Suspended in Space: Bedouins under the Law of Israel

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This article demonstrates the legal consequences that flow from the conceptualization of the Bedouin as rootless nomads and from the imposition of certain legal categories of land ownership as means for solving disputes across the indigenous/nonindigenous divide. I argue that the law works by imposing conceptual grids on time and space and that this conceptual ordering, in turn, gives rise to a series of binary oppositions that affirm the distinctions between "us" (Progressive Westerners) and "them" (Chaotic Oriental nomads). Once the Bedouin are placed on the side of nature, judicial practices tend, on the one hand, to objectify the denial of Bedouin claims of land ownership and, on the other hand, to facilitate state policies of forcing the Bedouin into urban settlements.

In the Negev we have to protect the desert, the non-settlement.

—D. Ben Gurion, *The Problem of the Negev,* 1955:107

We should transform the Bedouins into an urban proletariat—in industry, services, construction, and agriculture. 88% of the Israeli population are not farmers, let the Bedouins be like them. Indeed, this will be a radical move which means that the Bedouin would not live on his land with his herds, but would become an urban person who comes home in the afternoon and puts his slippers on. His children would be accustomed to a father who wears trousers, does not carry a Shabaria [the traditional Bedouin knife] and does not search for vermin in public. The children would go to school with their hair properly combed. This would be a revolution, but it may be fixed within two generations. Without coercion but with governmental direction . . . this phenomenon of the Bedouins will disappear.

—Moshe Dayan, *Ha'Aretz* interview, 31 July 1963

I am grateful to Shlomo Deshen, Patricia Ewick, Emanuel Marx, Alexander Kedar, and Menachem Mautner for their insightful and constructive reading of earlier drafts. I also thank four reviewers of the *Review* for their excellent suggestions for revisions and clarifications. The article is based on research supported by the Israel Foundations Trustees and the Israel Science Foundation. I also thank Nelly Elias, a research assistant, for her invaluable help. Address correspondence to Ronen Shamir, Department of Sociology/Anthropology, Tel Aviv University, Ramat Aviv, P.O. Box 39040, Tel Aviv, Israel. E-mail yonit@spirit.tau.ac.il.

Law & Society Review, Volume 30, Number 2 (1996)
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https://doi.org/10.2307/3053959 Published online by Cambridge University Press

> The torts in the Ordinance are nets upon nets, imposed, one upon the other, on a given set of facts. Some of the nets do not "capture" a given set of facts. At times, a given set of facts is captured by one net alone. At times, it is captured by a number of nets, all according to the intensity of the warp and woof in the various nets.
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> —Justice A. Barak, *Civil Appeal 243/83*, P.D. 39:1, 113, 126

The Argument: Theory

The purpose of this article is to account for ways in which the storytelling techniques of the law objectify the gradual extinction of the indigenous Bedouin culture in the Israeli Negev (the country's desert-like southern part). Two material practices are at the forefront of Israeli policies concerning the Negev: mass transfer of the Negev's indigenous Bedouin population to planned townships and a corresponding registration of the Negev lands as state property.[1] A cultural vision complements these practices: The Negev is conceived as *vacuum domicilum*—an empty space that is yet to be redeemed, and the Bedouin, in turn, are conceived of as representing a defeated culture in its last stage of total disappearance from Israel's historical scenery. As in other colonial settings, a cultural vision complements the physical extraction of land and the domestication of the local labor force and, again not unlike other colonial settings, the law of the colonizers creates an infrastructure for the advancement of such goals.[2]

Yet the law should not be treated as a mere arm of the state, as an instrument at the service of interests external to it, or even as a mere echo of the specific historical-cultural context in which it is embedded. We should begin to speak about law *as* culture

[1] The Bedouin population of the Negev has been estimated at 100,000 (Adva Center 1996). The transfer of the Bedouin population, the resettlement, and the appropriation of land had taken place since the early 1950s in several stages. In 1953, all the Bedouins were rounded up in an "enclosure zone." In 1975, an official policy of building permanent settlements and moving the Bedouins into them had been initiated, accompanied by aggressive implementation of zoning and building regulations that resulted in the mass destruction of houses in areas other than the ones designated for permanent settlement. All other Bedouin permanent settlements were labeled "spontaneous," in contrast to "planned." Land appropriation had taken place throughout the period. For a fuller account, see Brand et al. 1978. For a comprehensive bibliographical list on policy issues see Meir & Ben David 1989.

