlement.'[904] The court ordered the claimants to pay 50,000 NIS (US$14,000) in legal costs.

Although the *al-Uqbi* decision amounts to a legal precedent against the application of indigenous peoples' status and rights to the Bedouin, the details of the proceedings and the law/knowledge nexus illustrate the domestic challenges in making the internationally-defined status and rights active and effective in the context of the Bedouin in Israel. Finally, what and how the court comes to *know* about the Bedouin is significant, but the venue of narrating and knowing the Bedouin is also relevant. While anthropologist James Clifford compares the courtroom to a theater,[905] the courtroom is simply the place where the court sits, and where parties meet and tell their side of the story. In the Be'er Sheva District Court, two parties presented two versions of the Bedouin's past, specifically in relation to land use and settlement patterns, which was supported by testimonies and evidence, and the sitting judge was left to decide.[906] In this way, the courtroom transforms itself into an archive, where legal truths are made and kept.[907]

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[902] Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others, para. 28.
[903] Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others, para. 29.
[904] Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others, paras. 15, 36.
[905] For a fascinating analysis of how the courts treat "Identity in Mashpee [a town Massachusetts and the home of Mashpee Wampanoag tribe]", see Clifford, *The Predicament of Culture*, 291.
[906] 'While formally the trial was being conducted according to correct procedures, it felt as if the result was already known and there was no real chance for the Negev Bedouin claimants to present their claims to the court.' Kram, "Clashes over Recognition," 92.
[907] Jacques Derrida, *Archive Fever: A Freudian Impression*, trans. Eric Prenowitz (Chicago, IL: University of Chicago Press, 1998).

2. The Expert Witness and the Bedouin before the Courts

The court heard from Israel's leading experts in historical geography and political geography, as well as witnesses for both sides and historical documents relating to the land,[908] as in previous land-related litigation—and for the first time, Bedouin claimants submitted their own expert opinions that challenged the formal legal, historical, and geographical arguments made by the state. The expert witnesses on behalf of the al-Uqbis based their counter-arguments on Bedouin customary law, history, and human geography.[909] Professor Oren Yiftachel, a critical geographer and social scientist at BGU's Geography Department, testified for the plaintiffs. Professor Ruth Kark, a leading expert on the historical geography of Palestine and Israel at Hebrew University's geography department, testified for the state. These expert testimonies play a decisive role in the District Court's decision-making. As noted above, the state's attorneys argued that the *Ottoman Land Code* of 1858 was central to answering whether the land was *mewat*. They further argued that, under the law of evidence, witnesses can only testify to their personal knowledge. Because of a lack of personal knowledge about the situation in 1858, the Bedouin witnesses were not permitted to testify about their knowledge through oral histories from their fathers and forefathers.[910] (It is important to note that the Bedouin oral history tradition is more reliable and codified than those words evoke for most Western readers[911]; see Chapter 6.) In this way local knowledge was framed as amounting to hearsay,

[908] Five experts gave testimonies. Oren Yiftachel submitted the main expert testimony for the Bedouin claimants, which included hundreds of pages of evidence, Shlomo Ben-Yoseph submitted an expert opinion based on interpretation of aerial photographs, and Huda Abu-Frieh submitted an expert testimony based on his surveying expertise for the plaintiffs. In addition to Ruth Kark's expert testimony on behalf of the state, Avraham Halely submitted an opinion based on his advocate expertise. See, Kram, "Clashes over Recognition," 174.

[909] It is also noteworthy that, for the first time, Bedouin claimants recruited the services of a law office that specializes in human rights and international law. Kram, 92. Amara engages with the question of the lawyer. Amara, "The Naqab Bedouin and Colonialism," 169–70, 171, 173–74. Also, see Austin Sarat et al., eds., "Destruction of Houses and Construction of a Cause: Lawyers and Bedouins in the Israeli Courts," in *Cause Lawyering: Political Commitments and Professional Responsibilities* (New York, NY: Oxford University Press, 1998), 227–57.

[910] Bedouin women have been confined to activities generally considered to be suited to their nature, essentially housework and child-bearing and -rearing. Since 2010, Bedouin women scholars have included the Bedouin woman's voice when talking about the Bedouin past. See, for example, Aburabia, Safa, "Land, Identity and History: New Discourse on the Nakba of Bedouin Arabs in the Naqab.".

[911] There is a strong tradition of oral transmission of knowledge in the Middle East, as demonstrated today by memorizing the Qur'an and historically through both that and poetry contests. Cole, "Where Have the Bedouin Gone?," 237. On the role of oral transmission in the Bedouin context, Abu-Saad notes, 'History was passed on orally, as well as moral and religious values through poets, respected elders and storytellers. Abu-Saad, "Education as a Tool for Control vs. Development among Indigenous Peoples: The Case of Bedouin Arabs in

and was therefore inadmissible in the courts. The principal valid and admissible evidence was the expert opinions of Professors Kark and Yiftachel. These experts could testify about their personal knowledge and were allowed to draw on all available sources, including historical sources dating back to the 19th century.

The courts did approve the credibility and the validity of Professor Ruth Kark's expert knowledge on the Bedouin in historical geography, which it deemed more accurate and reliable. In short, Kark's assessment of al-Araqib draws on historical, geographical, and contemporary sources, including official maps, surveys, and the travel logs of European travelers[912] to show that there was no 'permanent' settlement in al-Araqib between 1840 and 1917.[913] Based on her cross-reference of primary sources and extensive research, Kark maintains that there had been no permanent settlements in the northern Negev and that there was no evidence that any lands in the area were owned by anyone. The first permanent settlement in the area, according to Kark's testimony, was Hirbet Huga, a town near Gaza about 6.9 kilometers north of the parcel of lands under dispute,[914] and next the permanent settlement was Be'er Sheva, the administrative and trade center established in the early 20th century. To support this opinion that there were no permanent Bedouin settlements in the Negev, she argued that the Bedouin did not make a living from land cultivation but rather survived from herding camels, sheep, and goats, which necessitated seasonal migration across the region. The courts regard Kark's testimony on behalf of the state to be authoritative knowledge, which illustrates the relationship and interactions between expert knowledge and judicial law.

a. The State's Expert and Historical Records in the *al-Uqbi* Case

Because of the role of Kark's expert testimony in deciding the case, it is worthwhile to briefly investigate Kark's research and writings on official maps, population censuses, and other

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Israel," 246. Aref Abu-Rabia also points out that in several Middle Eastern countries, Bedouin customary law (qada' 'urfi) which exists only as an oral tradition. Aref Abu-Rabia, "Family Honor Killings: Between Custom and State Law," *The Open Psychology Journal* 4, no. (Suppl 1-M4) (2011): 36.

[912] European travelogues, including those of Palmer from 1870, have been used in other court cases, including the seminal judgment *al-Huwashla* [1984]. See, Civil Appeal 218/74, Salim Al-Hawashleh v. State of Israel, P.D. 38(3) 141. (n.d.).

[913] Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others, para. 22.

[914] Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others paragraph 20.

written archives.[915] Kark's early work focuses on Jewish settlement in the Negev,[916] while her more recent studies interrogate the settlement patterns of the Bedouin in Palestine, drawing a comparison between Jewish and Bedouin settlement and highlighting the similarities and symmetries between both groups.[917] In parallel, Kark's research has, especially since 2010, shifted to the dissent and conflict between the Bedouin and the State of Israel over land ownership in the Negev.

In particular, Kark has studied the history of maps of Palestine, which served as material evidence in the *al-Uqbi* lawsuit to show Bedouin settlement patterns (including the al-Uqbis) since the enactment of the Ottoman Land Code in 1858. Her research on maps shows that while the Ottomans would affect change in the uses of land, they were not much interested in cartography.[918] In contrast, the British Mandate is remembered and commended for their official surveys and maps activities,[919] such as the Survey of Western Palestine carried out by the PEF's Conder and Kitchener from 1871 to 1877 (see Chapter 2). These PEF maps remain significant—even for the judge in the *al-Uqbi* case, who held the PEF survey to be 'an in-depth and fundamental review' of the settlement in the area.[920] Using aerial photograph surveys during World War I, the Germans and British produced town maps and updated the PEF maps. Unfortunately, all these activities left many areas in the Negev unsurveyed and unmapped, leaving the false impression (since the PEF) that Dhahiriya, a village south of Hebron, was the last area of human population before the Negev desert.[921] The Negev's cartographical absence

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[915] Professor Kark has served as an expert witness in several trials that involved Bedouin land claimants. In all her expert opinions, she supports the state as the property owner. See for example, District Court case 403/05 Almah'di et al. v. State of Israel (decision delivered by Judge Varda on 19 January 2010). Ratcliffe 171 See, Amara, "The Naqab Bedouin and Colonialism," 171.

[916] Ruth Kark, "The Agricultural Character of Jewish Settlement in the Negev: 1939-1947," *Jewish Social Studies* 45, no. 2 (1983): 157–74; Ruth Kark, "Jewish Frontier Settlement in The Negev, 1880-1948: Perception and Realization," *Middle Eastern Studies* 17, no. 3 (1981): 334–56.

[917] Dov Gavish and Ruth Kark, "The Cadastral Mapping of Palestine, 1858-1928," *The Geographical Journal* 159, no. 1 (1993): 70–80; Seth J. Frantzman and Ruth Kark, "Bedouin Settlement in Late Ottoman and British Mandatory Palestine: Influence on the Cultural and Environmental Landscape, 1870–1948," *New Middle Eastern Studies* 1 (2011): 1–22.

[918] On the Ottoman maps, see Ruth Kark and Haim Gerber, "Land Registry Maps in Palestine during the Ottoman Period," *The Cartographic Journal* 21, no. 1 (July 18, 2013): 30–32.

[919] Gavish and Kark, "The Cadastral Mapping of Palestine, 1858-1928," 79.

[920] Noam Levin, Ruth Kark, and Emir Galilee, "Maps and the Settlement of Southern Palestine, 1799–1948: An Historical/GIS Analysis," *Journal of Historical Geography* 36, no. 1 (January 2010): 2, 6–7. See also, Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others, paras. 20, 22.

[921] C.R. Conder and Horatio Herbert Kitchener, *The Survey of Western Palestine: Memoirs of the Topography, Orography, Hydrography, and Archaeology*, ed. Edward Henry Palmer and Walter Besant (London: PEF, 1881), vol. 3. Kark makes reference to this point in her expert report. Gavish notes that 'they did not think it worthwhile to map the Negev south of Beersheba, for it was very sparsely inhabited and was poor in water sources and in cultivatable land'. Dov Gavish, *The Survey of Palestine Under the British Mandate, 1920-1948*, Routledge

was only rectified after 1948 when Israeli mapping began in the south.

While many scholars, like Kark, continue to rely on historical maps of Palestine, they have also begun to employ digital methods, like Geographic Information Systems (GIS), to interrogate the spatial accuracy of the historical maps of Palestine, in terms of their completeness and reliability.[922] This technique facilitates research to compare and contrast hundreds of maps, which helps decipher systematically the settlement patterns of the Bedouin.[923] These GIS-based studies indicate that the majority of Bedouin were unsettled, tent-dwelling nomads until the late 1940s.[924] Old maps and new technologies are used to show the location and distribution of permanent villages and—according to Kark and her co-authors—they amount to 'crucial testimony in legal land claims for both the Bedouin claimants and the State of Israel.'[925] In this use of their expertise in surveys and maps, arguably these scholars act as adjudicators who decide when the Bedouin arrived and where they settled under Western cartographic conventions.[926] It would seem that such cartographic knowledge produces reliable and accurate results about Bedouin settlement patterns, which the judge in the *al-Uqbi* case readily accepts; however, GIS research cannot compile or compare maps that do not exist, and this reliance on the accuracy of cartographic knowledge overlooks the fact that the Negev was not included in historical mapping activity.

Drawing on Kark's testimony, the court also maintained that numbers produced through official surveys and censuses were authoritative and accurate, and could be relied upon to establish basic facts about the Bedouin—a reliance that is equally problematic.[927] Kark has researched and written about the Mandate's endeavors to take censuses of the Bedouin at various intervals, particularly 1922, 1931, and 1946. The census-taking activities converged with tent-counting because the Bedouin pastoralists had no fixed abode but moved freely in search of pastures and water for their herds. Kark gives a lower number of Bedouin living in the Negev during the British Mandate period (57,000-60,000), based on arguments that

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Studies in Middle Eastern History (Abingdon, Oxon: New York, NY: Routledge, 2005), 165. Also cited in Kark and Frantzman, "The Negev," 65.

[922] Levin, Kark, and Galilee, "Maps and the Settlement of Southern Palestine, 1799–1948: An Historical/GIS Analysis," 2.

[923] Levin, Kark, and Galilee, 13.

[924] Levin, Kark, and Galilee, 15.

[925] Levin, Kark, and Galilee, 17.

[926] Levin, Kark, and Galilee, 18.

[927] Mahmood Mamdani, *Define and Rule: Native as Political Identity* (Cambridge, MA: Harvard University Press, 2012), 30.

economic figures are more accurate.[928] However, data from the Bedouin sheikhs at the time indicates a much higher number (more than 90,000), because experts at the time reported that the sheikhs tended to conflate numbers and so their reports were smaller than the actual figure. Census numbers also varied[929] because, historically, the Bedouin were known to evade any form of external control: their unwillingness to participate in census-taking compounded the challenge of counting them (see Chapter 2).[930] Like the official map, the official population census points to fewer Bedouin in the Negev and supports the idea that the Negev was a vast, unpopulated area that awaited 'liberation' and 'civilization', as well as the contention that the Bedouin arrived no earlier than the late 18th century and freely roamed the area until the establishment of Be'er Sheva at the turn of the 20th century. Kark also maintains that, as census-taking relies on scientific methods such as aerial photographs, it produces more accurate and reliable results than the Bedouin sheikhs' oral records or receipts for tax payments of *tith*e [a rural property tax].[931] This argument by the state's experts, which is accepted by the court (the *al-Uqbi* decision refers to the 1922 census, in which 144 Bedouin people were counted, children included[932]), implies that Bedouin knowledge production does not meet accepted scientific standards. Personal knowledge based on local context and experience fails to conform to knowledge-production conventions in the courtroom, where expert knowledge is the order of the day.

The state controls the archives of the types of historical documents accepted by the courts, and thus the narratives that can be formed from them—narratives that are largely accepted by the court but questioned by some critical scholars. The archive is the primary print and literate source for information about the nation-state and the minority groups in its territory. For example, in the *al-Uqbi* case, formal documents, maps, and aerial photographs from the archives are the material evidence used to verify timing of the Bedouin's arrival to the Negev,

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[928] Kark's research on the census, which was accepted by Emanuel Marx, who one of the first Israeli anthropologists to carry out extensive research on the Bedouin. Marx, *Bedouin of the Negev*, 12.

[929] Muhsam, an expert from the Mandatory Department of Statistics, reported that the Bedouin had a tendency to conflate figures, and questioned the 90,000 number. See, Seth J. Frantzman, Noam Levin, and Ruth Kark, "Counting Nomads: British Census Attempts and Tent Counts of the Negev Bedouin 1917 to 1948," *Population, Space and Place* 20, no. 6 (August 1, 2014): 552–68.

[930] On the disengagement of the Bedouin with respect to registering lands, see Kram, "Clashes over Recognition," 12; Shamir, "Suspended in Space," 235, 241; Falah, "Israeli State Policy toward Bedouin Sedentarization in the Negev." See also, Hussein Abu Hussein and Fiona McKay, *Access Denied: Palestinian Access to Land in Israel* (London: New York: Zed Books, 2003), 113, 121.

[931] Kark and Frantzman, "The Negev," 76.

[932] Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others, para. 26.

and all of them point to immigration at the end of the 18th century and sporadic habitation until the middle of the 19th century, rather than presence since antiquity and a form of permanent settlement. The official archives—for example, the Israel State Archive (ISA), Israel Defense Forces and Defense Establishment Archives (IDFA), the Central Zionist Archives (CZA), and the Tuviyahu Archives of the Negev at BGU—are the sites where the nation-state's history is found, and where Bedouin history is assimilated/integrated and becomes part of the official state narrative that began in 1948.[933] In sum, the Bedouin's history based on local knowledge, which is represented and corroborated by non-Bedouin experts, is deemed invalid since it fails the evidential benchmarks the law requires, such as historical documentation.[934]

Israeli courts prefer official testimony because it puts forward evidence that is based on concrete, legible, or countable material.[935] Fitting into what Shamir calls law's 'culture of conceptual order',[936] this kind of material is considered apolitical, objective, and impartial, and is therefore more easily accepted as authoritative knowledge. However, the archive and the archival materials are the product of interests and circumstance, and have undergone various selection, cataloguing, and preservation processes.[937] Against the privileged status of the nation-state archive, some critical thinkers do not limit their research and writings to the official archive but also seek out and uncover local accounts, oral histories, and traditional practices—these additional sources challenge mainstream knowledge production and scholarship about the Bedouin and provide alternative perspectives about the Bedouin's history and current situation. Sometimes branded academic activists or public intellectuals, these critical scholars

[933] Frantzman and Kark, "Bedouin Settlement in Late Ottoman and British Mandatory Palestine: Influence on the Cultural and Environmental Landscape, 1870–1948," 11–12. Frantzman and Kark maintain 'We know, unfortunately, very little about what the Bedouin themselves thought about the changes going on around them in the Ottoman period. Several Bedouin poems written down over the years refer to views of the government and foreigners. The Ottomans 'had the reputation of being severe; government by bayonet (hukm be-sanja) is still a common phrase to describe the period.' One poem recited in the 1970s presents a typical view of what the Bedouin viewed as intrusion in their landscape by government and others. They hoped that the intrusions would be temporary, speaking of 'the Lord who lets strangers go back to their land, like the waves he lets roll to and fro.'

[934] In an effort to overcome this dynamic, an American-Israeli anthropologist has studied and attempted to record Bedouin poems through collecting, verifying, transcribing, transliterating, and translating them. Bailey, *Bedouin Poetry from Sinai and the Negev*.

[935] Here, we can dip into the debates on indicators. For an insightful assessment of the significance of numbers as a form of knowledge and governance, see Nehal Bhuta, "Introduction: Of Numbers and Narratives—Indicators in Global Governance and the Rise of a Reflexive Indicator Culture," in *The Palgrave Handbook of Indicators in Global Governance*, ed. Nehal Bhuta, Gaby Umbach, and Debora Valentina Malito (Cham, CH: Palgrave Macmillan, 2018). Studying capitalism and law, Weber suggests that modern law is not only stable and certain but also countable. See, Weber, *Economy and Society*.

[936] On the conceptual girds of space, time and populations, see Shamir, "Suspended in Space," 234.

[937] Sebastian Jobs and Alf Lüdtke, eds., *Unsettling History: Archiving and Narrating in Historiography* (Frankfurt: Campus Verlag, 2010).

are questioned for their lack of objectivity, impartiality, and scientific rigor.[938] For example, the Be'er Sheva District Court raised this charge against one of the expert witnesses in the *al-Uqbi* case (discussed below).

b. The al-Uqbis' Expert and Local Knowledge in the *al-Uqbi* Case

Against the mainstream narrative about the Bedouin in the Negev, Yiftachel's expert opinion presents the court with a completely different account of the al-Uqbis. His opinion is established on two interlocking threads: (1) the al-Uqbis' cultivation and settlement of the lands in question, and (2) their practice of customary land ownership in these areas. On the first point, Yiftachel shows that these 'tribal areas' of scattered tent clusters were not at that time registered with the authorities, but were nevertheless considered settled and met the definition of a 'village' according to the 1928 *Land Ordinance (Settlement of Rights of Title)*.[939] Yiftachel's testimony demonstrates that the al-Uqbis lived in al-Araqib for generations, and cultivated the land autonomously with minimal external interference from Ottoman and British authorities.[940] He also testifies that the Ottomans, British, and Jewish organizations and individuals purchased lands from the Bedouin—which amounted to external recognition of the Bedouin's land ownership. (This point was challenged by the other expert witness.[941]) Second, Yiftachel's testimony described a functioning, customary legal system characterized by rules for land purchases, inheritance, and court cases on land issues, as well as detailing Bedouin cultivation and an organized way of habitation.[942] His expert knowledge is based on 19th century literature, maps, and aerial photographs; recent scholarship; Bedouin oral testimonies; documents in the petitioners' possession, such as tax receipts, leases, and sale agreements; and fieldwork visits to al-Araqib.[943] In his role as expert witness, Yiftachel facilitates the production of local knowledge on the Bedouin, presenting history, geography, and law from a

[938] For a critique of the scientific methods of inquiry of activist scholars or public intellectuals in this setting, see, Frantzman, "The Politization of History and the Negev Bedouin Land Claims," 48–49, 67–68.
[939] Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others, para. 17.
[940] As in the case, the scholarship argues that the Ottomans and the British recognized the Bedouin ownership. See, Kressel et al., "Changes in the Land Usage by the Negev Bedouin Since the Mid-19th Century. The Intra-Tribal Perspective," 41. Noa Kram looks at Zionist organizations' purchases and the registration of these by the Ottomans, British recognition of land sales to Arabs and Jews, JNF purchases until 1936 and British recognition of Bedouin documents (sanad, tax receipts etc.) Kram, "Clashes over Recognition."
[941] Kram, "Clashes over Recognition," 135, 139–40. See, Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others paragraph 31.
[942] On the clash between Bedouin customary law and state law, see, Kram, "Clashes over Recognition," 116–31.
[943] Kram, 116–31.

distinctly Bedouin perspective. He also mediates their personal histories, cultural knowledge, and description of their land practices.

In the *al-Uqbi* decision, the difference between local knowledge and mainstream knowledge is also pronounced in the court's treatment of the experts from each side.[944] The state attorney cross-examined Yiftachel on the accuracy of his testimony, his academic credentials, and his public activities.[945] Judge Dovrat denounced Yiftachel and faulted him for his lack of preparedness and for the evidential reliability of his testimony.[946] The judge occasionally referred to the testimony of Hassan (Nuri) Suleiman al-Uqbi, but for the most part local knowledge was relegated to the periphery. Instead, the decision draws heavily on scientific-academic knowledge put forward by the state's expert witnesses.[947] Professor Kark's accuracy and academic credentials were not questioned. Kark was cross-examined on the disparity between her written submission filed to the court and the oral testimony given during the trial, which hinted at evidential inconsistency and unreliability—but the court defended Kark. Judge Dovrat's decision reads:

> In choosing between the two expert opinions, that of Prof. Kark is preferred in my opinion. Prof. Kark relied in her expert opinion on researchers who came to carry out research works (Court Record May 6, 2011, page 59 and onwards). The review carried out by the British Engineering Corps, the PEF survey, which marked the findings in the area exhaustively to the tree and nomadic dwelling, neither mentioned nor marked any settlement in relation to the period between 1840 and 1917.

Moreover, the *Israel-Academic Monitor* published an article upholding the validity of Kark's expert testimony and dismissing accusations of her being a Zionist expert.[948] Through the professionalization of knowledge, these witnesses set the parameters for what the courts can

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[944] Kram, 222.

[945] Yiftachel has provided expert testimonies in a number of cases, including 'the Qa'adan Case – for allowing Arab land purchase in a Jewish locality (2000); The Regional Council for Unrecognized Villages (for dismissing the Beersheba Metropolitan Plan), 2001; The Mizrahi Democratic Rainbow, for distributive justice in the allocation of state land (2002); The Dror Yisrael appeal against the privatization of state land (2012); The Uqbi, al-Turi and abu-Frih land claims, for recognizing Native title (2010-14).' Oren Yiftachel, "Curriculum Vitae (Short Version)," February 2015, http://www.geog.bgu.ac.il/members/yiftachel/Yiftachel%20CVshort2016.pdf.

[946] Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others, para. 21–23.

[947] In the Plaintiff's submission, see Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others para. 6. In the judge's discussion, see Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others, paras. 17, 31, 33, 35.

[948] Israel Academic Monitor, "Boycott Calls against Israel: The Radical Left against Ruth Kark," July 15, 2013, http://israel-academia-monitor.com/index.php?type=large_advic&advice_id=8695&page_data[id]=178&cookie_lang=he&the_session_id=918a3b88799f6a2fc2e3c8d1464b93fa.

know and also facilitated the depersonalization and de-politicization of the land dispute between the Bedouin and the State of Israel.[949]

c. Arguments for and against Indigenous Peoples' Rights in the *al-Uqbi* Case: Moving Beyond Opposition

From a judicial stance, Yiftachel's expert testimony constructs a new narrative about the al-Uqbis, which is at odds with both testimony presented by Kark and the succession of legal precedents. Yiftachel presents the story of semi-nomadism to show the al-Uqbis had 'fixed seasonal camping sites' in permanent locations over an uninterrupted time.[950] Yiftachel's expert opinion on the Bedouin's past affirms the general consensus among the Bedouin, who believe that they are the original landowners. Yiftachel's implied argument for Bedouin indigenousness in the *al-Uqbi* case is expanded upon in his published writings. Explaining the benefits of the international framework of indigeneity, he writes: 'The indigeneity angle can […] investigate fascinating questions, such as the impact of indigenous consciousness on the Bedouins' struggle, the rise of indigenous globalism and the intertwining of indigenous awareness and Islam.'[951] The judge in the *al-Uqbi* case does not respond to Yiftachel's indigenous narrative of the al-Uqbis.[952]

By contrast, Kark supports the narrative of the state in her testimony that, '[t]he indigeneity concept is inapplicable to the context of the Bedouin tribes of the Negev currently living in Israel/Palestine, for the reason that their context lacks the main characteristics which have brought other states to recognize groups as indigenous.'[953] As for Yiftachel, Kark's published writings expand on the perspective she shared in her testimony. One of the main characteristics that Kark and her co-authors raise to argue against the applicability of indigenous peoples' rights is the criterion of time.[954] Their argument is that if an indigenous peoples' claim exists

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[949] Amara, "The Naqab Bedouin and Colonialism," 172.
[950] Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others, para. 26.
[951] Yiftachel, "Epilogue: Studying Al-Naqab/Negev Bedouins-Toward a Colonial Paradigm?," 181.
[952] Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others, para. 26.
[953] Ruth Kark and Seth J. Frantzman, "Bedouin, Abdül Hamid II, British Land Settlement, and Zionism: The Baysan Valley and Sub-District 1831-1948," *Israel Studies* 15, no. 2 (2010): 73.
[954] Only the parameter of 'original occupancy of land' is explicitly stated, emphasizing the importance of time for the authors. Referring to Clinton Bailey's anthropological study, Kark and her co-authors claim that the Bedouin arrived in the Negev around the 18th century from their homeland in Arabia, Transjordan, Egypt, and the Sinai. Frantzman, Yahel, and Kark, "Contested Indigeneity," 95–97. See also, Clinton Bailey, "Dating the Arrival of

in the Negev, or in Israel generally, then it belongs to the Jewish people. Through a historico-religious construction of the concept and category of indigenous peoples, Kark and her co-authors contend that the 'First People' and 'original inhabitants' of the Negev are the Jews whose 'attachment to the land predates Arab presence there by millennia'[955] and can be traced back to biblical times.[956] Regarding time, they maintain that the Bedouin have only been in the Negev for two centuries—a relatively short time compared to their claim of a millennia-long Jewish presence on the lands. They further argue that while the Land of Israel amounts to the Jewish national homeland, to which Jews have a spiritual connection, the Bedouin's national homeland is the Arabian Peninsula.[957]

In his own writings, Yiftachel does address the issue of time as raised by Kark's writings. Arguing for indigenous peoples' status and rights on behalf of the Bedouin, Yiftachel maintains that the Bedouin 'have lived autonomously in this desert area subject to a clearly defined legal and tribal structures for centuries, including the Ottoman and British periods, until its subjection to the Israeli state, and its exposure to policies of evictions, denial and marginalization, alongside partial civil incorporation'.[958] They ground this position on four pillars of 'alternative knowledge'.[959] Firstly, on the question of the Bedouin connection to their lands, which encompasses the time dimension, the authors argue that 'when the Jews first arrived in the Negev, they learned much about this *terra incognita* through the names given by the Bedouins to every riverbed, every hill and every rift, the flora and fauna and seasonal events related to the traditional way of life in the desert.'[960] Secondly, on the history of discrimination and oppression, the authors speak of the 'traumas' that the Bedouin have experienced since 1948 and speak of 'a regime of essentially colonialist supervision and control'.[961] Thirdly, international recognition of the Bedouin is a result of domestic affairs and flows from

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the Bedouin Tribes in Sinai and the Negev," *Journal of the Economic and Social History of the Orient* 28, no. 1 (1985): 20–49.

[955] Yahel, Kark, and Frantzman, "Are the Negev Bedouin an Indigenous People? Fabricating Palestinian History," 6.

[956] On Israel as the 'ancestral homeland', or 'national homeland' of the Jewish community, see Yahel, Kark, and Frantzman, "Are the Negev Bedouin an Indigenous People? Fabricating Palestinian History," 8, 9, 11, 14. See also, Yahel, Kark, and Frantzman, 8, 9, 11, 14. For a comparison, which is also based on religion, see Yehuda Gruenberg, "Not All Who Wander Should Be Lost: The Rights of Indigenous Bedouins in the Modern State of Israel," *Brooklyn Journal of International Law* 34, no. 1 (2009): 6.

[957] On the Arabian Peninsula as the Bedouin's 'homeland' or 'historical homeland', see Yahel, Kark, and Frantzman, "Are the Negev Bedouin an Indigenous People? Fabricating Palestinian History," 12, 13.

[958] Yiftachel, Roded, and Kedar, "Between Rights and Denials," 2139.

[959] Yiftachel, Roded, and Kedar, 2143.

[960] Yiftachel, Roded, and Kedar, 2143.

[961] Yiftachel, Roded, and Kedar, 2145.

international norms, the Bedouin's admittance to the UNPFII, participation in indigenous peoples' conferences since 2005, and recognition by S. James Anaya, former UN Special Rapporteur on the Rights of Indigenous Peoples, in 2011. The fourth pillar of alternative knowledge focuses on the question of self-determination. Specifically, political self-determination is intrinsically linked to self-identification and cultural distinctiveness, and to the ways the Bedouin's struggles, namely land struggles, are exercised through the political and cultural structures of the modern state of Israel.[962] Applying these four pillars of alternative knowledge to the *al-Uqbi* case would support the al-Uqbis' claim to indigenous peoples' land rights in al-Araqib.

By challenging state officials and judicial narratives and attempting to expose a historical—or even an alternative—truth,[963] Yiftachel's testimony in the *al-Uqbi* case not only signals the al-Uqbi's indigenous presence but also suggests a new narrative about the nation-state. Yiftachel has been a key architect of concepts and analytical terms in the field of political geography. Forming the bulk of his work on political geography in the Israeli/Palestinian context,[964] Yiftachel's intellectual hallmark is the concept of *ethnocracy,* described as an ethnos-based hegemony or the 'elevation of the ethnos over the demos as a principal of political organization'.[965] Neither completely authoritarian nor democratic, ethnocracy can be seen as a synthesis of Yiftachel's theoretical work and empirical engagement over the course of many years.[966] In order to understand how the Zionist colonial project was promoted throughout Israel/Palestine, Yiftachel analyzes Israel as an 'ethnocratic' state and documents in detail the spatial and political means Israel has used expand and exercise control, offset by Palestinian resistance and counter-mobilization. However, the Zionist colonial project is only half the story. While Zionism[967]—an aspiration to establish a sovereign state and a homeland for the

[962] Yiftachel, Roded, and Kedar, 2145–46.
[963] Amara, "The Naqab Bedouin and Colonialism," 171.
[964] In spatial theorization, Yiftachel coined several interrelated concepts, including 'trapped minorities', ghetto citizenship, metrozenship, frontiphery, 'fractured regions', 'internal frontiers', 'creeping apartheid', and 'gray urbanism'. For an overview of his conceptual work, see the Appendix: Ethnocracy: A Conceptual Tour, Yiftachel, *Ethnocracy*, 2006, 295–300.
[965] Yiftachel, 295.
[966] Yiftachel, *Ethnocracy*, 2006. See also, Alexandre (Sandy) Kedar and Oren Yiftachel, "Land Regime and Social Relations in Israel," in *Realizing Property Rights (Swiss Human Rights Book)*, ed. Hernando de Soto and Francis Cheneval, 2006, 127–44; Oren Yiftachel, "'Ethnocracy': The Politics of Judaizing Israel/Palestine," *Constellations* 6, no. 3 (December 16, 2002): 364–90.
[967] On Zionism see, Baruch Kimmerling and Joel S. Migdal, *Palestinians: The Making of a People* (Cambridge, Mass: Harvard University Press, 1998); Zeev Sternhall, *The Founding Myths of Israel: Nationalism, Socialism, and the Making of the Jewish State*, trans. David Maisel (Princeton, NJ: Princeton University Press, 1999); Ian Lustick, *Arabs in the Jewish State: Israel's Control of a National Minority* (University of Texas Press, 1980).

Jews in Israel—is key to understanding the colonial project and the emergence of an Israeli ethnocracy, Yiftachel also identifies Zionism as a liberating and oppressive project, calling it a 'colonialism of refugees' and 'colonialism of collective survival',[968] which draws much of its strength from the tragic Jewish history.

Like the Israeli courts, it is easy to read and understand Yiftachel and Kark's scholarship as being in direct opposition—but doing so overlooks the nuances and subtleties of Yiftachel's position. Clustering Yiftachel with the proponents of the indigenous peoples' recognition and rights for the Bedouin makes him a radical thinker and actor in this setting,[969] but a closer inspection of his scholarship suggests otherwise. Yiftachel's work on the international framework of indigeneity in the Israeli/Bedouin context also incorporates the nation-state, where the Bedouin are emplaced and live in relation to the Jewish majority in Israel.[970] For him, implicit in the Bedouin's recognition is an acknowledgment of the majority society, which amounts to mutual recognition of indigenous and non-indigenous populations.[971] Yiftachel's seemingly radical stance is thus less so once he factors in the domestic contingencies and social relations. A co-authored paper illuminating this point states:

> There is no space here to deal with the phenomenon of intertwined collective identities, although it must be mentioned as part and parcel of indigenous existence in most post-colonial nation-states. Finally, and more politically, we suggest that rather than forming a bone of contention, indigeneity can be used as a platform for reconciliation. It presents a real *opportunity for redressing the (internal) colonial relations existing in the Negev since the late 1940s*. This is because the indigenous concept enables (mutual) recognition, flexibility and adjustment.[972]

While such a view lends itself to critical appraisal,[973] this quote shows that Yiftachel pursues an approach to the Bedouin's recognition as indigenous peoples that acknowledges the interconnectedness of state/Bedouin relations, or what he and his co-authors call 'intertwined collective identities'. Such mutual recognition corroborates Yiftachel's vision of a future Israel

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[968]Oren Yiftachel, "Nation-Building or Social Fragmentation? Internal Frontiers and Group Identities in Israel," *Space and Polity* 1, no. 2 (1997): 114–32.
[969] Israel Academic Monitor, "Boycott Calls against Israel: The Radical Left against Ruth Kark."
[970] See the introduction.
[971] Such indigenous recognition is line with the recognition of indigenous peoples in the traditional settler-colonial societies, which rules out the type of self-determination in Chapter 1, Article 1 of the UN Charter or Article 1 in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
[972] Yiftachel, Roded, and Kedar, "Between Rights and Denials."
[973] Based on my reading of the law, a *de jure* mutual recognition is not expressed in the international law of indigenous peoples' rights but which, some may argue, is a *de facto* given.

and Palestine that coexist through the reconfiguration of a single state with consociational power-sharing.[974]

Yiftachel's expert testimony can be characterized not only for its re-presentation and re-telling of the al-Uqbi's history but also as an effort to critically and reflectively re-present and re-tell the history of the dominant society in Israel. Despite judicial independence under the separation of powers doctrine, it is not realistic for the Israeli judiciary to separate itself from the historical-legal narrative of the nation-state and the groups it inherited in 1948. The court itself is bound by internal rules and procedures that make it difficult or impossible to undo legal precedents or introduce new narratives.

3. Legislation, Jurisprudence, and the Bedouin

While domestic legislation amasses considerable authority, other land legislation is disqualified in two scenarios: firstly, when it concerns Bedouin customary law and secondly, when international human rights law, such as indigenous peoples' land rights, is applied to the Bedouin in unrecognized villages or illegal clusters.[975] The mainstream view is faithful to the law of the land, according to which Israel inherited the legal system and laws from its predecessors. Israeli law is largely comprised of and continues directly from the legal systems of its predecessors, namely the British Mandate and Ottoman governments.[976] Both legal systems have played a seminal role in the state's appropriation of lands inside Israel as state property.[977] If there are legal exceptions, then they are officially described in law. Such an approach guarantees, almost without exception, that the State is *de facto* and *de jure* landowner.[978]

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[974] Katie Attwell, *Jewish-Israeli National Identity and Dissidence: The Contradictions of Zionism and Resistance* (Basingstoke, Hampshire: New York: Palgrave Macmillan, 2015), 74–77.

[975] The non-application of international human rights law within the territory of nation-state, which is a signatory of the relevant international human rights' treaties, amounts to the extraterritoriality of human rights in reverse, where the state maintains its authority to withhold (international human) rights in a specified area on its territory since these areas fall outside of domestic law and legality.