[2] On the view of the Bedouin as a defeated culture, shared by a host of policymakers, planners, and scholars, see, e.g., Braslavski 1946; Shmueli 1980. Jewish ownership and control of land is perhaps the single most important aspect of activist Zionism. From this perspective, the "problem" of the Bedouin is the "problem" of all Arabs of Israel. In this article, however, I emphasize the particular meeting of Zionist culture with the nomadic "other."

https://doi.org/10.2307/3053959 Published online by Cambridge University Press

rather than only about law as a mirror of culture (Cover 1983). Law should be understood in terms of its own mode of operation: a mode that actively contributes, as a kind of a surplus value, to the reproduction of law's own distinction. The basic commitment of modern law to stability, certainty, and calculability, already noted by Weber's (1978) analysis of law and capitalism, is the primary means by which modern law constitutes itself as an autonomous normative universe of discourse. The modern law of the West epitomizes what Dewey (1958) described as the obsessive philosophical and cultural search for certainty and stability, and what Benhabib (1990) described as the Faustian-Cartesian dream of order. In his cultural criticism, Dewey (pp. 21–22) talks about "intellectualism" as the sovereign method that privileges knowledge based on schematization, isolation, and decontextualization over knowledge grounded in experience and context. Benhabib (p. 1437) discusses the Cartesian metaphor of the two cities: "the one traditional, old, obscure, chaotic, unclear, lacking symmetry, overgrown; the other transparent, precise, planned, symmetrical, organized, functional." The law, embedded within these aspirations and dreams, is not a mere instrument for their activation. It is a mode of action and cognition that simultaneously validates and constitutes a modern identity grounded in these terms *and* one that affirms its own specific autonomous universe of order. The commitment to stability through schematization and planning, in turn, is actively worked out through what I refer to here as the law's "conceptualist" mode of operation.

Conceptualism here is a mode of cognition based on the belief that the most accurate and reliable way for knowing reality (hence "truth") depends on the ability to single out the clearest and most distinct elements that constitute a given phenomenon. Conceptualism is a praxis of extracting and isolating elements from the indeterminate and chaotic flow of events and bounding them as fixed categories. Each concept must relate to only one aspect of things, and the pure concept is simple and well demarcated, in contrast to vague and flexible images and sensory data. Conceptualism, in short, works through isolation, division, separation, and fixity, conceiving reality as a series of moments and not as an ongoing process.[3]

In this sense, conceptualism produces a distinct mode of narration. In their articulation of a sociology of narration, Ewick and Silbey (1995) discuss the historic absence of the narrative form in

[3] The attraction of conceptualism stretches back to the Platonic and Aristotelian belief that fixity is a nobler and worthier thing than change. In this ruling philosophical tradition, reality is conceived to be single, unitary, and unalterable. Concepts, being themselves fixities, agree best with this fixed nature of reality. They express the hope that underneath all this flux there is an eternal world—a logic that is superior to the facts and that can be revealed through conceptual thought.

https://doi.org/10.2307/3053959 Published online by Cambridge University Press

legal scholarship as a self-conscious achievement designed to ground such scholarly work in the realm of scientific authority. Here, I extend their argument to law and the judicial discourse itself. The narrative has been associated with particularity, ambiguity, and imprecision and as such has been resisted in the legal format. Yet I suggest that this does not mean that judicial discourse does not produce narratives; rather, it is committed to the production of narratives that are constructed and organized within rigorous rules of conceptual order. This means that judges do not necessarily deny the voice of narrators external to the legal system (e.g., witnesses) by their mere silencing, but that they typically reassemble such narratives in ways that assign them a more orderly and methodical appearance. This reassembly, in turn, sustains the powerlessness of the "original" narrator and validates the moral and rational superiority of the powerful. In other words, conceptualism marks a process whereby a given narrative is deconstructed and then reconstructed as a novel one: one which acquires the specificity of narrating itself in relation to a rigid set of pregiven storytelling rules, and one which becomes an act of fitting the details to already objectively existing frames and matrices. Thus the law works by imposing a conceptual grid on space—expecting space to be divided, parceled, registered, and bounded. It imposes a conceptual grid on time—treating time as a series of distinct moments and refusing any notions of unbounded continuity. And it imposes a conceptual grid on populations—treating them as clusters of autonomous individuals who should be readily identified and located in time and space (also see Merry 1988:888, developing Foucault's notion of modern capitalist law as a surveillance mechanism based on the timetable, the cell, and the panopticon).