[976] Critiquing Western legal regimes and categories of time and space, see Stavenhagen and Amara, "International Law of Indigenous Peoples and the Naqab Bedouin Arabs," 165–66. Critiquing the critical analysis of an Orientalist Western view of and legal approach towards the Eastern Bedouin and their customary legal system, specifically referring to Stavenhagen and Amara's point on the Israeli concepts and categories of time and space, see Frantzman, "The Politization of History and the Negev Bedouin Land Claims," 57.

[977] Challenging this notion and arguing the Israeli legal approach is in opposition to the legal approach, see Yiftachel, Roded, and Kedar, "Between Rights and Denials," 2142.

[978] And yet the national angles are totally absent from the legal discourse. In this way, the state shifts the land disputes from a historical and national conflict between the Negev Bedouins and Israel, to a legal conflict between individual Bedouins and the state. As Geremy Forman and Sandy Kedar argue, Israeli laws and court decisions

Despite a relatively quickly acquired sovereignty through the UN[979] and the 1948 War,[980] territorial control was a more complicated matter and was only possible to achieve through the legal tools of 'colonial law', which was inherited from the Mandate[981]—but there is some debate over which people(s) in Israel descend from a colonialist heritage. For example, Kedar does not draw a line of distinction between the British Mandate's legal system and the Israeli legal system—according to him, both are colonial and Western in essence.[982] Kedar does however set the Ottoman legal order apart from its successors because it was Muslim and disorderly, which seems to make it non-colonial.[983] Some agree with Kedar that the British and Zionist governments are both colonial.[984] In contrast, scholars opposing the Bedouin's status and rights as an indigenous peoples maintain that the Bedouin are actually conquerors who displaced the settled Arabs of the region, and that Jews are 'far from being colonial intruders' but are 'descendants of the country's ancient inhabitants, authorized by the international community […] to re-establish their independence in the ancestral homeland.'[985] Comparatively speaking, these experts argue, the Bedouin have more 'in common with the European settlers who migrated to other lands, coming into contact with existing populations with often unfortunate results for the latter [existing populations].'[986]

Such questions do not concern the District Court judge, whose role as a court officer is to determine the facts and apply the law to those facts, thereby upholding the rule of state law and

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have "invisibalized" the political and historical contexts of the dispute through legal arguments and jargon. Geremy Forman and Alexandre (Sandy) Kedar, "From Arab Land to 'Israel Lands': The Legal Dispossession of the Palestinians Displaced by Israel in the Wake of 1948," *Environment and Planning D: Society and Space* 22, no. 6 (2004): 809 – 830; Alexandre (Sandy) Kedar, "The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948-1967," *New York University Journal of International Law and Politics* 33 (2001 2000): 923–1000. quoted in Kram, "Clashes over Recognition," 209–10.

[979] See footnote 632 (re partition)

[980] After the 1948 war, both Egypt and Jordan had claims of sovereignty over the Negev, and Israeli sovereignty was only fully established and internationally recognized after the war of 1956. Swirski and Hasson, "Invisible Citizens: Israel Government Policy Toward the Negev Bedouin," 5.

[981] 'Colonial law' is 'the interpretation of Ottoman law by colonial officials, the use of foreign legal concepts, and the transformation of Ottoman law through supplementary legislation.' Forman and Kedar, "From Arab Land to 'Israel Lands,'" 491.

[982] Kedar, "The Legal Transformation of Ethnic Geography," 928, 936–39. See also, Shamir, "Suspended in Space."

[983] Kedar, "The Legal Transformation of Ethnic Geography," 932–36.

[984] Forman and Kedar, "From Arab Land to 'Israel Lands,'" 810. Israeli borders encompassed 20.6 million dunams but only 2.8 million dunams belonged to the state or was Jewish owned. See, Abraham Granott, *The Land System in Palestine — History and Structure*, trans. M. Simon (London: Eyre & Spottiswoode, 1952).

[985] Yahel, Kark, and Frantzman, "Are the Negev Bedouin an Indigenous People? Fabricating Palestinian History," 11.

[986] Yahel, Kark, and Frantzman, 14.

the legitimacy of the judiciary.[987] In the court proceedings for the *al-Uqbi* case, the District Court judge scrutinizes the land laws enacted since the Ottoman period and concentrates much of the court's ruling on legislation and legal precedents since 1948. Nonetheless, the judge faced arguments based on both domestic and international law.

a. Domestic Legislation and the Bedouin in the Court

In this case, the burden of proof rests on the al-Ukbis to prove that they are the legal landowners,[988] which under statutory Israeli law requires them to meet two aggregate conditions. The first test requires the individual to show that the land is no longer *mewat* land under the 1858 *Ottoman Land Code*—an Ottoman category meaning 'dead', or uncultivated, land located less than 1.5 miles from a permanent settlement that has not been allocated to or occupied by anyone.[989] The individual must have revived the *mewat* lands, or made them cultivatable, in order to gain land title. The second test, stipulated under the *British Land Ordinance* of 1921, requires the individual already cultivating lands without administrative consent to register their lands in the Land Registry within two months of the enactment of the law in April 1921. An individual who wished to cultivate lands should first obtain an official permit, otherwise he would be subject to prosecution for trespass.[990]

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[987] Arguably this is a narrow and naïve way to view the judge, which contrasts to Shamir who, building on Dewey's "intellectualism" and Benahib's two cities, sees the judge acting qua conceptualist in law's "conceptualist" mode of operation. Shamir, "Suspended in Space," 233, 242. Shamir also talks of the judge as carriers of law, see Shamir, 237.

[988] For a critical review of the burden of proof in the case of the Absentee Property Law see, Alexander (Sandy) Kedar, "On the Legal Geography of Ethnocratic Settler States: Notes Towards a Research Agenda," *Current Legal Issues* 5 (2003): 426.

[989] Article 6 defines: "Arazi Mevat is waste (Khali) land which is not in the possession of anybody, and, not having been left or assigned to the inhabitants, is distant from town or village so that the loud voice of a person from the extreme inhabited spot cannot be heard, that is about a mile and a half to the extreme inhabited spot, or a distance of about half an hour". Mewat are "lands which have been uninhabited and uncultivated from time immemorial." Granott, *The Land System in Palestine — History and Structure*, 92. For the background of this law, see Issachar Rosen-Zvi, *Taking Space Seriously: Law, Space, and Society in Contemporary Israel* (Ashgate Publishing, Ltd., 2004); Meir, *As Nomadism Ends*. On *Mewat*, see Kedar, "The Legal Transformation of Ethnic Geography"; Shamir, "Suspended in Space." For test, Civil Appeal 218/74, Salim Al-Hawashleh v. State of Israel, P.D. 38(3) 141.

[990] Article 103 of the Ottoman Land Code (OLC) regulates revival of *mewat* land mainly through agriculture which gives rise to good title. Prior permission was unnecessary. One of the first Mandatory amendments to the OLC obstructed the facility by which Mewat land could be acquired: the Mewat Land Ordinance (1921) repealed the last paragraph of Article 103 of the OLC, substituting the following instead: 'Any person who without obtaining the consent of the Administration breaks up or cultivates any waste land shall obtain no right to a title-deed for such land and further, will be liable to be prosecuted for trespass.' The Mewat Land Ordinance, 1921, 38 I.R. 5, (Mar. 1, 1921); Goadby & Doukhan, *supra* note 35, at 46; Shemesh, *supra* note 26, at 147. Kedar, "The Legal Transformation of Ethnic Geography," 936.

These legislative measures span space and time.[991] The Bedouin must have cultivated land, which is located near a settlement and not allocated or occupied, since 1858 according to the state attorney as confirmed by the court,[992] and must provide official registration documents.[993] The final arbiter is the judge. In the *al-Uqbi* case, the judge ruled that the claimants failed to pass the burden of proof: the al-Uqbis did not prove the land is no longer *mewat* or provide proof of registration.[994] Hence, under the Israeli *Land Law 5729* of 1969, which consolidated and replaced Ottoman and British land legislation, the al-Uqbis have no title to the land and are not entitled to any remedy under Israeli law.[995]

Consistent with the judge's application of the law in this case, the mainstream position is that the British and Ottomans did not recognize Bedouin land ownership,[996] and that the Bedouin are perceived to exist outside of state law and escape legal classifications, categorizations, rules, and procedures.[997] It is argued that the Bedouin have historically failed to adjust to Ottoman and British legislation[998] as well as the laws enacted by the Israeli legislature, and rather they obey an internal 'traditional code', which is different to 'conventional and modern law'.[999] Specific to the Bedouin's land claims, the dominant view[1000] sees the land conflict

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[991] Shamir, "Suspended in Space," 242–43.
[992] Civil Case File Numbers 7161/06, 7275/06, 7276/06 1114/07, 1115/07, 5278/08, Suleiman Mahmud Salaam Al-Uqbi (deceased) and others v. The State of Israel and others paragraphs 16, 17.
[993] For a critical assessment of the interpretation of these dimensions, see Kedar who systematically studied a timeline of legislation enacted at four key moments - arguably "hegemonic moments" - between 1948 and 1960 that transformed Arab land to "Jewish-Israeli 'national land'" to finally become "Israel Lands". In other words, Kedar contends that legislation and its drafters at the senior and second-tiered level facilitated and articulated 'ethnonational geographies of power.' Kedar, "On the Legal Geography of Ethnocratic Settler States," 404.
[994] For a discussion on 'battles over documentation', see Ian Lustick, *Arabs in the Jewish State: Israel's Control of a National Minority* (University of Texas Press, 1980), 176.
[995] Havatzelet Yahel, "Land Disputes between the Negev Bedouin and Israel," *Israel Studies* 11, no. 2 (July 1, 2006): 11. The 1969 Israeli Land Law abolished the mawat category and determined that all such land would be registered as state property— unless a formal legal title could be produced according to the Ottoman or British laws. However, the state claims that the last opportunity to register mawat land was under the British ordinance in 1921. Since most of the Bedouins did not register their land at that time, their only option to prove ownership was to convince the Israeli judicial branches that their lands were not mawat. See, Shamir, "Suspended in Space," 238–50. See also, Falah, "Israeli State Policy toward Bedouin Sedentarization in the Negev," 77.
[996] Yahel, "Land Disputes between the Negev Bedouin and Israel," 2. For a contrary perspective, see Swirski and Hasson, "Invisible Citizens: Israel Government Policy Toward the Negev Bedouin," 10. See also, Hussein and McKay, *Access Denied*, 122.
[997] Clashes between state law and indigenous law regarding land ownership are common: under colonization and state rule, indigenous groups are perceived as not entitled to land ownership and the land that they traditionally possessed is confiscated. As state law usually does not recognize indigenous customary law, the legal system has a central role in the confiscation of indigenous land. Alfred Taiaiake, "From Sovereignty to Freedom," in *A Will to Survive: Indigenous Essays on the Politics of Culture, Language, and Identity*, ed. Stephen Greymorning (New York, NY: McGraw-Hill Companies, 2004), 115. See also, Niezen, *The Origins of Indigenism*, 75..
[998] Yahel, "Land Disputes between the Negev Bedouin and Israel," 2.
[999] Yahel, 11.
[1000] Yahel, 1.

predate Israel since the Bedouin encountered conflict over land with both the Ottoman and British authorities.[1001] This frames Bedouin land conflicts with Israel as a historic land dispute, which is then exacerbated by the Bedouin's 'illegal' use of land and construction of 'illegal' buildings and structures in violation of Israeli land and planning legislation and regulations, specifically the *Planning and Building Law* of 1965.[1002] In this framework, the Bedouin are seen as 'a trespasser, a lawbreaker or, at best, a creature taking its first steps toward socialization'.[1003] Echoing these scholarly observations in state/UN relations, the Government of Israel in a letter dated 15 August 2011 responded to the issues raised by the Special Rapporteur about the village of al-Araqib, stating:

> The *so-called* El-Arkib village was simply an *act of squatting* on state owned land. The individuals never had ownership over this land. In the early 2000s, the Israel Lands Administration lawfully evicted the Bedouin families, but many individuals returned to the area without permission. This started a series of legal proceedings, held in three instances in including the Supreme Court, all of which ordered the Bedouin families to leave the area. The Israel Lands Administration continued to evict the families and they continued to return. Israel also offered the Bedouin families alternate agricultural lands at symbolic rates, but they refused and continued their *illegal actions*.[1004]

Illegal activities of this nature are seen as impeding government efforts to provide basic services and infrastructure that would improve the lives of the Bedouin.

Still, some scholars offer a different perspective on these criticisms directed at the Bedouin for their 'inability' to adapt to modern law. For example, Kedar's historical-legal analysis of the Ottoman category of *mewat* land, the amendments introduced by British ordinances, and interpretations by Israeli courts identifies contemporary evidentiary, procedural, and substantive obstacles facing Arab and Bedouin landholders who seek to prove ownership and registration before the courts.[1005] This critical reading of the legislation would suggest that the system is designed to ensure that the Bedouin landowners lose their cases, which was the outcome of the al-Uqbis' legal challenge in the District Court. Indeed, since the seminal judgment in the a*l-Hawashleh* case in 1984,[1006] domestic courts have always ruled against the Bedouin land claimant and upheld Israeli territorial sovereignty.

[1001] Yahel, 2.
[1002] The 1965 law requires building permits for construction or renovations to avoid administrative and legal demolitions orders
[1003] Shamir, "Suspended in Space," 237.
[1004] For the Response of the Government of Israel see, UN Human Rights Council, "Report by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, UN Doc A/HRC/18/35/Add.1," 30.
[1005] Kedar, "The Legal Transformation of Ethnic Geography," 952, 971.
[1006] Civil Appeal 218/74, Salim Al-Hawashleh v. State of Israel, P.D. 38(3) 141.

The customary legal system of the Bedouin themselves offers stark contrast to the dominant depiction of Bedouin as invisible, portable, or law-breaking. The Bedouin have their own legal order with codes, practices, and tribal courts that have existed since the land reforms that followed the reorganization of the Ottoman Empire from 1839 to 1876.[1007] Bedouin land law covers practices for boundary-marking; rules on land sales, mortgages, and inheritance; and mechanisms for settling land disputes before tribal courts. Under Bedouin customary law, the majority of Bedouin are law-abiding, and not trespassing or squatting on land. It is worth emphasizing that the tribal courts deal harshly with the offence of trespass.[1008] This system operates in parallel to the domestic and international legal systems, but often Bedouin customary law is given precedence by the Bedouin themselves. For example, even if official state permission has been granted to relocate to lands belonging to another Bedouin, customary Bedouin law prevents the new owner from doing so without the consent of the original owner.[1009] Interestingly, the state recognizes Bedouin customary law when it involves internal matters in Bedouin society; however, Israeli domestic law is given its full force in land matters.[1010]

b. International Legislation and the Bedouin in the Court

As it seems that domestic legislation has created hurdles for the Bedouin in exercising their land rights, foreign legislation may offer an alternative avenue for the Bedouin to claim land ownership. Eight years prior to the al-Uqbis' claim under the international human rights framework of indigenous peoples, an Israeli legal scholar asked the general public 'are the Arab Bedouin an Indigenous People?' (see the introduction). At the time, the Be'er Sheva District Court rejected this question outright. Professor Rodolfo Stavenhagen submitted an *amicus brief* but this made little difference to the courts despite his contact with the Bedouin

[1007] 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, no. 6 (November 17, 2009): 969–83; Moshe Ma'oz, *Ottoman Reform in Syria and Palestine, 1840-1861: The Impact of the Tanzimat on Politics and Society* (Oxford: Clarendon Press, 1968). At the end of the 19th and the beginning of the 20th century customary law developed. See, Kram, "Clashes over Recognition," 194.

[1008] Noa Kram has focused much of her research on the customary law of the Bedouin. On the legal mechanism see also, Lavie, *The Poetics of Military Occupation: Mzeina Allegories of Bedouin Identity Under Israæli and Egyptian Rule*.

[1009] Bedouin witnesses went before the Goldberg Commission and testified to this situation. Amara, "The Goldberg Committee: Legal and Extra-Legal Means of Solving the Naqab Bedouin Case," 231.

[1010] On the validity of Bedouin customary law concerning land matters today, see Kram, "Clashes over Recognition," 142–54.

in his many capacities.[1011] In 'International Law of Indigenous Peoples and the Naqab Bedouin Arabs', Stavenhagen and Amara observe that herders and pastoralists are recognized as indigenous peoples, which would imply that the nomadic and semi-nomadic pastoral Bedouin fall into the fold of indigenous peoples' recognition.[1012] This study maintains that ILO Convention No. 169 is geared towards pastoral groups, which directly addresses the argument against indigenous recognition because the Bedouin are nomadic and lack attachment to the land.[1013] The authors draw a general comparison between pastoralist groups in the Middle East and East Africa, and underscore the similarities between the Bedouin and the Amazigh, or Berbers.[1014] They conclude that the Bedouin 'share many *common traits* with indigenous peoples in other parts of the world, particularly with semi-pastoralists in other Arab-speaking countries in North Africa' (emphasis added).[1015] Noting the significance of context,[1016] and relying mainly on the four factors of the UNWGIP from 1996,[1017] the authors resolutely conclude that:

> The Naqab Bedouins self-identify as a population indigenous to the Naqab Desert since the fifth century, prior to the presence of Ottoman, British, and Israeli ruling authorities (Meir, 1997). The Bedouins' cultural distinctiveness from the Israeli Jewish majority and the ongoing marginalization and discrimination that the Bedouins suffer as a distinct collectivity are more than sufficient to grant them protection as an indigenous group under international law.[1018]

In contrast to the detailed explorations on the Bedouin's indigenous status and rights carried out by domestic scholars, the judge's discussion in the *al-Uqbi* decision is both concise and

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[1011] Stavenhagen's contribution refers to the preamble and articles in the UNDRIP. He then discusses discrimination between indigenous and non-indigenous populations in land questions, the Inter-American jurisprudence on indigenous lands, and domestic court decisions, and refers to the Goldberg Commission's positive findings. He concludes his discussion with reference to the UNWGIP and a report written in his capacity as UN Special Rapporteur on the Rights of Indigenous Peoples. Rodolfo Stavenhagen, "The International Human Rights of Indigenous Peoples and the Negev Bedouin Communities: A Contribution by Professor Rodolfo Stavenhagen, El Colegio de Mexico, and Former United Nations Special Rapporteur for the Human Rights and Fundamental Freedoms of Indigenous People," 2010.

[1012] Stavenhagen and Amara, "International Law of Indigenous Peoples and the Naqab Bedouin Arabs," 159.

[1013] Stavenhagen and Amara, 166.

[1014] Stavenhagen and Amara, 159–60, 162, 175–79. For comparison, see Havazelet Yahel, Ruth Kark, and Seth Frantzman, "Negev Bedouin and Indigenous People: A Comparative Review," in *Societies, Social Inequalities and Marginalization*, Perspectives on Geographical Marginality (Cham, CH: Springer, 2017), 121–44.

[1015] Stavenhagen and Amara, 182.

[1016] Stavenhagen and Amara, 179. While Israel is not their focal point and questions of colonization are left outside of the discussion, their understanding of the Bedouin's land tenure is established on the fact that the Bedouin's presence predates the state.

[1017] The four factors deals with priority of time, self-identification, cultural distinctiveness, and the experience of subjection, marginalization, dispossession, exclusion, or discrimination. UN ECOSOC Commission on Human Rights, "Report of the Working Group on Indigenous Populations of Chairperson-Rapporteur, Ms. Erica-Irene A. Daes, UN Doc E/CN.4/Sub.2/1996/21," para. 60.

[1018] Stavenhagen and Amara, "International Law of Indigenous Peoples and the Naqab Bedouin Arabs," 181.

revealing on the topic. While not delving into the criteria of the international definition of indigenous peoples, the District Court judge held that the claim to indigenous peoples' rights is inapplicable, which ultimately barred the international framework of indigenous peoples from influencing and shaping knowledge, in particular legal knowledge, about the Bedouin in the Negev in the courtroom. First of all, the court weighs heavily in favor of the domestic legal system. This aspect of the judicial reasoning focuses on the separation of powers doctrine, which holds the legislature—the Knesset in this setting—to be the only legitimate body to make laws and to transplant international law into domestic law.[1019] Moreover, the court preemptively negates the application of the international framework of indigenous peoples' rights in future domestic cases. The duration of the Bedouin's settlement in the Negev ultimately rules out indigenous peoples' recognition, in the judge's opinion, as they do not pass the required temporal threshold (discussed above). In other words, the judge anticipates the non-application of indigenous peoples' rights to the Bedouin, and in so doing, does not deviate from the 'rootless nomad' precedent.[1020] The judicial statement is extremely important on the domestic level.

One group of scholars contests the Bedouin's claim to indigenous peoples' status and rights. Interestingly, they use the relative silence of Israeli scholars on the question of indigenousness to argue that "indigenous" does not apply—in their view, there is nothing to say on the topic because 'the claims to indigeneity occur mainly in forums […] devoted solely to this one-sided viewpoint'.[1021] These scholars maintain that writings advancing the framework of indigenous peoples for the Bedouin (e.g., Yiftachel) can be seen as representative scholarship immersed in a cause—and that scholar-activist participation has removed the Bedouin case from the domestic context and 'cast [it] as an international issue, to cater to a narrow agenda relating to Israel.'[1022] They conclude that 'the entire question of indigenousness is particularly problematic' in the domestic context, adding it will generate further tension between the State of Israel and the Bedouin. Ultimately, they concede that 'the Negev Bedouin may be a poor and marginal sector of Israeli society, yet this does not transform them into an indigenous

[1019] Moreover, to circumvent the issue that Israel has not signed or ratified the UNDRIP, the authors make a case that the declaration can be considered part of customary international law and is of universal application. Stavenhagen and Amara, 168.
[1020] Civil Appeal 518/86, Abu-Solb v. Israel Land Authority, P.D. 42 (4), 518 (1986).
[1021] Frantzman, Yahel, and Kark, "Contested Indigeneity," 94.
[1022] Frantzman, "The Politization of History and the Negev Bedouin Land Claims," 49.

people.'[1023] These statements concerning the difficult politics of Bedouin indigenousness and its ultimate inaccuracy are echoed by domestic political officials.[1024]

In contrast to scholars contesting indigenousness for the Bedouin in the Negev, Kedar maintains that the Bedouin amount to an indigenous peoples under international conditions and draws support from the Cobo definition and other sources of international human rights law.[1025] In order to protect and guarantee the rights of indigenous peoples in Israel on a domestic level, Kedar has faith in the Israeli Supreme Court and *The Basic Law: Human Dignity and Liberty – 1990* to 'strengthen the Arab Bedouins' status relating to the land, and give meaningful consideration to their interests.'[1026] Elsewhere, Kedar considers the courts to be a possible site for 'restructuring Israeli spaces towards a more equal paradigm',[1027] although he is also aware that the Israeli judiciary has played a key role in nationalizing Arab lands.[1028] Against Kedar's positive outlook on the potential for a judicial-led reform, some literature refers to past judgments to critically interrogate the significance of the Israeli judiciary's denial of Bedouin land ownership.[1029]

On appeal by the al-Uqbis, the Supreme Court upheld the decision of the District Court.[1030] The decision in the *al-Uqbi* case, both at the lower and higher instances, maintains and even solidifies the precedent that holds the Bedouin to be living illegally on state lands under Israeli

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[1023] Yahel, Kark, and Frantzman, "Are the Negev Bedouin an Indigenous People? Fabricating Palestinian History," 14.

[1024] This sentiment about the inappropriateness of the concept and category of indigenous peoples in the Israeli/Bedouin context is echoed on the political level; for example, Ehud Prawer, the head of Bedouin Policy Planning area at the Prime Minister's Office since 2008, stated: ''The attempt to claim that the Bedouins are an indigenous group in the Negev is fraught with difficulties. Not only is it historically inaccurate, but it antagonizes unnecessarily, presenting the Jews in the area as invaders, which runs contrary to the fact that we have returned to our homeland. Again, I say, adopting the indigeneity approach will damage any Bedouin attempt to attain civil equality in Israel.' Several months later, Minister Benny Begin, co-author of the Prawer-Begin Plan, declared in a public conference: 'I have heard some talk as though the Bedouins are an "indigenous people" in the Negev. I want to remind the audience that the People of Israel and the State of Israel are sovereign in the Negev. True, the Bedouins have an attachment to the land and we take this into due consideration, but I propose that everyone remembers that the People of Israel are living in their historical homeland in the Negev. There is no contestation of this fact nor will there ever be.' Yiftachel, Roded, and Kedar, "Between Rights and Denials," 2134.

[1025] Kedar, "Land Settlement in the Negev in International Law Perspective," December 2004, 4.

[1026] Kedar, 8.

[1027] Kedar, "The Legal Transformation of Ethnic Geography," 994, 1000.

[1028] Kedar also examines the role of Israeli courts and their adjudication and interpretation in land cases that reflect the ethnocratic bent toward settlement and the ethnonationalist "greed for land". Kedar, 996.

[1029] Amara discusses the Naqab Bedouin Arabs' engagement with the Israeli legal system, in particular with the judiciary since the early 1990s. Amara, "The Naqab Bedouin and Colonialism," 162–87.

[1030] For a critical reading of the Ottoman law and its interpretation by the Israeli courts, Kedar, "The Legal Transformation of Ethnic Geography"; Forman and Kedar, "From Arab Land to 'Israel Lands'"; Shamir, "Suspended in Space."

legislation and case law.[1031] The inclusion of a claim based on international rights law regarding the concept and category of indigenous peoples marks a potentially transformative and jurisgenerative moment for Bedouin claimants, but it did not alter the existing precedents or judicial decision-making processes that involve land.

4. Managing the Bedouin 'Beyond the Letter of the Law'[1032]: Back to Administration or Toward Extralegality?

There is a triadic relationship between knowledge, law, and governance in the Israeli/Bedouin context.[1033] Few would argue that the land question can be isolated from historical, social, financial, cultural, and ethnic factors—yet law remains the primary marker for understanding the land dispute.[1034] Whether judicial law can solve the dispute is another matter.[1035] The courts prefer a problem-solving approach, without the law or in the shadow in the law, which is implicit in the court's praise of the state's efforts to reach an out-of-court settlement through negotiation and compensation.[1036] The government's conciliatory approach through financial compensation and proposals of alternative land slots is viewed in a positive light by the Israeli-Jewish majority. From a critical standpoint however, the government's approach is seen less benevolently and such tactics are seen as amounting to 'legislative expropriation [of land], administrative measures, and unwinnable court cases'.[1037] Due to the limits of law and the legal

[1031] Bedouins do not have land-ownership rights but rather "partial- holding rights", see Swirski and Hasson, "Invisible Citizens: Israel Government Policy Toward the Negev Bedouin," 9–11. Shamir talks of "abstract possession" as oppose to possession real possession, Shamir, "Suspended in Space," 241. See also Rose who speaks of "possession as text". Carol M. Rose, "Possession as the Origin of Property," *The University of Chicago Law Review* 52, no. 1 (1985): 73–88.
[1032] Swirski and Hasson, "Invisible Citizens: Israel Government Policy Toward the Negev Bedouin," 17.
[1033] Foucault offers us insight. Some would suggest that governance and law are forms of power and fall under that heading. Similar to law's multiple functions, including a power function, governance has more than power functions.
[1034] Yahel is not alone in concentrating on the legal aspects. Ismael Abu-Saad and Amara also focus on the legal aspect, arguing that a legal culture developed since the British Mandate and that 'the law is an essential prism for understanding the Bedouin question.' Amara and Abu-Saad, "Indigenous (In)Justice," 2. Despite recent judicial skepticism, law never escapes Amara's scholarship. His doctrinal approach, largely based on legislation and case law, and his critical turn, which borrows from critical legal theory and law and society, take into account the legal realities in the particular context. Ahmad Amara, "The Negev Land Question: Between Denial and Recognition," *Journal of Palestine Studies* 42, no. 4 (2013): 28. The legal question of land ownership plays an important and unique role, because the law provides legitimacy to the state authorities' claim that Negev land belongs to the state and that the Negev Bedouins are not entitled to land ownership. Kram, "Clashes over Recognition," 228.
[1035] Amara, "The Naqab Bedouin and Colonialism," 179.
[1036] Specific to the Israeli/Bedouin context, Shamir sees the courts oriented toward problem-solving that helps improve and advance the Bedouin, while simultaneously the courts obstruct the emergence of a 'jurisprudence of regret'. Shamir, "Suspended in Space," 252.
[1037] Amara and Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab," 80–81.

system, administrative committees have been set up to try to find an alternative solution to the land question in the Negev. Consequently, the knowledge/law nexus must also factor in government involvement in the management of the Bedouin.

Key areas of Bedouin life in Israel have fallen into the hands of government agencies that administer the Bedouin through control and surveillance, and administrative committees were established with the specific purpose of solving the land issue. Not long after military rule was lifted in 1966, the government stepped up its modernization plans to accelerate the Bedouin's transformation into an 'urban proletariat', which necessitated transitional governance on two levels. Firstly, for the Bedouin, who accepted the offer to relocate to permanent towns in designated areas in the Negev, local councils were set up on their behalf and were initially headed by Jewish appointees. Secondly, for the Bedouin who did not resettle to the designated towns, three state agencies were established to facilitate the anticipated transition from Bedouin traditional life to Israeli modern life. The Bedouin Development Authority, which was part of the Israeli Land Administration, and the Bedouin Education Authority provided provisional services.[1038] The third agency, the Green Patrol, was a special body with the mandate to 'protect the environment', which meant to evacuate—employing any force necessary—Bedouin who were illegally using state lands.[1039] Despite these administrative agencies for transitional governance, a sizable number of Bedouin rejected the state's incentives to relocate to the towns, and opted to remain on what they perceive to be their lands.[1040] As a result, the land settlement process introduced in 1969 under the Ministry of Justice was suspended only a few years later.[1041]

The land settlement process, in which every plot of land was supposed to be registered under a specific owner, was halted through the recommendations of the Albeck Committee. Appointed by the state in 1975, the Albeck Committee recommended that the government negotiate and reach a compromise with the Bedouin—but did not recognize Bedouin land

[1038] On the BEA, see Human Rights Watch, *Off the Map*. On the BDA, see Swirski and Hasson, "Invisible Citizens: Israel Government Policy Toward the Negev Bedouin."
[1039] See, Penny Maddrell, "Beduin of the Negev" (London: Minority Rights Group, December 1990), 10–11.
[1040] Mainly because if they move to the towns, they will have to relinquish their land ownership claims. See, Shamir, "Suspended in Space," 236.
[1041] As part of this legal process, 3,200 claims were submitted by the Bedouin, which covered an area of 991,000 dunams (1.5 million dunams according to Amara). Of these claims, about 140 dunams have been settled and the rest remains disputed. The state has filed counterclaims since 2003 and 50,000 dunams have been registered in the name of the state.

rights. As a sign of goodwill, the Albeck Committee recommended the government offer compensation to the Bedouin if they agreed to give up their lands and resettle in one of the Bedouin-only towns.[1042] The majority of the Bedouin rejected this offer outright. The Albeck committee was followed by other intergovernmental committees,[1043] which also failed to find a solution acceptable to the Bedouin who were unwilling to accept compensation or alternative plots of land if it meant giving up their lands.

Established in December 2007, the Goldberg Commission was appointed by the government with the same mandate: to advise the government about a policy to regulate Bedouin settlements in the Negev.[1044] Justice Goldberg, a retired judge who headed the body, recognized the Bedouin's historical rights in the Committee's 2008 report and sought a fair and equitable solution.[1045] The Goldberg Commission made significant admissions, namely that the Bedouin are not 'squatters' but rather Israeli citizens who are entitled to equal rights, and that the unrecognized villages should be recognized 'to the extent possible'.[1046] The taskforce appointed to implement its recommendations negated many of the positive aspects credited to Justice Goldberg and was also considered regressive in its treatment of the Bedouin in the Negev.[1047] As a result, mass popular demonstrations, social media campaigns, and civil society actions ensued and arguably contributed to the shelving of the Goldberg plan in late 2013.[1048]

[1042] As part of the settlement scheme, some Bedouin claimants were offered 20% of the lands and then the remainder 80% would be given in compensation.

[1043] Havatzelet Yahel and Ruth Kark, "Land and Settlement of Israel's Negev Bedouin: Official (Ad Hoc) Steering Committees, 1948–1980," *British Journal of Middle Eastern Studies* 0, no. 0 (July 14, 2017): 1–26.

[1044] Amara, "The Goldberg Committee: Legal and Extra-Legal Means of Solving the Naqab Bedouin Case." There was a public hearing in 2008 that heard more than a hundred witnesses, including Bedouin who talked about customary law and the impact of the land dispute on the Bedouin. Amara, 231.

[1045] The Goldberg Commission was largely viewed as a positive step forward, especially vis-à-vis recognition of the Bedouin's "historical attachment" to the land, which often is raised in academic and para-academic literature. However, critiques were also raised, as the Commission regurgitates several old 'chestnuts' on how to see the Bedouin, such as the demographic and development problem; and the Commission also claimed to be unable to reverse previous measures taken, in the end toeing the same line and calling for an extrajudicial remedy. For a discussion of the positive elements of the Commission, see Yahel, "Land Disputes between the Negev Bedouin and Israel.". For a critical analysis, see Amara and Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab," 94.

[1046] Goldberg, "Final Report of the Commission to Propose a Policy for Arranging Bedouin Settlement in the Negev," para. 110. The Commission recommended that the state recognize villages that have a "critical mass" of permanent residents and that do not interfere with other state plans. In practice this would be limited to the recognition of only a few of the unrecognized villages.

[1047] The Commission also called for the establishment of several claims committees to deal with Bedouin ownership claims and provide financial compensation for expropriated land. In May 2009, the government established the Prawer Committee to outline a plan to implement the Goldberg Commission's recommendations.

[1048] While the latest government plan reverses many of the significant admissions of the Goldberg Commission, interestingly, the Bedouin's rejection of the plan was paralleled by the rejection of Israel's right-wing faction, who viewed the plan as donating land to Bedouin who were illegally occupying Israeli lands.

Filed because of the standstill in the land settlement process, the al-Uqbis' petition can be seen as a final attempt by the family to seek a remedy by way of the courts.[1049] Directly after the Supreme Court decision in May 2015, which ended any hope for the al-Uqbis, legal scholar Ahmad Amara asked a provocative question: 'why not undertake a full-scale boycott of the judiciary?'[1050] Past proponents of litigation as a means of redress for the Bedouin had been encouraged by partial legal successes, especially in the realm of housing and service provisions. Given the judicial reasoning in the *al-Uqbi* case, however, they were forced to rethink their legal strategy in land cases. Instead of litigation and legal advocacy in the domestic courts, it would seem that 'efforts towards international advocacy and local mobilization can offer results not possible through Israel's courts.'[1051] An outgrowth of cause lawyering, 'cause advocacy'[1052] encompasses the extra-legal processes, actors, strategies, and discourses.[1053] With regard to identity and terminology in cause advocacy, Amara remarks, 'The indigenization of the Bedouin Arabs is another interesting characteristic of cause advocacy. Advocates utilized the legal concept of indigeneity to claim economic, social and cultural rights for the Naqab Arabs.'[1054] On the local level, cause advocacy manifests in Bedouin agency and mobilization, exercised through various daily modes of defiance—protests, alternative plans, advocacy—and through staying power.[1055] The next chapter investigates whether indigeneity shapes and influences cause advocacy at the local level.

5. The Nexus of Law, Knowledge and Governance in the Israeli/Bedouin Context

The land dispute between the al-Uqbis and the State of Israel raises important legal questions and demonstrates how law, knowledge, and government are interdependent, constitutive, and

[1049] Amara, "The Naqab Bedouin and Colonialism," 171–74.
[1050] For a critical view of the Israeli judiciary, see Amara, "Moving Towards Full-Scale Judicial Boycott in the Naqab," 3.
[1051] Amara, 3–4.
[1052] Amara, "The Naqab Bedouin and Colonialism," 172.
[1053] Amara, 165.
[1054] Amara, "The Negev Land Question: Between Denial and Recognition," 38–41. See also, Amara, "The Naqab Bedouin and Colonialism," 180. Since the 1990s, and following the Israeli courts repeated rejection of their land claims, most Bedouin have stopped trying to register their land in court; instead, as a way to maintain their claims, they cultivate and build on the disputed land. Swirski and Hasson, "Invisible Citizens: Israel Government Policy Toward the Negev Bedouin," 16. See also, Yiftachel, *Ethnocracy*, 2006, 199.
[1055] Amara and Miller, "Unsettling Settlements: Law, Land, and Planning in the Naqab," 102. See also, Amara, "The Negev Land Question: Between Denial and Recognition," 38–41. See also, Amara, "The Naqab Bedouin and Colonialism," 171–73, 179, 180.

corroborative in this context.[1056] It is helpful to elucidate how domestic courts *know* the al-Uqbis in law, which sharpens the focus on the role of knowledge, especially expert knowledge, in conceptualizing and categorizing the Bedouin generally, and their land struggle in particular. Although each apparatus deploys a different tactic to solve the land problem, state agencies, administrative committees, and courts share the common view that the lands under dispute are Israeli land and property. Symptomatic of the courts' general approach to the Bedouin, the District Court judge in this case followed the dominant conceptual grids of time, space, and population, so that the Bedouin are without exception framed as ahistorical, rootless, and nomadic.[1057] Had the courts recognized the al-Uqbis as an indigenous peoples, which would have entitled them to indigenous peoples' rights, including land rights, there would have been legal ramifications not only for the 17 indigenous claimants in the *al-Uqbi* case but also for other populations in Israel, including the 1.8 million Arab minority. The court's rejection of the al-Uqbis' rights-based claim highlights the ambiguity and controversy that arise when Bedouin attempt to appropriate and translate the concept and category of indigenous peoples and the international framework of indigenous rights in the domestic courts. While the courts dismissed the claim swiftly and discretely, the question of indigeneity is an issue of bitter contention in the Israeli educational establishment, with struggles over the meaning and interpretation of indigenousness as illustrated by so-called 'deniers' and 'post-academics'.[1058] The relativistic, adversarial, competitive, and uncertain nature of the concept and category of indigenous peoples comes to the fore in these scholarly debates arguing for and against the Bedouins status and rights as an indigenous peoples.