The conceptual ordering of reality, for example, underlies what feminist jurisprudence currently identifies as the dominant "separation thesis" in law: the legal construction of a physically and psychologically bounded [male] individual who must be protected against the threat of penetration. Analyzing this deeper layer of legal consciousness, feminists argue that the law is bound to deny experiences that are grounded in a "connection thesis": that which emphasizes an ethic of mutual responsibility and care and which takes account of the shifting boundaries of the self (West 1993). Feminist jurisprudence, with its emphasis on connection, provides a powerful critique of conceptualism thus defined. Concepts are unable to express the most important features of human coexistence, and their limitations are exposed once we consider the multiplicity of continuities, heterogeneity, and overlapping dimensions underlying the complex webs of social relations.[4]

[4] The limits and force of conceptualism are hard to reveal. The power of legal concepts over women, writes Holtmaat (1989:482), "is extremely difficult to reveal because

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Likewise, the conceptualist culture of law has significant ramifications at sites of conflict over the so-called indigenous/nonindigenous divide. It seems to me that an important achievement of recent sociolegal scholarship on law and colonialism is that it portrays the *form* of modern European law, rather than its specific content, as the deeper layer of its mode of operation. Looking at colonial law in different settings, sociolegal research strongly indicates that the culture of law, analytically distinct from the specific uses into which it is put, is first and foremost a "culture of conceptual order" (Mertz 1988; Moore 1990; Merry 1991; Espeland 1994; Webber 1995). Consequently, it is to how modern law understands the "nomad" through concepts of time and space that we must look at in order to make sense of the typical treatment of indigenous populations under the law's command. As the following account shows, the resistance of law to elements that escape its conceptual grids results in the annihilation of the actions, movements, and histories of people who do not fit the frame.

The Argument: Praxis

Several accounts indicate the complexity of the relationship between the Bedouin and the Negev's land. Historically, Bedouins had their own legal mechanisms for deciding land ownership disputes and for acquiring, leasing, selling, inheriting, and marking a given area's boundaries.[5] The single most important point in all these accounts is the strong role that land ownership plays in constructing meaning and power in the lives of the Bedouins. The land is said to contain the personality of its owner and as such cannot be taken away even with changed circumstances or long periods of absence. Further, ownership of land is a primary mechanism of stratification and distinction, relegating Bedouins without land to an inferior position in their society.[6]

The strong sense of ownership and belonging is only one aspect of an account that challenges the idea of the Bedouin as a rootless nomad. Other accounts describe the Bedouins' quite habitual and fixed patterns of movement in space. The Bedouins establish permanent places of summer and winter dwellings, and pastoral activities are relatively fixed: Some members of the fam-

these concepts are part and parcel of our 'natural' world; they are entirely self-evident, as invisible to us as the water of the ocean is to the fish who live in it."

[5] On the legal mechanisms of Bedouins, see Halil Abu Rabia 1988; Lavie 1990.

[6] Kersel et al. 1991. This fact helps explain the limited success of the government's efforts to concentrate the Bedouins in designated planned townships. Only 40–45% of the Bedouin indigenous population moved into townships (Ben David 1988; Hamaisi 1990). Bedouins who moved into townships and signed leasing agreements with the state mainly belong to the category of nonowners. Bedouin owners, on the other hand, refuse to move to lands that they consider to be owned by other Bedouins (Marx 1974, 1988; Halil Abu Rabia 1988; Ben David 1988).