As this chapter reflects, the knowledge production (or counter-production) of indigeneity not only produces inconsistencies, uncertainties, and indeterminacy but also generates tensions, hybridities, frictions, and new subjectivities. Although the indigenous subjectivity of the Bedouin is mentioned in passing by scholars, such as Stavenhagen and Amara, even Bedouin scholars have refrained from examining the question of indigenous consciousness and

[1056] If we think of law as a form of power, then we can also say that law and knowledge empower each other, which leads us to Foucault on knowledge/power.
[1057] Shamir, "Suspended in Space."
[1058] In "The Politicization of History and the Negev Bedouin Land Claims: A Review Essay on Indigenous (In)Justice", Frantzman dubs the collection's contributors 'post academics', whose 'post scholarship' makes disingenuous claims 'based on a faulty reading of the historical sources.' Frantzman, "The Politization of History and the Negev Bedouin Land Claims," 45.

subjectivity in-depth.[1059] The next, and final, chapter investigates the ways in which the concept and category of indigenous peoples has been made in the Bedouin vernacular in Bedouin localities, and traces the emergence and development of an indigenous subjectivity and consciousness among the Bedouin in the Negev.

[1059] Frantzman points out that Stavenhagen and Amara do not provide evidence, such as interviews, to show that the Bedouin self-identify as indigenous. Contending that herders and pastoralists facing structural subordination are indigenous, Frantzman argues, would cater to mobile peoples in what he considers a maneuver to 'change the definition [of indigenousness] to fit the Bedouin.' Frantzman, 51.

And hope and history rhyme.

Seamus Heaney, *The Cure at Troy*

VI. Indigeneity in a Bedouin Vernacular

Many studies employing an international indigenous peoples' model share a goal in exploring the ways in which the Bedouin in the Negev are challenging and contesting their marginal or disadvantaged status.[1060] This case study of the Bedouin in the Negev, and of the act and art of becoming indigenous in international law, is illustrative of the global knowledge production of indigeneity in context. This chapter aims to explore the often-unquestioned relationship between collective identities and the ways the Bedouin articulate their rights, or claims to justice. In the third cultural flow in the vernacularization of rights, which Merry calls 'the localization of transnational knowledge', rights are made in the vernacular. Simply put, if rights are made local, then rights speak *up* from the ground—however, 'local' is not as clearly separate from 'global' as the terms would suggest. The local setting is usually seen as the context where human rights are made in the vernacular and local idioms;[1061] nevertheless, it is important to emphasize Merry's point on 'local as a matter of degree'.[1062] Referring to the layers that separate the local from the global, she argues, 'the terms global and local are not particularly useful [since] their meaning is ambiguous and they often become a stand-in for social class.'[1063] Not only is the global/local distinction unhelpful but it can also prove to be arbitrary, particularly when it involves the localization of indigenous peoples' rights. Binaries

[1060] Ratcliffe et al., "The Naqab Bedouin and Colonialism," 11.

[1061] Perugini and Gordon speak of human rights in local idioms, which have the same essence as human rights in the vernacular. Both expressions are useful, but I lean toward 'human rights in the vernacular'. See also, Perugini and Gordon, *The Human Right to Dominate*.

[1062] On "Local as a matter of degree", see Engle Merry, *Human Rights and Gender Violence*, 212–15.

[1063] On "local" and "global" binaries see, for example, Eslava, *Local Space, Global Life*; Goodale and Engle Merry, *The Practice of Human Rights*. For a critical appraisal of the romance of the global, see Appadurai, *Modernity At Large*. On a reevaluation of the local, see Arturo Escobar, "Culture Sits in Places: Reflections on Globalism and Subaltern Strategies of Localization," *Political Geography* 20, no. 2 (February 2001): 139–74. In her presentation on 'Overlapping and Intersecting Legal Contexts', Eve Darian-Smith proposes thinking with a 'global imaginary', which 'should be more encompassing than the transnational and the international, which are anchored primarily to the nation-state.' Darian-Smith adds that it is necessary 'to complicate how we see the global and that it should not be limited to geopolitics but encompasses the local. The local and the global are mutually constitutive and are involved in a constant dynamic.' Eve Darian-Smith, "Overlapping and Intersecting Legal Contexts" (Transnational Law Summer Institute - King's College London, 2015), https://www.youtube.com/watch?v=HBrS4TFM9Ds.

are a trap in which the 'local' represents everything indigenous, traditional, and 'primitive', while the 'global' stands for everything non-indigenous, modern, and progressive.[1064]

1. Global versus Local: The Case of Airbnb and al-Sira

To illustrate this point, it is useful to look at a Bedouin listing on Airbnb, the online marketplace and hospitality service, which not only shows how the local/global distinction collapses and blends but also outlines the significance of Bedouin culture in making human and indigenous peoples' rights active and effective in practice. A key cultural marker of Bedouin society is Bedouin hospitality,[1065] which is known for its '*ahlan wa sahlan*' (welcome) greetings, Turkish coffee, sweet mint tea, and trays of food.[1066] Conversely, Airbnb is a form of hospitality that offers virtually-inspired home-sharing and 'connects people to unique travel experiences, at any price point, in more than 65,000 cities and 191 countries.'[1067] Airbnb maintains that home-sharing is 'thriving' in Israel, where 'guests enjoy authentic and local experiences—in communities they might otherwise have missed.'[1068] Scrolling down the Airbnb listings in the Be'er Sheva area in April 2017, 'Amazing Bedouin hospitality/near Dead Sea' is listed.[1069] The location—'סרה-אל, הדרום מחוז, Israel [al Sira, southern district, Israel]'—is marked on the Airbnb map,[1070] which suggests that Airbnb is not concerned about the legal status of the village

[1064] There is always a risk of essentialism when constituting an indigenous peoples, which in the case of the Bedouin is compounded by the risk of Orientalism. From an Orientalist perspective, the Bedouin should avoid changing their habits and tastes in order to keep their Bedouin lifestyle 'pure' and unaltered by the inexorable spread of the Western lifestyle. Indeed, the myth of the Bedouin and real image of the Bedouin often seem to have a reciprocal effect on one another. Eitan Bar-Yosef talks of a self-orientalization. See, Bar-Yosef, *The Holy Land in English Culture 1799-1917*, 8–9. Without indulging in hyperbole, the lesson of indigeneity runs the risk of amounting to a civilizing process and a reinforcement of cultural superiority. On the risk of ethnic essentialism, see Cole, "Where Have the Bedouin Gone?," 237.

[1065] Other cultural markers include Bedouin weddings and funerals, Bedouin women, the camel, the black goat-hair tent used for hosting guests, and religious feasts or celebrations, like the birth of a baby boy, that involve the slaughter of lambs. For a comprehensive account of Bedouin cultural markers from a historical perspective, see El-Aref, *Bedouin Love*.

[1066] For a critical account of the tourism industry see, Dinero, "Bedouin Tourism Development Planning in the New Economy' Dinero, *Settling for Less*. See also, Dinero, "Image Is Everything: The Development of the Negev Bedouin as a Tourist Attraction."

[1067] See, Airbnb, "About Us," https://www.airbnb.ie/about/about-us.. Some of the countries where Airbnb is not available include: North Korea, Iran, Syria, and Sudan.

[1068] Airbnb, "Airbnb Citizen - Israel," https://www.airbnbcitizen.com/israel/. It is worth noting that Airbnb emphasizes the role of the government in the home-sharing enterprise and has designed an 'Airbnb Policy Tool Chest, a resource for governments to consider as they draft or amend rules for home sharing.'

[1069] Airbnb, "Amazing Bedouin Hospitality/ Near the Dead Sea - Khalil," https://www.airbnb.ie/rooms/16564434?location=bedouin+hospitality&s=DXKNEbOk.

[1070] Al-Sira is 25 miles from Be'er Sheva Airport, which is a military airport established after the peace agreement between Israel and Egypt. Havatzelet Yahel and Ruth Kark, "Reasoning from History: Israel's 'Peace Law' and the Resettlement of Tel Malhata Bedouin", Israel Studies. Yahel and Kark, "Reasoning from History."

or whether the village is included on official state maps. In practical terms, finding al-Sira is a challenge for visitors who are new to the area, and as one reviewer comments 'Without Waze [it is] hard to find the place. A signe [sic] in the entrance of the village would be useful.'[1071]

The link leads to Khalil Alamour's profile picture of him standing in the desert with a goat in the background; a second profile picture is of Alamour being handed his degree at the Israeli Bar conferral ceremony. The description accompanying the listing states:

> Our quiet apartment in the Bedouin village of Alsira [al-Sira] is really an exciting place to stay in. You can enjoy the traditional food and coffee served generously by a Bedouin family. Beside the unique calm stay you *can learn about the Bedouin community customs, culture and daily life* and visit interesting places and neighboring villages and towns: Be'er sheva (30 min), Dead Sea (35 min), animal market (10 min). (emphasis added)[1072]

Alamour invites Airbnb guests to his village to 'explore the desert people' and to learn about authentic and local experiences on offer in al-Sira.[1073] Under the house rules, guests are advised to 'dress modestly, [and] respect the traditional and conservative community when touring and walking out in the village'.[1074] Alamour talks about the listing as a 'Zimmer', the German word for 'room', which refers to an up-market B&B and a popular destination for Israeli holiday-makers. The listing, a two-bedroom semi-detached built for his second son (currently studying medicine abroad), is available for short-term lease for roughly €50 per night, which covers lodgings, meals, and cleaning. An Australian, who stayed with his wife, posted the first review, commenting:

> The apartment is located in the middle of a fair dinkum Bedouin village up on the plateau. Surrounded by rolling hills with sheep and camels, the experience was authentic. The host and his family were very gracious. They provided us with a special dinner and a traditional breakfast, and we were able to learn about their culture from them, an important reason that I choose to use Airbnb. The room itself is very large, definitely big enough for 5 or 6 people. It is a little rustic but that is part of the experience. The bedroom and bathroom were good, and there was plenty of hot water. I only wish that we had time to stay there more than one night to speak more with the family and see more of the Bedouin culture.[1075]

[1071] Airbnb, "Amazing Bedouin Hospitality/ Near the Dead Sea - Khalil."
[1072] Airbnb.
[1073] Airbnb.
[1074] Airbnb. The listing also states, 'Modest dressing is obligatory under Islam and Bedouin tradition.'
[1075] Airbnb.

Airbnb requires Alamour to meet the criteria to be an Airbnb host, and he does, which makes him an 'Airbnb citizen'.

Traditionally, Bedouin hospitality relates to honor and is based on reciprocity.[1076] Yet, Airbnb's virtually-inspired hospitality offers Khalil Alamour an additional platform and new audience to raise awareness about his village and the situation of the Bedouin in the Negev**.** It also offers an additional income. One reviewer hints at the multiple purposes behind the Airbnb listing: 'Not only is he [Alamour] a great host but establishing a presence of Bedouin villages on Airbnb is a great thing to do for so many reasons. Khalil will explain more.'[1077] The reviews of Airbnb guests from Hong Kong, Miami, Massachusetts, Bremen, and Ghent are overwhelmingly positive and have earned Alamour's listing five stars on Airbnb. Comments range from 'The experience was beyond our expectations' and 'It is a special experience staying at Khalil's place! Even better if you are interested in history of the Bedouins in Israel', to 'Perfect for those who wish to stay away from city and experience something different in Israel's Negev desert.'[1078] In addition to compliments on the hospitality, Alamour is also described as 'an expert in this field' who willingly talks about the life and the daily problems of the Bedouin in the Negev. In this dual role as Airbnb host and representative of Bedouin society, Alamour relies on Bedouin culture to relay information about the human rights issues of the Bedouin. To summarize, the listing of al-Sira on Airbnb illustrates the local/global dynamics at work and shows how Bedouin culture is employed to talk about and relay information about international human rights issues in the Negev, and on the specific issue of Bedouin land rights as an indigenous peoples living in unrecognized villages.

Although the Bedouin have been talked about/over until now, this chapter studies the concept and category of indigenous peoples with an ethnographic sensibility to its lived realties and local textures, focusing on what the Bedouin majority have to say. Bedouin localities are perceived as marginal and on the periphery, but these localities are crucial for the international status and rights of indigenous peoples to penetrate and thrive in Bedouin society. They

[1076] A body of literature exists on the Bedouin as based on honor, as opposed to shame. Indeed, articles on the Bedouin in the Negev often deal with the question of honor. According to Bedouin tradition, hosting the guest is done without expectation of payment, and so Alamour's participation in Airbnb represents an adaptation or evolution of Bedouin tradition. See, El-Aref, *Bedouin Love*, 132–34, 193. See also, Marx, *Bedouin of the Negev*, 178.
[1077] Airbnb, "Amazing Bedouin Hospitality/ Near the Dead Sea - Khalil."
[1078] Airbnb.

illustrate the concept and category of indigenous peoples in action, which is beyond the abstract discussion of definitions yielded by international lawyers and academic commentators. Speaking from an etic perspective, a few scholars maintain that the Bedouin do see themselves as indigenous.[1079] As already noted, some CSO representatives admit that the Bedouin might not employ the word 'indigenous' but counter that they do employ their own labels corresponding to the international definition. On the other hand, scholars who regard the Bedouin's indigenous claim as a fabrication argue that the term does not exist in Arabic and that further research with the Bedouin is required.[1080] In short, few can speak with absolute authority on the question.[1081] Despite the lack of agreement and general ambiguity on the question, in this chapter I argue that an indigenous perception is strong among a specific group: the Bedouin elites.

2. The Role of Bedouin Elites: Cultural Insiders and Intermediaries

Bedouin elites are cultural insiders in their communities and cultural intermediaries connecting different people and places with one another,[1082] thus appropriating and translating rights. Several characteristics distinguish them from the rest of the Bedouin. They are highly-educated with postgraduate education, attend prestigious and high-ranking universities in Israel, and spend periods studying abroad at English-speaking universities.[1083] Bedouin elites usually specialize in their profession. For example, the lawyer often becomes an international human rights expert, or the scholar specializes in Middle Eastern studies or Bedouin women's studies. Fluent in several languages, including Arabic, Hebrew, and English, Bedouin elites engage

[1079] Stavenhagen and Amara, "International Law of Indigenous Peoples and the Naqab Bedouin Arabs," 181–82.
[1080] Frantzman, Yahel, and Kark, "Contested Indigeneity," 104 (footnote 111). The authors maintain that there is no Arabic version of the term or of the concept and category of indigenous peoples.
[1081] This statement is an acknowledgement of the position I held as an outsider asking questions that, for the person being asked, lie between the personal and the political. While the Bedouin will always want to help a stranger in need (by offering help, information, etc.), I have reflected on whether a cultural insider might be the most appropriate person to ask these questions.
[1082] Felipe Gómez Isa points out that 'Betweenness would be the inherent characteristic position of intermediaries and cultural insiders to be effective cultural translators.' Felipe Gómez Isa, "Freedom from Want Revisited from a Local Perspective: Evolution and Challenges Ahead," in *The Local Relevance of Human Rights*, ed. Koen De Feyter et al. (Cambridge: Cambridge University Press, 2011), 59. Betweenness can be understood 'to express the ways in which human rights discourse unfold ambiguously, without a clear spatial reference, in part through transnational networks, but also, equally important, through the projection of the moral and legal imagination by social actors whose precise locations within these networks are (for them) practically irrelevant.' Mark Goodale, "Introduction: Locating Rights, Envisioning Law between the Global and the Local," in *Cambridge Core*, ed. Sally Merry and Mark Goodale (New York: Cambridge University Press, 2007), 19.
[1083] Dinero observes, 'Today's Bedouin is not an illiterate herder holding onto flocks and wishing to live in a tent; rather, he (and increasingly, nowadays, she) is often a savvy, educated, knowledgeable professional or businessperson who is well traveled, and is quite familiar with Jewish Israel.' Dinero, *Settling for Less*, 90.

with multiple audiences and often translate simultaneously. It is, however, their English fluency that allows them to travel to foreign countries to present, interact, and communicate. Irrespective of the six official languages of the UN, English is the UN working language, and mastery of English is essential for UN participation.[1084] English fluency is also essential for Bedouin scholars in Israel who pursue an international academic career, since English has become the dominant language of scientific research and papers worldwide. All in all, the educated and professional worlds of the Bedouin elites can be juxtaposed to the Bedouin village or town, which is the place they call home.

In short, Bedouin elites help bring international human rights home to the local Bedouin context. In his scholarship on how to enhance the legitimacy of international human rights in Islamic societies, Islamic scholar and international jurist Abdullahi An-Na'im observes that 'it is primarily the task of internal actors, supported and encouraged by external allies, to promote and sustain the necessary degree of official commitment and popular political support for a program for changing Shar'ia laws'.[1085] According to An-Na'im, individuals who are situated in their own society can be most persuasive and convincing.[1086] For example, internal Bedouin actors influence the internal dynamics of Bedouin society through their community involvement. They often work collaboratively to promote the status and rights of Bedouin society and unrecognized villages, and Bedouin women's issues are a priority concern for them. Aligning with An-Na'im's work, Merry's 'cultural insiders' are key to facilitating the localization of international human rights.[1087] In this context, Bedouin elites act as cultural

[1084] Although UN meetings have simultaneous translation, UN documents are produced in English. A person who has not mastered the language would have great difficulty accessing the events and documents. The benefit of a common language is that it enables everyone to comprehend, speak, and dialogue across realms, and that common language can then be made, or re-made, in the vernacular in the local realm. Whether multiple vernaculars in local sites of action globally converge or diverge is not of major significance, ultimately they are uniformly understood through the singular logic of international law, which is a golden thread running throughout Merry's three cultural flows.

[1085] An-Na'im, "State Responsibility under International Human Rights Law to Change Religious and Customary Laws," 184.

[1086] See, Abdullahi Ahmed An-Na'im, "State Responsibility under International Human Rights Law to Change Religious and Customary Laws," in *Human Rights of Women: National and International Perspectives*, ed. Rebecca Cook (Philadelphia, PA: University of Pennsylvania Press, 1994), 184.