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ily head to grazing areas at some periods of the year while the rest, including the head of the family, stay behind in the permanent place of residence (Aref Abu Rabia 1988; Marx 1984). The tent, perhaps the most visible symbol of nomadic life, also emerges as a rigid structure that orders social life according to strict spatial rules (Havakuk 1986). At present, there are more than 150 permanent Bedouin settlements in the Negev, all labeled "spontaneous" by the authorities, a label which affirms their [mis]treatment as "unrecognized" and "illegal" settlements that are not entitled to basic social and public services. In fact, one study concludes that the efforts of the Israeli government to force the Bedouins into designated townships only encourage the Bedouins to establish more permanent settlements as means of protecting lands that they consider their own (Marx 1988).

Such accounts of the relationship between Bedouins and land are almost entirely absent from Zionism's "official story." A host of historians, geographers, reporters, engineers, policymakers, and educators emphasize the rootless character of Bedouin life and describe the Bedouin as lacking the fundamental and constructive bond with the soil that marks the transition of humans in *nature* to humans in *society* (hence, for example, the distinction between "planned" and "spontaneous" settlements). One aspect of this official story emphasizes the emptiness of the Negev, while another aspect discovers the Bedouin *nomads* as part of nature. Both aspects ultimately converge into a single trajectory: an empty space that awaits Jewish liberation, and a nomadic culture that awaits civilization.[7]

The law plays a crucial role—through its distinct logic of ordering and its techniques of surveillance—in turning the Zionist vision into a taken-for-granted objective reality. The overall result of the treatment of the Bedouin under Israeli law is that a fixed and rigid concept of nomadism is substituted for a historical view of the Bedouin trajectory. Nomadism becomes an essentialist ahistorical category that provides rational foundations for appropriating land on the one hand and for concentrating the Bedouins in designated planned townships on the other hand. Nomadism, associated with chaos and rootlessness, is the perfect mirror image of modern law, which assumes and demands the ordering of populations within definite spatial and temporal boundaries. Nomadism becomes a deviance that modern law

[7] Thus, Zionism appears as a savior of both people and land: "The Bedouins of the Negev have always been the backward element among the Arabs of Eretz-Israel, and Israel is the only country that implements a plan of binding them to the land. . . . [T]he effect of law and order penetrates the Negev and the people of the desert become tillers of the soil" (Shimony & Muzery 1955:101). For a more detailed account of the construction of the state's practices as benevolent, see Goering (1979). The best critical account of this vision and its distribution in texts appears in the fantastic essay of Lavie, in which she, an anthropologist, and her American husband, record a Bedouin "positioned as literary critic of his Eurocentric textual representation" (The Hajj, Lavie, & Rouse 1992).

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cannot but attempt to correct. The basic sanction for nomadism is exclusion from the *social* realm and the positioning of the nomad on the side of *nature*. Consequently, nomads acquire two important properties: First, they become invisible to the law—a property that allows the state to freely register lands as state-owned and to deny counterclaims of ownership.[8] Second, they become movable objects—a property that allows the state to freely move them in space. Once the Bedouin is placed on the side of nature, the results of legal disputes between Bedouins and the state become objectively inevitable and morally justified. Further, when the nomad eventually reappears from the ensuing oblivion, that nomad becomes a trespasser, a lawbreaker or, at best, a creature taking its first steps toward socialization.

Israeli law comes to life in judicial proceedings in which history, culture, misery, hopes, intentions, policies, and traditions are encoded and reconstructed in ways that transform the complex experience of the Bedouin into a one-dimensional truth. Judges provide accounts that complement the Zionist commitment to the Jewish control and redemption of land. Yet the law contains its own constitutive technology. On the one hand, it orders judges to order the story of the Bedouins—both in the sense of issuing a command and arranging reality—according to objective categories, classifications, rules, and procedures. The carriers of law are always busy validating the law's autonomous specificity.[9] On the other hand, the application of conceptualist law to the Bedouin should not be exclusively explained in terms of Zionism's thirst for land—in terms of external political interests that impose themselves on courts of law, or in terms of a convergence of material interests between the juridical and political apparatuses of the state. Rather, the constitutive technology of Israeli law—embedded as it is in the legacy that the Israeli legal system willingly inherited from former colonial powers (England, in particular)—performs the crucial task of asserting Zionism's identity as a modern Western project that resists a backward-looking and chaotic East.