[1087] On the bifurcation of insider/outsider, see Ghassan Hage who argues that 'An insider is usually someone who "belongs" and is mentally and bodily attuned to a specific socio-cultural space. His or her body feels "at home" within that space, usually because, this body has historically evolved in relation to that space… The insider is someone who perceives that this collective order of things is their own. Thus, they feel that their "I" can legitimately speak the "we" of the collective identification with the law. He or she can say "this is our law" or "this is our way of doing things".' By contrast, the outsider, "does not experience either socio-cultural or political belonging. It is someone whose mental and bodily dispositions have evolved somewhere else and thus feels culturally "out of place". Likewise, the outsider does not identify with or experience the law as his or her law but

insiders who help make indigenous peoples' rights in the vernacular among the Bedouin. It is important to stress that although Bedouin elites accept the formalities of the concept and category of indigenous peoples as it is defined internationally, they are also embedded in Bedouin society and follow the internal codes of Bedouin society. Said differently, Bedouin cultural insiders come from a particular cultural tradition but are not exclusively rooted in it, and often see alternative ways of doing things.

Bedouin elites involved in rights-translation processes are important cultural intermediaries who connect and are connected to numerous worlds. They have access to multiple arenas and are mediators who make communication possible, presenting and speaking about the situation of the Bedouin at international conferences, in national debates, and at village events. At the UN, for example, they present reports, attend sessions, publicly read statements, and conduct private meetings with high-level UN officials.[1088] As cultural insiders and intermediaries, they not only participate in international events but they also identify with other groups and collaborate and dialogue with CSOs. It is worth noting the majority of the Bedouin elites do not necessarily engage in generating official commitment or political support domestically. They see greater potential for facilitating change in either their own backyards or in international settings.

After several conversations with Bedouin elites from different fields, the question of legitimacy arose. I was left wondering who is legitimate, and authorized, to travel and speak on behalf of the Bedouin in international settings.[1089] In the UN headquarters in New York and Geneva, where the majority of indigenous peoples' events take place, questions of representation and group membership become real and unavoidable.[1090] The Bedouin spokesperson is seen as representing not only the Bedouin in Israel but also possibly the Bedouin in Area C of the West Bank or Bedouin in the Middle East as a whole. Some international audiences may even see the Bedouin speaker represent the inhabitants of the former Ottoman Empire and British Mandate (see Chapter 5). Of course, there are differences among the Bedouin, which depend

somebody else's law." Ghassan Hage, "Insiders and Outsiders," in *Sociology: Place, Time and Division*, ed. Peter Beilharz and Trevor Hogan (Melbourne: Oxford University Press, 2006), 1.

[1088] To a lesser extent, these Bedouin representatives also engage with human rights bodies like the Committee on the Elimination of Racial Discrimination (CERD), the UN Human Rights Committee's review of Israel under the *International Covenant on Civil and Political Rights* (ICCPR), and the Committee of Economic, Social and Cultural Rights (CESCR).

[1089] Engle Merry, *Human Rights and Gender Violence*, 18–19.

[1090] Spivak, "Can the Subaltern Speak?"

on their level of education, social class, gender, language skills, and living arrangements in the Negev. However, making such distinctions, which are often considered internal differences, could diminish the international impact or cause confusion for the non-expert audience. Bedouin elites do not claim to speak on behalf of all the Bedouin in the Negev, but they are positioned to speak about the general situation of the Bedouin even if they are largely unaffected by most issues. Bedouin representatives often publicly read statements about human rights issues in unrecognized villages, such as the lack of basic services like running water, electricity, or public transportation, even though they themselves live in Be'er Sheva city, which is the capital of the Negev and has a high standard of living as well as public services and infrastructure.

Most Bedouin elites agree that the Bedouin fulfill the criteria of indigenous peoples, which entitles them to recognition as an indigenous peoples and access to the corresponding set of rights. While this group acknowledges the lack of consensus around and competing meanings for the international definition of 'indigenous peoples', they apply the term to the Bedouin nonetheless. For example, Mansour Nasasra is a Bedouin scholar and lecturer at the Department of Politics and Government at BGU who has become prominent for his scholarship that emerges from within Bedouin society. He writes about the Bedouin as an indigenous peoples, although he recognizes the problems of the definition of indigenous peoples. Not solely limited to academia, Nasasra has previously participated as a Bedouin spokesperson in UN indigenous peoples' forums and has been involved in civil society initiatives abroad.[1091] Nasasra's signature article 'The Ongoing Judaisation of the Naqab and the Struggle for Recognising the Indigenous Rights of the Arab Bedouin People' examines the land dispute, focusing on al-Araqib, and employs the analytical framework of indigenous peoples' rights. As part of his scholarship, Nasasra also researches and documents the local history of the Bedouin, offering unique insight into the active agency and autonomy of the Bedouin and their efforts to defy subjugation and control from an internal perspective.[1092] To lend support to their position that the Bedouin are an indigenous peoples in international human rights law, Bedouin elites often cite or paraphrase high-level UN officials who have expressly recognized the

[1091] Mansour Nasasra read out this statement on behalf of NCF at the 11th Session of the Permanent Forum on Indigenous issues in New York in May 2012: 'NCF and Amnesty UK. Unrecognized. A talk on the dispossessed Bedouin minority living in unrecognized villages in the Negev in London on 4 November 2010. Mansour was affiliated to the University of Exeter at the time and acted as the moderator. See, NCF, "International Lobby - UN Permanent Forum on Indigenous Issues.". See also, Amnesty International, *UNRECOGNIZED: A Talk on Dispossessed Negev Bedouins*.

[1092] Nasasra, *The Naqab Bedouins: A Century of Politics and Resistance*.

Bedouin as an indigenous peoples. Some Bedouin elites recall holding private meetings with S. James Anaya when he was the Special Rapporteur on the Rights of Indigenous Peoples.[1093] Most Bedouin elites recognize the power of the international human rights of indigenous peoples, which is the reason why they represent the Bedouin as an indigenous peoples in international settings and discuss the issues facing the Bedouin as indigenous peoples' issues.

3. Talking Indigeneity from Below in the Israeli/Bedouin Context

My exchanges with Bedouin elites reveal a paradox, however, centering around their relationship to indigenous identity and their translation (or non-translation) of the concept and category into the vernacular. Their indigenous consciousness and subjectivity sways from complete affirmation as an indigenous peoples to an uneasy tension with the concept and category, to other ways of seeing themselves. They do not hold a strong attachment to the concept and category on a daily basis, whether at work or at home. Irrespective of their changeable feelings about their indigenous peoples' status, their translation role reveals a further paradox. On the one hand, they engage with the international framework of indigenous peoples and penetrate international forums, raising their voices to translate *up* the experiences and hardships from Bedouin localities to international audiences; in other words, they enlarge the situation of the Bedouin by decoding Bedouin experiences into more familiar ones for an international audience. On the other hand, it is necessary to ask what role these cultural insiders play in translating *down* the international definition from the UN to Bedouin localities in the Negev. Pursuing An-Na'im's reasoning that internal actors are required to promote and sustain commitment to and support for reform,[1094] it would seem that Bedouin elites are instrumental to developing an indigenousness consciousness and subjectivity among non-elite Bedouin—and yet, many of the cultural insiders with whom I interacted do not actively translate *down* the concept and category into the Bedouin vernacular. Simply put, they do not decode the concept and category of indigenous peoples into more familiar terms for the Bedouin majority. Does this mean the concept and the category of indigenous peoples is the prerogative of a tiny Bedouin elite? Does it also mean that the majority of Bedouin are unaware of their possible internationally-defined status and rights as an indigenous peoples?

[1093] Alamour, Interview.

[1094] Whether it is national reform or local reform makes a big difference to the role of the cultural insider. An-Na'im, "State Responsibility under International Human Rights Law to Change Religious and Customary Laws," 184.

Language is the human communication channel for the transnational knowledge of rights to be domesticated and localized. In order to make the international definition of 'indigenous peoples' in the vernacular, words (i.e., distinct conceptual units that constitute language) are needed. Like all language terms, the international definition in the Israeli/Bedouin context is open to interpretation, and its meaning—both obvious and hidden—must be balanced and weighed carefully. Because of their English language proficiency, Bedouin elites can interpret independently and give their own meaning to the concept and category of indigenous peoples.[1095] But, among the Bedouin majority, formulations of the term are predominantly rooted in Arabic and articulated in a Bedouin dialect,[1096] with Hebrew (the working language of the State) as a backdrop.[1097] The terms *indigenous* and *indigenous peoples* translate into Arabic as *asli* and *asleen*, respectively.[1098] Translated back to English, *asli* and *alseen* mean 'original' and 'original peoples', which evokes notions of 'the beginning of time', 'time immemorial', 'first peoples', or 'original inhabitants'.[1099] Such contextualized translations and re-translations epitomize the phenomenon of entangled translation,[1100] which arises when an internationally-created status and the rights associated with it move across contexts. If original is understood as 'first' or 'beginning', then time is the subtext of the concept and category of indigenous peoples in the Bedouin vernacular. With this understanding, it is little wonder that the majority of Bedouin automatically spoke about a time-honored presence on the land in the Negev. As I was told, 'the Bedouin are here since forever'.[1101]

In deeper conversation, it quickly became clear that the words *asli* and *asleen* are almost unfamiliar to the Bedouin majority and not terms that they typically use to talk about themselves—revealing the marked difference between the term 'indigenous' and the concept and category of indigenous peoples. Because of their foreignness and novelty, the Arabic terms

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[1095] Kelly, *Law, Violence and Sovereignty Among West Bank Palestinians*, 16.
[1096] The first language of every Bedouin in Israel is Arabic, and specifically, a dialect of Arabic that sets them apart from other Arabic speakers in the country and the region. Arabic and Hebrew are Semitic languages and share similarities in the verb system, and some common roots.
[1097] When it comes to the act of naming and re-naming, specifically with regard to post-1948 geography, reference is often made to Benvenisti, *Sacred Landscape: The Buried History of the Holy Land since 1948*.
[1098] Another word synonymous to *asli* is the word *guh*, which means very authentic. It is also used in slang. For example, if you ask someone if they are Bedouin, and their parents and grandparents are Bedouin, then they will respond with '*guh*.'
[1099] In a conversation, a distinction was made between *asli* and *asleen* and the battle of the "s", which highlights how Bedouin elites keep abreast with the developments of the concept and category of indigenous peoples, specifically the transformation from 'people' to 'peoples'.
[1100] Howard S. Becker, *Tricks of the Trade: How to Think about Your Research While You're Doing It* (Chicago, IL: University of Chicago Press, 2008).
[1101] Morad El-Sana, Interview, December 9, 2015.

asli and *asleen* required explanation, elaboration, and clarification. In my conversations with the Bedouin, I had to momentarily act as a rights translator to translate *down* the term by drawing comparisons, telling anecdotes, and recalling events of the past. Among other explanatory tools,[1102] I paraphrased the late PLO leader Yassar Arafat who, in one of his last media interviews, was of the conviction that 'We are here, in Palestine, facing them. *We are not Red Indians*.'[1103] Local knowledge of the region's geopolitics and key figures, like Arafat, and a basic general knowledge of 'Red Indians' in the United States helped ground the concept and category of indigenous peoples. While acknowledging the benefits and risks of these clarification tools,[1104] the point I want to emphasize is that the term for 'indigenous peoples' in Arabic was largely unknown at first and required explanation. Despite this initial unfamiliarity, once the Bedouin I spoke with understood these Arabic words in their own terms, the concept and category of indigenous peoples resonated with the vast majority of them. Rather than reject the concept or deny its application to them, they accepted and even embraced indigenousness as it is understood internationally. Some inquired into the uses it could serve them, hinting at the pragmatic use and concrete benefits of legal claims.[1105]

On what it means to be an indigenous peoples in the Bedouin vernacular among the Bedouin elite and the Bedouin majority,[1106] the answers I gathered are best shared as a list. In the following, Bedouin interpret indigenous peoples in the Bedouin context:

> *A Bedouin grassroots representative and lawyer from the unrecognized village al-Sira*: We were here 2,000 years ago. We are the indigenous peoples. But Abraham, our common father, came here and bought a plot of land from the Bedouin. So it is a non-solvable problem that we can argue forever […] We are indigenous peoples. We are not new incomers; we are not refugees. We are indigenous people; we are originally here. Indigenous peoples is not a new religion or a new nation. It is, I think, a privilege. If you are privileged, you cannot be discriminated against. Here, it is the opposite.

[1102] Other ways to clarify the meaning of *asleen* is to relate the term to the history of the Bedouin under the Ottoman Empire (1517-1917), the British Mandate (1917-1948), and the Israeli government since 1948. Another way to make the term understandable was to refer to groups commonly called 'indigenous', namely Aborigines or Native Americans, to see if the Bedouin I spoke with perceived any relation between themselves and those groups.

[1103] The problem of Palestine, in Arafat's opinion, was an international problem. In this quote, he was referring to the International Court of Justice (the ICJ) and its ruling on the separation barrier, the UN Generally Assembly resolutions, and Israel's failure to erase the Palestinians. His words suggest that the Palestinians are not silent, complacent, and submissive to domination but are at the center of the world-stage. International Court of Justice (ICJ), "Advisory Opinion Concerning Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, General List No. 131," July 9, 2004.

[1104] In every act of labelling, it affixes meaning, which can obstruct interpretation or discourage multiple or alternative meanings.

[1105] Kelly, *Law, Violence and Sovereignty Among West Bank Palestinians*, 28.

[1106] In reality, there is a continuum between 'elite' Bedouin (as I define them) and the majority of Bedouin, with individuals falling anywhere in between, based on their life experience, age, and education.

They are privileged people in many countries, like the Aborigines in Australia today; they are trying to promote their lives and to give them extra conditions to cover the evil things that they did to them in the past: the same with the Native Americans.

Me: Do you use the word 'indigenous'?
A Bedouin the town of Rahat: In fact, we *do* use it. We live it.
Me: You live indigenous?
A Bedouin from the town of Rahat: Even though we never say it [the word indigenous].

An elderly Bedouin from the unrecognized village Abu Tlul: It is completely right to feel indigenous. That is not because of the Red Indians but because of the feeling of being original, or struggling for your land in the place you are living in. Today we are more educated, more aware of the complicated situation we are living in, and we know what we are facing. And we are going to carry on.

An elderly Bedouin from the unrecognized village of Hwashla: Bedawin which means, in Arabic, the plural of *badawi* is from the word 'beginning,' the very beginning, the start. It is very original. From Suez Canal, the whole Sinai, to the Red Sea, to the Naqab, Negev, all those who are living in this area are Bedouin. And they are originally indigenous. I accept the phrase 'indigenous' as a Muslim, Palestinian living in the Naqab [the Negev].

A Bedouin from the unrecognized village of al-Araqib: I am indigenous to my piece of land here. During the Ottomans, my great-grandfather, my grandfather lived under the Ottomans. After them the British Mandate, after them under Israel government. We are still here. Indigenous people mean that they have the right to this piece of land. The people feel they belong to this land. I feel if I leave this land, I will die. This is what I feel. Everyone feels it. The Palestinian refugees from outside the country, all of them has this dream to come back. He has this dream to come back to the land.

A Bedouin from the unrecognized village of Sawa: People are proud for being called 'indigenous' or 'Bedouin'. It is not shame if they call them this or that. They feel that they belong to this place. Being Bedouin is being proud and nothing else.

Me: 'Indigenous' can mean a lot of things. Would you say that you are indigenous?
A Bedouin from the recognized town of Hura: Yes, this is part of my empowerment.

Regardless of whether the response comes from an elite (cultural insider), the rawness of understandings of 'indigenous' is discernible.[1107] The cumulative responses I received from the Bedouin emphasize how the term 'indigenous peoples' as it is used and understood internationally gives rise to different interpretations and a range of meanings in the context of the Bedouin in the Negev. Most of the local responses to what it means to be indigenous

[1107] 'Rawness' is understood here in terms of McCormick's raw law, as discussed in the Introduction of this study.

underscore the significance of history and social relations, as well as feelings of pride, privilege, and empowerment, and a strong sense of place and attachment to the land.

Culture, context, and circumstance have helped shape the ways in which the concept and category of indigenous peoples is made in the Bedouin vernacular, which contrasts to the academic and lawyerly approaches that prefer abstract conceptualization and definition. Put differently, the Bedouin majority does not replicate the concept and category according to the same precise and static blueprint formulated in international law or academic commentaries. Nonetheless, many Bedouin with whom I interacted addressed one or more of the criteria enumerated in the international definition formulated in international law. As civil society representatives predicted, even if the Bedouin are unaware of the international definition and its application to them, they instinctively address the concept and category of indigenous peoples, but on their own terms. By way of example, no ordinary Bedouin explicitly raised the criterion of 'cultural distinctiveness'; nevertheless, they often spoke about their unique Bedouin culture in positive terms. Concrete examples of cultural uniqueness include Bedouin hospitality, and they gave the example of the Bedouin host offering the guest three half-cups of coffee, each of which has a symbolic meaning, or the guest being allowed to stay for three days without invitation or questioning the purpose of his visit. Bedouin weddings and the weaving and embroidery carried out by Bedouin women also epitomize the distinct Bedouin culture, according to Bedouin society.[1108]

Furthermore, a strong sense of the priority of and rootedness in the land is a common theme in conversations about indigenous status and rights in the Bedouin vernacular. Most Bedouin are convinced that their people were in the Negev long before anyone else. Their origins, roots, and beginnings in the Negev are confirmed by local history and, for many, the land continues to be their lifeline. In short, many Bedouin see land as a place of refuge at the core of who they were and are. As one Bedouin succinctly put it, 'I feel I am the earth of my village".[1109] Such self-perceptions about their connection to land contradict mainstream opinion and the dominant narrative about the Bedouin (as confirmed by the Israeli judiciary in the *al-Uqbi* case), which holds the Bedouin to be a rootless and nomadic desert-dweller whose origins are

[1108] Bedouin women are often perceived as the carriers of culture. There was a time when the Bedouin exercised Bedouin customary law, which Aref el-Aref interrogates. Bedouin law has largely fallen into disuse, becoming dead law or marginalized law, and the tribal courts are now closed. Despite the absence of Bedouin law, however, some strands of Bedouin codes remain when it concerns family feuds.
[1109] Atir Umm al-Hieran, Interview, 21 November.

far from the Negev. The official perception contrasts to the Bedouin's own perceptions of their history on lands, encapsulated by the phrase 'it is the lands of my father and forefathers'.[1110] Internally, the origins of each Bedouin tribe are not in dispute; for example, every Bedouin in the Negev knows that the Abu-Suhayban clan, or sub-tribe, which is part of the Tarabin tribe, is originally from the Sinai and migrated to the Negev a couple of centuries ago.[1111] While the Bedouin do not express the criterion of 'attachment to ancestral lands' to the letter, land was usually the main topic of conversation—especially among the residents of unrecognized villages where the land issue is a pressing daily concern, owing to the developments in the land dispute with the State of Israel. For instance, one elder Bedouin farmer from an unrecognized village explained the predicament of his son who is unable to marry. In order to marry, the son must provide a home, but he cannot build a home for himself and his wife on the lands because that home will only be demolished by the state.[1112] Or, for example, the situation where an elder Bedouin woman was forced to live in the village mosque after her home was demolished.[1113] On several occasions, the unrecognized village of al-Araqib was flagged in order to stress the gravity of the land struggle.