This does not mean, of course, that conceptualism causally explains the treatment of the Bedouin. After all, land owned by Arabs had been appropriated on a mass basis in the early years of the state with the aid of a complex web of legal rules specifically

[8] Consider an episodic example of Bedouin invisibility, even after being concentrated in state-sponsored townships: "Rahat [a Bedouin township] is so overlooked that it doesn't even warrant a consciously thought out policy of benign neglect. If, for example, you go to Beer Sheva's central bus station and ask for a ticket to Rahat, they'll sell you a ticket to Shoval, a nearby Kibbutz. Rahat has twenty times the population of Shoval, and it doesn't even rate a bus stop" (Chertok 1993).

[9] Following Bourdieu (1991), specificity implies no essence but a typical form of producing an identity for a given field of knowledge. The specificity of law, for example, with its concern for rules, procedures, and categories, produces neutralization and universalization effects (Bourdieu 1987).

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designed for that end. It is highly probable that Israel would have appropriated Bedouin land even at the absence of a legal conceptual scheme of the type outlined here, although perhaps with greater difficulties because the Bedouins, unlike the Arab population, had not been considered a national enemy. The point of this article is not that conceptualism has been the reason for denying Bedouin ownership rights (although it certainly facilitated the denial) but that it provided a powerful cultural framework for celebrating it as a message of progress and benevolence. In this respect, the law cannot be conceived merely as executing interests external to it but as an active constitutive force through which one culture establishes its modern identity by rendering another culture unfit for its underlying conceptual structure. Once we think of law as a distinct type of narration, a particular literary genre that tells us who we are by telling the story of others, the law's methods and points of view must be analyzed in their own terms.

The Invisible Nomad

In 1984, ten years after appellants lost their case in a district court, the Supreme Court of Israel upheld the *El-Huashlla* [1974] case. Appellants, 13 Bedouins, asked the court to recognize their rights of ownership and possession over a number of plots, arguing that their rights were established on the basis of antiquity, rights stretching many generations into the past. The State of Israel, defending an administrative decision to deny the Bedouin claim, argued that the disputed plots were vacant and barren lands that fell within the statutory category of *Mawat* (Mawat [literally "dead"] is one of several categories according to which Ottoman law—parts of which remained in effect in the Israeli legal system until the late 1960s—classified lands and assigned different relations of ownership and possessory rights to each). The state then relied on a 1969 Israeli law that abolished the Mawat category and stipulated that all such lands would be registered as state property unless a formal legal title could be produced by a claimant. The state also pointed out that the last opportunity to obtain legal titles for Mawat lands was granted by the British mandatory authorities in 1921, when holders with claims of possession had to apply for formal registration.

Without legal titles at hand, the only legal remedy open to appellants was to convince the court that said lands were not of the Mawat type. The decision focused on this single issue, compelling the 1980s court to analyze legal categories of the previous century and, incidentally, to reveal the conceptual framework applied to Bedouins in general. In order to classify land as Mawat, the state had to meet two requirements. The first was that the land was so distant from any town or village that a person who

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used the loudest voice could not be heard there. This archaic Ottoman definition was later adapted to mean (in Mandatory law) that such land had to be a mile and a half away (i.e., space) from any town or village, or, alternatively, within more than half an hour's (i.e., time) walking distance from the nearest permanent settlement. The second was that the land was barren and was not held by anyone or set aside to anyone by the authorities. The court found that the nearest town to the disputed plots was roughly 20 miles away. Reminding itself that this town—a Jewish "development town"—did not exist before the establishment of the state, the court ruled that the nearest town was in fact remote Beer-Sheva—the ancient capital of the Negev—thus providing an even more solid support to the state's position. The court also dismissed the appellants' claim that an old settlement (Kurnov) did exist near the disputed lands in earlier times and, furthermore, that a Bedouin village (Seer) existed near the lands until the middle of the 19th century. As to Kurnov, the court found that it had been more than a mile and a half from the disputed lands and, further, that "Kurnov was not a settlement in the sense of the relevant statutory provisions, since it only consisted of a police station and an adjacent Bedouin tent-encampment." As to Seer, "the court had before it a description of the area, as it had been observed by those who toured the Negev in the middle of the previous century. This description reveals that in the said area there had been no village and no agriculture, and except for a visible Bedouin tent-encampment and wild vegetation the whole area was nothing but barren desert" (*El-Huashlla* pp. 148–49).

The court ruled that the state also met the requirement stipulating that the desolate land had not been possessed by anyone. It relied on a report of a 19th-century British traveler who "toured the area and closely studied the Negev's condition." The traveler, the court argued, "found desolation, ancient ruins, and nomadic Bedouins, who did not particularly work the land, did not plough it, and did not engage in agriculture at all" (p. 150). The Bedouins, therefore, failed to establish their rights over said lands.

This precise way of establishing facts, however, retains its objectivity only as long as it is not concretized and contextualized. The use of the Mawat category as a means of establishing state rights over the disputed lands is not a value-free application of a legal rule to a factual reality. The expectation that the disputed land will be no more than a mile and a half from a town or village relies on a culturally and historically specific definition of towns and villages, one that presupposes a living presence of agricultural or urban social life as a matter of fact. The Ottoman rulers of Palestine, as well as the British Mandatory regime that succeeded them in 1917, tended to refrain from interfering with the

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Bedouin internal and autonomous regulation of land. It was only after the establishment of Israel in 1948 that the old Ottoman land categories became powerful means of appropriating the lands of the Negev (Kersel, Ben-David, & Abu Rabia 1991). It is only then that the law appears, or rather reappears, as a conceptual framework which fails to capture the Bedouin form of living. The Bedouin tent, by definition, is conceived as a nonsettlement, in fact, part of the "wild vegetation" surrounding it, and as such guides the court's analysis and conclusion.[10]

In the same manner, the conceptual legal framework of "possession" presupposes agricultural activity; the possible existence of a pastoral economy is thus left out of civilized forms of living. These are conclusions that emerge a posteriori by looking at "facts" that conceptual law itself creates; yet facts are abstractions, and we always establish facts by isolating "a certain limited aspect of the concrete process of becoming, rejecting, at least provisionally, all its indefinite complexity" (Thomas 1966:271). Further, our conception of social facts is embedded within the particular trajectory and experience of our own community. As such, the facts *constitute*—rather than mirror—the Bedouins' culture as part of nature, as if it is no more than another element—alongside vegetation—in the wilderness. The Bedouin tent, in the court's account, is in fact socially invisible for all practical purposes.[11]

It is from the conceptual perspective that treats the Bedouin as invisible that the Negev appears to the court as barren and empty:

> When we add to all this [scientific evidence] the nomadic character of the Bedouin tribes and the fact that the area lacks in rain most of the year, the conclusion reached by the first instance fits this reality and the objective situation that characterizes the area. . . . Witnesses . . . indicate the lack of water in the Negev that prevented the inhabitants from reviving the lands and led them to prefer nomadic life and pasturing over an ordered and profitable agriculture, hereby leaving the lands in their desolation. For generations, this situation characterizes the area. (*El-Huashlla* [1974]:150)

The opposition between society and nature and between order and chaos are implicitly invoked and objectified, leaving the Bedouins with no legal remedy. The rule of law becomes an inev-

[10] In the *El-Riati* [1981] case (pp. 329, 332), the court justified a denial of a request for an injunction against moving a Bedouin tent by saying that the request "concerns a Bedouin tent that in its nature is a mobile object designed for nomadic life and to an ongoing transition from one place to another, and the [denial of the request] only means that the applicant would have to move his tent, and maybe also his sheep-pen, which also—according to testimonies heard in this case—has a very mobile and tentative character, from one place to another. There is no special difficulty here or a meaningful harm to the applicant."

[11] Thus, the tent is at best romanticized in museums and other bounded touristic parks as a symbol of the noble savages who once inhabited the desert.

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itable succession of precedents from which the court quotes at large: "[I]t is important to know how the law perceives the concept of working and reviving the land. This concept means: seeding, planting, ploughing, constructing, fencing and all types of adaptations and improvements such as: clearing of stones and other improvements performed on a dead land," and all this should result in "a total, permanent, and persisting change in the quality of the worked land" (ibid., p. 151). Pasture, in all this, remains an unrecognized form of living. The court's decision thus becomes an objective application of a clear legal rule. The Bedouin claims of possession rely, at most, on "abstract possession" that cannot serve as sufficient ground for concluding that the disputed lands are not Mawat.[12] In other words, such "abstract possession," a term the court itself coins, becomes a powerful legal way of making the Bedouins invisible. "Abstract" possession is a working mode of conceptualism, in the sense that it evaluates practices and experiences through decontextualization and abstraction, namely, "outside the narratives that constitute them" (Ewick & Silbey 1995:199), and juxtaposes this abstraction with the "real" project of planting and fencing.