Because the majority of Bedouin interlocutors spoke about the significance of land for the Bedouin, many would argue the Bedouin's land connection entitles them to indigenous recognition and to land rights as an indigenous peoples. Many argue that this significance of land is the foundation of indigenous peoples' rights in international human rights law and is what distinguishes indigenous peoples from other minority groups. On this point, former Special Rapporteur and scholar Stavenhagen explains:

> And perhaps one of the essential links that come[s] out in these debates […] is the important relationship between the people we call indigenous, and the land. The relationship between a society, a culture, and the land, which in South America is called the *pachamama*: that is the mother-earth relationship. I have found this comes out in conversations with indigenous peoples all over the world. And this is where they are increasingly threatened and have increasingly suffered dispossession in their relationship with the land, which leads again to the outside context of the colonial or neocolonial or postcolonial relationship between a dominant political entity—call it an empire, call it a state, call it a republic, a federation, or whatever you want—and […] the idea that this state which is outside and above the indigenous peoples reserve[s] for itself the right to decide what do to with the so-called "national territory" and its riches,

[1110] This phrase was commonly heard in the interviews and informal conversations with the Bedouin when asked about what is meant by indigenous peoples.
[1111] Cole observes 'knowing his/her kin affiliation allows one to place the other in a framework that is meaningful mainly in terms of identification'. Cole, "Where Have the Bedouin Gone?," 252.
[1112] Al-Hawashleh, Interview, November 21, 2015.
[1113] Al-Sawali, Interview, November 21, 2015.

> and its wealth, regardless of the identities of the people or peoples in the plural that happen to, or historically do, live on that land and consider it as their own.[1114]

Only in exceptional cases did the Bedouin interlocutor grasp the term *indigenous* without need of explanation. On these occasions, the Bedouin was conversant about international indigenous peoples' rights and the situations of other indigenous peoples in the world. Local knowledge of the international legal framework of indigenous peoples can be traced to special set of circumstances, namely, a close proximity to rights translators, interactions with international audiences and officials, and the specifics of the land dispute in the speaker's village. For instance, some al-Araqib villagers have developed an appreciation and practical understanding of indigenous peoples' rights, and the term is not an entirely new entry in the lexicon employed to talk about their situation. Hence, they see themselves and their village as indigenous, and their actions to remain can be viewed as solidifying an indigenous peoples' presence on al-Araqib lands. In addition to rebuilding the village after each demolition and organizing weekly demonstrations on one of the major roads to Be'er Sheva,[1115] the villagers have gone before the courts seeking, *inter alia,* indigenous peoples' recognition and indigenous peoples' land rights.[1116] Neither a rights translator nor a cultural intermediary, but nonetheless fully aware of the spaces and opportunities afforded by international human rights law, al-Araqib resident Aziz al-Turi is convinced he and his family are in the right and are backed not only by international indigenous peoples' rights and protections but also by expressions of solidarity from around the world.

4. Indigeneity, Indigenous Consciousness, and Subjectivity: 'Self-Identification' in the Context of the Bedouin in Israel

While few would dispute that al-Turi has a working knowledge of the international definition and perceives himself and his family to be indigenous to al-Araqib lands, after further probing

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[1114] Stavenhagen, interview.

[1115] Speech acts of repetition play a key role in the operational practice of international human rights law, and in making rights work on the ground. The act of speaking and the act of doing affect how people think about international human rights law and its operation in context. Apart from the frames, adaptations, and redefinitions described by Merry in making rights local, the translation process requires discursive reiteration and repetition, which can help international law transform into the local vernacular and become a language of global power and knowledge. The cunning of international human rights discourse is that it both serves to mask state power and serves as a powerful tool for non-state subjects of international human rights law.

[1116] Emily McKee discusses "taskscapes" in relation to Aziz al-Turi, an activist and potential village leader. McKee, *Dwelling in Conflict: Negev Landscapes and the Boundaries of Belonging*, 3.

a conceptual weakness emerges.[1117] Al-Turi sees himself as representing indigenous peoples in the Negev but it is up to other actors, namely rights translators,[1118] to transform his *social claims* into *legal rights* that are actionable in international and domestic forums, including the domestic courts. On this point, al-Turi readily concedes, 'I don't dream of international law'.[1119] Based on these observations, the Bedouin recognize that they are an indigenous peoples to the Negev but the majority do not pursue an international human rights agenda. This, I argue, says more about the constraints of the paths of international human rights law, or the availability of actors, than about the law itself. In this section and the next, I revisit the criterion of 'self-identification' and the criterion of 'historical continuity with pre-invasion and pre-colonial societies' discussed in Chapter 4 in order to shed light on these problematic criteria in the context of the Bedouin, as articulated in the Bedouin vernacular.

In the international definition, the criterion of self-identification discussed in Chapter 4 betrays a Kafkaesque conundrum that only arises in practice. If the beneficiary is unaware of their internationally-defined status and rights, then an indigenous self-perception is unlikely to follow—but without that self-identification, recognition as an indigenous peoples is withheld. Self-identification requires external recognition,[1120] which Anaya calls 'subjective determination'.[1121] Hence, one can make two general observations about the application of the criterion of 'self-identification' in context. Firstly, external identification, or recognition, is more significant than self-identification.[1122] Secondly, it is not unusual that recognition precedes self-identification—in other words, individual actors recognize a group as indigenous before the group members themselves self-identify as indigenous.

[1117] A claim and a right can be distinguished: a claim is social and is pre-right, which means it can be exercised as a right or as something else; a right, by contrast, is purely legal, and justice is often framed as a right.

[1118] Since I am an international, Aziz al-Turi saw me as an 'ambassador' and 'messenger' to spread the word about al-Araqib. The fact that I am an international with a graduate degree meant that I could transmit and communicate information about the situation in al-Araqib that epitomizes the phenomenon of the unrecognized in the Negev.

[1119] Aziz Al-Turi, Interview, November 20, 2015.

[1120] Jeremy y observes that the act of recognition is 'not an utterly deferential one (such acts never are); in the act of recognizing, the law also goes some ways towards defining. Jeremy Webber, "Beyond Regret: Mabo's Implications for Australian Constitutionalism," in *Political Theory and the Rights of Indigenous Peoples*, ed. Duncan Ivison, Paul Patton, and Will Sanders (London; New York: Cambridge University Press, 2000), 77.

[1121] S. James Anaya employs the phrase 'subjective determination' when he discusses the State of Israel and the Bedouin and their recognition as indigenous peoples. UN Human Rights Council, "Report by the Special Rapporteur on the Rights of Indigenous Peoples, James Anaya, UN Doc A/HRC/18/35/Add.1," para. 26 (Annex VI).

[1122] Indigenous recognition has significant legal consequences, opening the beneficiary to a particular legal status and the set of rights and protections that goes with it.

In the particular context of the Bedouin in Israel, competing and contradictory identities amount to a fundamental challenge for the application of the criterion of self-identification.[1123] Former Special Rapporteur Rodolfo Stavenhagen and expert scholar Ahmad Amara contend that the Bedouin meet the self-identification criterion: '[t]he Naqab Bedouins self-identify as a population indigenous to the Naqab Desert since the fifth century, prior to the presence of Ottoman, British and Israeli ruling authorities (Meir, 1997)'.[1124] Stavenhagen and Amara's observation would suggest that the concept and category of indigenous peoples has entered the consciousness and shaped the subjectivity of the Bedouin majority, who have constructed an indigenous peoples' identity and now self-identify as such.[1125] This condition implies that the Bedouin majority should be able to translate *up* the situation of the Bedouin in terms of indigenous peoples. In the best-case scenario, all Bedouin in the Negev, and not only Bedouin cultural insiders with their professional knowledge, can participate in international circuits where they can present reports, attend sessions, read public statements, and conduct private meetings with high-level UN officials. This is a simplistic way to approach the condition but, I argue, the identity-based condition seems to ignore the heterogeneous nature of identity, which is actually not monolithic but interacts, overlaps, and eludes strict and static categories. Moreover, given the Bedouin's smallness in scale, especially with regard to power relations, some Bedouin are wary of the introduction of new terms and the application of foreign identities. The criterion of self-identification stresses the tension between international human rights law and local identities that are shaped by local particularities, personalities, and internal dynamics.

[1123] Amara distinguishes between political indigeneity and legal indigeneity. Let's say we ignore this distinction, and we hypothetically include the Palestinian citizens inside the fold of indigeneity, would this in turn threaten an indigenous status and rights becoming too vast? This is not a rhetorical question. On the broader issue of indigeneity and the Arab minority see, Amal Jamal, *Arab Minority Nationalism in Israel: The Politics of Indigeneity* (London: New York, NY: Routledge, 2011). Jamal argue the Arab minority in Israel is indigenous because of 'its decent from the populations that inhabited the country at the time of colonization and the populations that inhabited the country at the time of colonization and the establishment of the present state boundaries, as well as on account of its self-perception as such.' See also, As'ad Ghanem and Mohanad Mustafa, "The Palestinians in Israel: The Challenge of the Indigenous Group Politics in the 'Jewish State'','" *Journal of Muslim Minority Affairs* 31, no. 2 (June 1, 2011): 177–96. For a review of this discussion, see Elie Rekhess, "The Arab Minority in Israel: Reconsidering the '1948 Paradigm,'" *Israel Studies* 19, no. 2 (April 25, 2014): 187–217.
[1124] Stavenhagen and Amara, "International Law of Indigenous Peoples and the Naqab Bedouin Arabs," 181–82.
[1125] The questions of consciousness, subjectivity, and identity are the matrix of beings and becomings. Cross-disciplinary efforts attempt to distinguish between them; however, while it is beneficial and necessary to make conceptual divisions, I see them as akin to a trinity of the self, individually and collectively. In this instance, I see identity as an articulation of the subjective and conscious self, which are dialectical, internal processes.

Indigenous peoples' identification is not *per se* because those in the Bedouin majority consider themselves to be Bedouin, which they see as a tradition or a way of life.[1126] When asked about who they are, most Bedouin were quick to raise their religious belonging and regional affiliation; put differently, being Muslim and Arab forms a core of their identity. Being Palestinian, which is rooted in pre-1948 Mandate Palestine, was also central to who they are, especially for the older generation born before 1948 and a younger generation born with awareness of a collective past. Israeli citizenship, which was conferred after military rule was lifted in 1966, was also mentioned in these conversations about their identity.[1127] In sum, the Bedouin sees himself to be simultaneously Bedouin (a way of life, tradition, culture), Arab (ethnicity, nationalism), Muslim (religious affiliation), Palestinian (nationality, collective belonging), and Israeli (citizenship). Indigenous peoples' identity, or indigeneity, also fits into the local schema of identities. The Bedouin self-identifies as indigenous not solely because he is a Bedouin from the Negev. In contrast to rights translators in civil society and at the UN, whose focus is on the indigenous peoples' rights of the Bedouin, the Bedouin take a more holistic approach to their identity and identification processes: the Bedouin take into account context, contingency, and multiplicity.[1128] The Bedouin in the Negev are sensitive to the complexities and contradictions of identities, and live with them rather than focus on the divisions and barriers that those identities might erect. The Bedouin's relaxed and versatile approach to their identity makes it possible for the Bedouin majority in the Negev to be, *inter alia*, an indigenous peoples in accordance with the international definition.[1129]

Indigeneity is a human-rights-based identity formulated in indigenous peoples' rights in international law (see Chapter 4), which can be seen as part of a sequence of identity transformations in the Israeli/Bedouin context. Civil society often encourages the Bedouin to see their situation—which is attributable to domestic institutions, policies, and practices—as

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[1126] On the shift of the Bedouin as a way of life to an identity see Cole, "Where Have the Bedouin Gone?," 237. The Bedouin way of life is 'Not one of simple and total transformation, but rather of an ongoing dialectic of continuity and change, an interplay between tradition and modernity. They are adjusting their material and political life to rapidly changing modern conditions and yet they continue to respect and adhere to a range of traditions that help them defined and perpetuate their ethnic integrity, **their** *Bedouin-ness* (Khaalaf 1990: 2410)'. (emphasis added) Quoted in Cole, 237.

[1127] Several interlocutors spoke of their increased awareness of a Palestinian identity, especially among the younger generations. These assertions align with scholars who argue that the Bedouin downplay a separate Bedouin identity and instead espouse a pan-Arab or Palestinian identity. Yonah, Abu-Saad, and Kaplan, "De-Arabization of the Bedouin"; Abu-Saad, Yonah, and Kaplan, "Identity and Political Stability in an Ethnically Diverse State."

[1128] On becoming, see Clifford, *Returns*.

[1129] On the Bedouin's complex and multifaceted existence and their shifting self-perceptions, see Cole, "Where Have the Bedouin Gone?," 235, 254.

one of rights violations. Bedouin who are unhappy with how the state treats them can turn to international human rights law for legal relief, which influences how they think about themselves. However, it is important to note that the adoption of the international framework of indigenous peoples does not displace other frameworks but adds a new way to think about themselves and their predicament. By deciding to appropriate international human rights, the Bedouin can draw on a multiplicity of internationally-created identities, such as indigenous peoples, internally displaced persons (IDPs), or minorities (national, ethnic, religious, or linguistic). Salient here is Leve's notion of the 'identity machine', which is 'a global cultural imaginary that compels peoples to represent themselves in certain terms and make their claims in certain ways.'[1130] It is therefore possible that over time, or due to changing circumstances, one of these internationally-formulated identities will become stronger at the expense of others.[1131] Bridging the domestic and international rights systems, Cowan et al. observe the 'intriguing […] dialectic between the discourses and practices—one might say, the culture—of human rights and those of the groups that appeal to them.'[1132] Questioning the general application of international human rights in Israel, one Bedouin elite points out that since 'identity […] is an issue that changes depending on the political issues around', he puts his confidence in the domestic legal and rights framework rather than international rights frameworks.[1133] What we see among the Bedouin is a constant tacking back and forth across a line of identity transformations, which are influenced by domestic, local, and international factors.[1134]

Taking on a human rights-defined self requires a substantial transformation of consciousness. Moreover, appropriating a rights-based subjectivity also entails acquiring a new self-understanding, which may give rise to an unfamiliar sense of self, which can be at odds with community values.[1135] Hence, for the international human rights to gain acceptance and legitimacy, it is necessary to tailor foreign rights toward local structures and typical ways of

[1130] Lauren G. Leve, "Identity," in *The New Keywords: Unveiling the Terms of an Emerging Orthodoxy* (Anthropological Association Annual Meeting, Chicago, IL, 2003), 80–81.
[1131] Engle Merry, *Human Rights and Gender Violence*, 180–81.
[1132] Cowan, Dembour, and Wilson, "Introduction," 11.
[1133] Muhmmed Nabari, Interview, November 21, 2015.
[1134] Engle Merry, *Human Rights and Gender Violence*, 182.
[1135] According to Abu-Rabia, 'Needless to say, one of the salient features of Bedouin-Arab society is the emphasis on collective identity as opposed to individual identity. To a large extent, social status and economic security are still based on group identity.' Abu-Rabia, "Family Honor Killings: Between Custom and State Law," 37.

thinking.[1136] Explaining how rights are adapted to Islamic societies, An-Na'im maintains that human rights are adopted more effectively when models from Islam are employed.[1137] Likewise, in the case of the Bedouin, presenting international human rights ideas in images and symbols that are familiar helps expedite Bedouin acceptance of them. Because international human rights challenge local ways of understanding themselves, the process of taking up an internationally-defined subjectivity does not happen quickly or easily.[1138] There are no radical discontinuities or sudden moments of transformation, but the process is slow and complicated.[1139] Based on these observations, the Bedouin are not required to abandon their way of seeing themselves or their ways of doing things, but instead, to layer the indigenous status and rights framework over those ways. Since any new subjectivity is tried and tested, as Merry points out, we can expect the Bedouin to 'try on, [indigenous subjectivity] drop it, and try again'.[1140] Merry also observes that for a new subjectivity to be sustained, it requires institutional support; however, in some situations, support can also come from civil society, such as grassroots organizations, transnational networks, or the UN and even possibly academic institutions (see Chapters 3 and 5).

Law plays a key role in how identities are formed, claimed, and enforced. Part of the reason to move local subjects into the sphere of international law is so that they become rights-holders. Hence, the shift in subjectivity is demanded by international human rights law[1141] and in the case of indigenous peoples, who ask for help from international human rights law, they are required to take up an indigenous peoples' subjectivity.[1142] The adoption of a rights-based subjectivity and identity is influenced by the individual's experience with the law, which often takes place in the courts. In the *al-Uqbi* case, the new subjectivity, defined within the discourses and practices of international law, was articulated in the venue of the Be'er Sheva District Court. On the domestic level, one of the powerful consequences of the new subjectivity

[1136] Abdullahi Ahmed An-Na'im, "Toward a Cross-Cultural Approach to Defining International Standards of Human Rights: The Meaning of Cruel, Inhuman, or Degrading Treatment or Punishment," in *Human Rights in Cross-Cultural Perspectives: A for Consensus*, ed. Abdullahi Ahmed An-Na'im (Philadelphia, PA: University of Pennsylvania Press, 1992), 19–44.
[1137] An-Na'im proposes a cross-cultural dialogue on human rights while also acknowledging obstacles. On the one hand, this dialogue entails a respect for cultural difference despite incompatible values; while, on the other hand, universal standards are of great importance. In order to resolve these obstacles, he proposes that the solution is based on dialogue, in a country and among others. An-Na'im. See also, Abdullahi An-Na'im, *Cultural Transformation and Human Rights in Africa* (London: New York, NY: Zed Books, 2002).
[1138] Engle Merry, *Human Rights and Gender Violence*, 181.
[1139] Engle Merry, 182.
[1140] Engle Merry, 217.
[1141] Engle Merry, 181.
[1142] Engle Merry, 181.

is that when a case is brought to the legal system, the petitioner meets the defendant. In the *al-Uqbi* case, the Bedouin petitioners confronted the state attorneys in the courtroom and demanded, although unsuccessfully, the international land rights of an indigenous peoples. Furthermore, interactions with lawyers, judges, expert witnesses, and rights advocates affect the willingness of the individual or group to take on a new subjectivity and identity.[1143] These interactions underscore the dialogic nature in domesticating rights ideas. The willingness to take on rights depends on the experience of asserting rights at home. Merry argues that the more domestic institutions seriously reflect back attention to the individual, the more willing individuals will be to take on this identity.[1144] If these rights are treated as insignificant or are quashed domestically, Merry adds, the potential rights-holders may give up and no longer frame their grievances in terms of international human rights.[1145] And yet, in some situations, the individual or group is left with little option but to take up a new subjectivity to challenge domestic institutions, policies, and practices. When the Bedouin in the Negev call on the international human rights system for help, they have taken an important step toward seeing themselves as defined by the promises and protections of indigenous peoples' rights in international law.[1146]

5. Remembering, Narrating, and Evidencing a Bedouin Past in the Negev: On 'Historical Continuity' in the Context of the Bedouin in Israel

The criterion of 'having historical continuity with pre-invasion and pre-colonial societies' (discussed in Chapter 4) limits the application of the term 'indigenous peoples' to pre-colonial and pre-invasion societies, which suggests that invasion and colonialism interrupted the indigenous group's historical continuity—requiring a chronological order with a definite beginning. Answering the question of when indigenous time begins, one interlocutor maintains that 'we start to count after the colonization. It means that if you are here before the current colonization, you are the indigenous peoples to the place.'[1147] Specific to the Israeli/Bedouin context, he continues: 'The modern colonization *now* is in Israel. If you were here before the establishment of Israel, even one day before, that means you will be considered indigenous.'[1148]

[1143] Engle Merry, 182.
[1144] Engle Merry, 182.
[1145] Engle Merry, 182.
[1146] Engle Merry, 184.
[1147] El-Sana, Interview.
[1148] El-Sana.

The Bedouin majority are aware that the Jewish majority consider themselves to have been in Israel for millennia, or since biblical times. In practice, we see how the application of the criterion of 'historical continuity' creates a temporal conflict over who was the first to arrive to the Negev as part of greater Israel: did the Israelites or the Bedouin arrive first? One Bedouin elite addressing the time issue maintains:

> As I told you from indigenous international law, it is enough that the Bedouin were here before the establishment. They don't have to be 2,000 years before. If we go back to the history, by the way, if the Israelis want to go back, then which point do you go back [to]? So Israelis were here since Abraham—but before Abraham, who was here? Why should we go back to Abraham? Why shouldn't we go back to more than Abraham? And that is why international law says it is the modern colonization that determines who is the indigenous peoples? Abraham came and bought land from the Palestinians when he came from Iraq. Why shouldn't they [Jewish people] go to Iraq if that is their original [place]. *Chuckles*. And, by the way, Abraham is the father of the Arabs and the Jews.[1149]

Similar to the gap in local knowledge about the term *indigenous*, the Bedouin majority did not talk about the foreign rulers in terms of invaders or colonizers. The Bedouin born before 1948, who remember their first encounters with Jewish immigrants to the Negev, reported that they willingly helped the newcomers, not because they had to help but because they wanted to.[1150] If, and when, the breakdown in relations was raised, criticism was directed at the state, government institutions, or para-state bodies rather than at the individual Jewish immigrant. Many of the Bedouin frequently spoke of good relations with their Jewish neighbors in the surrounding area.

The subject of history and questions on how to tell and who tells history reveal what is at stake when groups seek to make indigenous rights in the vernacular.[1151] As noted, history has portrayed the Bedouin either as frozen in a certain time and place or as a group living outside of place and out of time, which fuels their fascination and allure.[1152] It has been illustrated how history in the courtroom becomes a testament of legal truth, which confirms or negates presence of the Bedouin in the Negev. The isolation and compartmentalization of Bedouin history can be traced to the ways in which Bedouin life and experiences have been demarcated externally, both periodically and geographically. Conventional wisdom on the Bedouin is

[1149] El-Sana.
[1150] Abu-Tlul, Interview, November 20, 2015.
[1151] Writing on the broader topic of Palestinian history, Edward Said remarks that 'for too long we have been outside history.' Edward W. Said, *The Question of Palestine*, Reissue edition (New York: Vintage, 1992), xv.
[1152] Cole, "Where Have the Bedouin Gone?," 237.

largely based on European historiography under three periods—the Ottoman, the British, and the Israeli—which saw the Bedouin meet new realities of power that are considered the only catalyst for bringing about change in Bedouin society.[1153] One illustration of such historical representations is the way that official borders have been erected around the Bedouin over the centuries until, in recent Israeli history which saw the Negev become a satellite terrain, they have been reduced to a Negev-only phenomenon. The 'Negev Bedouin', or 'Naqab Bedouin' among the Bedouin themselves in their particular dialect of Arabic, is a commonly used phrase nowadays. Ignoring the traditional knowledge and local history of the Bedouin, or delegitimizing their ways of recording of the past, undermines or overwrites the dynamic nature of the group and the places where they live.

Based on my conversations with the Bedouin, narrations of Bedouin history tended to fall under two categories: on the one hand, ambivalence and, on the other hand, certainty. Among Bedouin youth, the lack of knowledge about their past is quickly discernible. Accompanying a group of Bedouin youth participating in the Israel-Middle East Model United Nations (TIMEMUN),[1154] I asked Fadi, who played the role of leader as the oldest male among us, if he could tell me something about the history of the Bedouin. Met by silence, I suggested sharing a local event or figure, or even a folk tale. Fadi explained that he did not know much about Bedouin history but could tell me about key events in Israeli history, like the War of Independence in 1948, the Six Day War in 1967, or the Lebanon War in 2006. Most Bedouin youth are like Fadi: there is often a blind spot in their knowledge of Bedouin history and the local history of the region before 1948. Irrespective of the separate school systems for Arab and Jewish children and youth, all students learn the official history of Israel. The Ministry of Education decides the curricula nationwide, and requires Arab students to learn the history of the Israeli-Jewish majority—and only that history.[1155] To fill this knowledge gap around local history, Bedouin grandparents often take their families to the places where they used to live so that they can walk the lands and have a picnic of the simple food from that time. Sometimes Bedouin families visit nearby forests to make a barbeque after Friday prayers (the most

[1153] On a critique of the regulative functions and fictions of the periodization schema that historians employ, see Peter Novick, *That Noble Dream: The Objectivity Question and the American Historical Profession* (Cambridge: Cambridge University Press, 1988), 16.
[1154] TIMEMUN took place at the Walworth Barbour American International School in Even Yehuda, north of Tel Aviv.
[1155] Geoff Eley, "Is All the World a Text? From Social History to the History of Society Two Decades Later," in *Practicing History: New Directions in Historical Writing after the Linguistic Turn,* ed. Gabrielle M. Spiegel (Abingdon, Oxon: New York, NY: Routledge, 2005), 35–61.

important day of the week for Muslim believers). On these occasions, the grandfather will often take the grandchildren on a nature walk to teach them the names of local flowers and plants in Arabic. Not only do the younger generation of Bedouin learn local knowledge about the place and the peoples, but this practice also allows the older Bedouin to remember the past and reenact old habits.[1156]

In contrast to the relative historical silence among the youth, Bedouin elders are in a position to recollect the history of the people and the place[1157] but they respond to questions about their past only in ways that they believe to be acceptable, proper, and sayable.[1158] Mistrust and suspicion of foreigners is rife among the Bedouin, especially among older Bedouin in unrecognized villages, who recall the harsh treatment of the British Mandate. There is also some internal mistrust because of local collaboration with government authorities.[1159] For most elder Bedouin, the past is a sensitive topic, and talking with a stranger can be met with resistance if not trepidation. Invited by a friend to meet his father, who was born around 1938 and has been a sheep farmer in the Negev all his life, I was forewarned that answers to my questions might not be forthcoming. As expected, the old Bedouin's responses were short and did not give much information away. The distress of forced relocation from his lands to a government town in the late 1970s was the main reason for his unwillingness to talk about the past. An-Na'im expands on the notion of physical displacement in the colonial model, and describes the transformation of the person:

> When colonialism in the African setting and other settings transformed my consciousness, my ways of knowing, my ways of feeling and the things that I seek to realize. What I call 'imperial epistemologies' that seek to transform the way of think[ing], how I think and to what ends—that is a form of displacement. It is not the physical [displacement] of people being exterminated to make space for new people, but people who have been transformed in a way that made them *no longer of their own*. That loss of who we are and how to relate to our roots and pre-colonial histories and experiences—that is where our loss is (emphasis added).[1160]

[1156] Mansour Nasasra, "The Ongoing Judaisation of the Naqab and the Struggle for Recognising the Indigenous Rights of the Arab Bedouin People," *Settler Colonial Studies* 2, no. 1 (March 19, 2012): 100.
[1157] Proust talks of "remembering" and Heidegger calls it "thinging" in order to sense and make sense of the world. See, Mrázek, *Engineers of Happy Land*.
[1158] Edward Said, "Permission to Narrate," *Journal of Palestine Studies* 13, no. 3 (1984): 27–48.
[1159] The harsh treatment of British Mandate officials was a topic that arose in conversation with Bedouin elders. Zeina B. Ghandour, *A Discourse on Domination in Mandate Palestine: Imperialism, Property and Insurgency* (London; New York: Routledge, 2010).
[1160] Abdullahi Ahmed An-Na'im, *It's Time to Decolonize Human Rights* (Emory University, 2016), https://www.youtube.com/watch?v=_MCkvt9y46o. See also, Raef Zreik, "When Does a Settler Become a Native? (With Apologies to Mamdani)," *Constellations* 23, no. 3 (September 1, 2016): 351–64.\

The criterion of historical continuity demands concrete, Western time, which does not align with the Bedouin, for whom time is more fluid. A vernacular understanding of historical continuity can be found in the concept of *sumud*. In Western society, time has a regularizing function and is perceived along a linear, progressive axis,[1161] based on a belief that time is aimed at propelling one toward advancement. By contrast, the Bedouin's lack of attachment to time can be juxtaposed to their strong bond to the place and the people. Their talk of time is vague without specifying dates and times; commonplace phrases like 'tomorrow' 'slowly, slowly', and 'later' are sufficient indicators of time.[1162] An elder Bedouin's stoic outlook outlines his current predicament: 'The only thing we can do is to stay here. I don't care if they [the international community] know or not, I care about being here and staying here forever.'[1163] It is possible to see the elder's commitment to 'staying here forever' as an expression of *sumud*, which is a totem of steadfastness, endurance, or holding on and is often seen as a core characteristic of the Bedouin in the Negev. *Sumud* is conceived of locally and is advocated as an end in itself, which is distinct from domestic and international politics and law.[1164] Against the official position of the Bedouin as nomads, which had made the Bedouin feel like a guest on the lands where they live, *sumud* can be seen as a demonstration of the ongoing 'historical continuity' of the Bedouin seeking to remain on the lands.[1165]

The demand for legal truth and evidential precedent demonstrated in the *al-Uqbi* case stresses the tension between the official history of the Israeli nation-state and the local history of the Bedouin. As noted previously, the history of the Bedouin has not been traced in great detail: the subject lies in the twilight, broken only by a few bright beams of light that emerge from within the Bedouin.[1166] That the Bedouin's own historical record lacks significance is widely known, and there is a tacit acceptance that the Bedouin are beyond the conventions of the subject of history. The official history of Israel is based on Western science (e.g., archeology)

[1161] This question about the regularizing function of time has been reconsidered in the field of queer theory. Lee Edelman, *No Future: Queer Theory and the Death Drive* (Durham, NC: Duke University Press Books, 2004).
[1162] Indeed, Wolfe's argument that colonialism is a structure and not an event is an implicit move to move our understanding from the focus of events and their temporariness to the physicality of colonialism. Wolfe, "Settler Colonialism and the Elimination of the Native."
[1163] Al-Hawashleh, Interview.
[1164] When the indigenous peoples' struggle succeeds, Audra Simpson refers to this success with 'Indigenous political orders prevail' as 'nested sovereignty', revealing that Canada's settler colonial project is not as complete or settled as we might think. Audra Simpson, *Mohawk Interruptus: Political Life Across the Borders of Settler States* (Durham, NC: Duke University Press, 2014).
[1165] Most interlocutors speak in male terms: their grandfathers, sons, grandsons, uncles, brothers, and so forth.
[1166] Nasasra, *The Naqab Bedouins: A Century of Politics and Resistance*; Abu-Rabia, *A Bedouin Century*; Ismael Abu-Saad, "Retelling the History: The Indigenous Palestinian Bedouin in Israel," *AlterNative: An International Journal of Indigenous Peoples* 1, no. 1 (n.d.): 25–47.

and religious scriptures while in contrast, there has been little or no writing and reproduction of a Bedouin history.[1167] In the *al-Uqbi* case, some of the al-Araqib residents gave oral testimonies about the history of al-Araqib in the courts, but the judge did not accept this version of local history that emerges from within Bedouin society and challenges the official version. Indeed, no Israeli judge has yet accepted Bedouin historical evidence. According to Aharon Barack, professor and former president of the Supreme Court of Israel, 'Every jurist is a historian. Every judge is a historian. Most of us are bad historians. Some of us—and I among these—are frustrated historians.'[1168] Aziz al-Turi's experience evokes the courtroom scenario when the judge asks them to present the official deeds that prove their land ownership. Al-Araqib residents are fully aware that they are unable to produce the official documents required by the court, and that the historical documents in their possession do not count as official history in domestic law.

Providing a different explanation for European travelers' accounts of the 'empty' Negev and challenging the courts' treatment of the Bedouin, one Bedouin lawyer remarks, 'The story of al-Araqib that two researchers, two Orientalists came from Europe and made a road from Hebron to Gaza or to Ashkelon to Ashdod, and they never saw things—I think this is a weak story.'[1169] He points out that in the summertime 'everything is dead' and further argues, 'If you go 30km south of Be'er Sheva in the summer, you will see that everything is dead. If they talk about 1853 … *Chuckles*. Thirty years ago, if you came here in the summer and passed through some places, you would think that there are no people here. That's the desert character; nothing stays, nothing appears, and nothing is clear in the summer.'[1170] An alternative reading of local history from a Bedouin perspective includes traditional knowledge of the geography, the environment, and the climate of the desert. This contextualized reading contrasts with the official historical record where the Bedouin are not protagonists in history and their accounts are perceived to be impaired, embellished, or fabricated. Aziz speaks of efforts to 'delete the history of the Bedouin'.[1171] This erasure of Bedouin history prevents us from seeing them as a people who had autonomy, land, communities, governance, trade, culture, and spirituality;

[1167] Morton J. Horwitz, "Writing Legal History in a Post-Formalist World," in *The History of Law in a Multi-Cultural Society: Israel 1917-1967*, ed. Ron Harris et al. (Aldershot: Ashgate Publishing, 2002), 415–22.
[1168] Aharon Barak, "Israeli Legal History," in *The History of Law in a Multi-Cultural Society: Israel 1917-1967*, ed. Ron Harris et al. (Aldershot: Ashgate Publishing, 2002), 388.
[1169] El-Sana, Interview.
[1170] El-Sana.
[1171] Al-Turi, Interview.

important for our discussion, it also prevents us from seeing any historical continuity of Bedouin society.

The Bedouin do have historical artifacts, though those artifacts have not yet been validated by Western science. Alamour presented me with a file containing a bundle of documents. There was a photograph of the Swedish Ambassador on an official visit, and another photograph of government officials posting the demolition order on the door of his house. There was also a single document that belonged to the British Mandate period. The date on the yellowed paper was 23 November 1921. Written in Arabic, the document was a sale agreement between Alamour's family and the British Mandate authorities. Alamour pointed to the written signatures and the thumb print, which I was told was the signature of an illiterate Bedouin. Such documents are pieces of Bedouin history that are real for the Bedouin, but the Israeli authorities do not recognize their historical content or value. Alamour decided against framing or laminating the document because he wants people to touch it with their hands; for safe-keeping, he stores the documentary proof in a plastic sleeve. To create a material and legible history of the Bedouin, some Bedouin recognize the need to produce a scientific history of the Bedouin in the Negev. According to one Bedouin interlocutor, 'If we have money, if all the NGOs and some of them have money, can bring, for example, scientists and examine the graves, some of the Bedouin graves, and see how old these graves are. Based on my grandma's stories we have graves from 300 or 400 years ago.'[1172] Implicit in this statement is an acknowledgment that the grandmother's oral account, which is based on memory and word of mouth, is deemed insufficient.[1173] Only science, CSOs, and capital can facilitate the reframing of the Bedouin past and their historical records according to Western and Israeli standards, supporting their claim that they have historically and continuously lived in the Negev and making it more difficult to deny the Bedouin's indigenous presence in the Negev.

[1172] El-Sana, Interview.
[1173] 'The major problem Palestinian historians face today is not locating evidence testifying to their existence as a people, or to the justness of their cause, but in regaining the initiative in interpreting this own history.' Doumani, "Rediscovering Ottoman Palestine," 17.

6. A Final Thought

Few would dispute that the processes of the global knowledge production of the concept and category of indigenous peoples is at work in the Israeli/Bedouin context. It is worth reiterating that groups can choose to claim the status and rights of indigenous peoples, which is clearly the process in Bedouin localities, and that despite ongoing global efforts to define indigenous peoples, the concept and category is in fact ambiguous and therefore open to such claims. In the final cultural flow where transnational knowledge of indigenous peoples' rights is domesticated and localized, we expect the international definition to be made in the vernacular of the Bedouin in the Negev. However, in making the international definition in the vernacular, the pull of cultural and contextualized factors exerts local pressure on the international definition, and the contradictions and complexities of the definition become real and tangible. By necessity, it would seem that the Bedouin have become indigenous in the sphere of international human rights law, and the international definition in the vernacular has had to carve itself a space in contradiction and contestation. The story of the international definition in the vernacular can be seen as the story of a domestic struggle between a nation-state and a minority who, so it seems, have had to seek out a new status and set of rights under the conditions of international human rights law. It can be argued that the international definition of indigenous peoples helps re-define the predicament of the Bedouin under international indigenous peoples' rights, which in turn makes the circumstances of the Bedouin knowable. Arguably, the real crisis in making the international definition in the Bedouin vernacular is the crisis of the nation-state since it is the nation-state that is being challenged internally/locally and internationally through the international human rights framework. Moreover, the international definition in this particular context points to a rupture in the image of formal statist law and offers a radical break from the view that the state is the sole custodian of sovereignty, national identity, and lawmaking. Reiterating this point in the Bedouin vernacular, al-Turi from al-Araqib states, 'We know the government has power but we [the Bedouin] have rights. Until now and until tomorrow, we have rights. We are stronger than the government.'[1174] It is within this uneasy narrative between the Israeli nation-state and the Bedouin's wish to remain on the land that the international definition is tried on, dropped, and tried again[1175] and the struggle over its interpretation and meanings from below will arise.

[1174] Al-Turi, Interview.
[1175] Engle Merry, *Human Rights and Gender Violence*, 217.

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