Finally, the demand for formal and documented proofs of ownership and possession are also rendered problematic once put in context. Indeed, Bedouins who are asked to produce proofs of their ownership rights are at a loss as far as documentation is concerned. The Bedouins traditionally were suspicious of attempts to force them into registering their lands. They considered such attempts as means of turning them into subjects of an external authority and into tax-paying and army-serving citizens. The Bedouin historical resistance to all forms of state control made them reluctant to take any measures toward formal registration of their lands (Brand et al. 1978). Under Ottoman and British rule, the absence of formal documentation did not threaten the Bedouins' control of land because their de facto autonomy had largely been respected. However, this situation abruptly changed with the establishment of Israel in 1948. From then on, the formal legal demands for establishing ownership through documentation and registration provided another objective and powerful reason for denying any such claims.[13] In all

[12] On physical, observable, and communicable possession as the origin of property rights in the common law, see Rose 1985. Rose's essay demonstrates the strong commitment of modern law to stability and certainty premised on observable control of lands and on public records. Both means are treated as a form of unambiguous and enduring communication. Rose shows that "possession-as-text," in turn, is premised on the existence of an interpretive community that produces and reads such symbols in a shared manner. She argues that possession-as-text explains why the claims of indigenous peoples—who lack such a priori agreed-on symbols of control over land—cannot be recognized by and satisfy the common law.

[13] Bedouin rights of possession were recognized by the Supreme Court in one rare case in which some Bedouins provided documents showing that they had been granted a "Draught Compensation" by the Israeli authorities. See *El-Kalab* [1989]:343. Although

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this, the question whether the objective legal categories are simply inapplicable to the Bedouin culture is never raised by the court. The judge qua conceptualist approaches the Bedouins with strict notions of land ownership, commercial and agriculturally based economy, and written and time-fixed categories. Towns and villages, titles of ownership, and orderly plowing and seeding assume the objective character of the only culture possible, in a taken-for-granted opposition to the "culture" of the uncivilized and feckless Bedouin.[14]

Salta Mortale: The Inversion of Time and Space

The ordering of time into well-defined and clearly bounded units is brought into its most formal expression in modern law. The way conflicts over space are transformed into a temporal dispute is a crucial element in the storytelling techniques of the law. In this transformation, the opposition between unbounded spontaneity on the one hand and fixity and permanence on the other hand is established only in order to be rationally solved by affirming the modernist vision of orderly time. The law creates a series of objective temporal signposts that determine when a story begins and ends, what kind of historical narrative may be listened to, and what are the necessary conditions for establishing temporal truth. Memory per se becomes suspect. Expressions that describe relations to land by referring to "time immemorial" or to "generations-old succession" may be a good way to begin a story but a poor way for providing real hard evidence. The law speaks in terms of dates, signed and dated documents, approved and established enactments, and time-honored written precedents. History in law is a fixed succession of preestablished points in time, not a continuous and fuzzy process in flux. And it is the policing of time that the Bedouins confront as an insurmountable barrier in their legal struggles.[15]

In the *El-Huashlla* [1974] case the court was asked to hear "old witnesses" who recalled the time-immemorial use of the land by appellants and the generations-old respect for their rights of ownership. Yet these testimonies faded when contrasted with the proofs of "expert witnesses." In the last instance, the court turned

decided in favor of appellants mainly on procedural grounds, this decision could have served the court in a subsequent principled case in which it was asked to recognize the rights of Bedouins on grounds of "state promise."

[14] The Bedouins' grievances are denied not simply because the court *refuses* to listen to the Bedouins but because the court *cannot* hear them; it speaks a different language from the one they are using and it can only relate to the Bedouin story in its own legal-cultural terms. On the idea that injustice consists precisely in this incompatibility, see Lyotard 1988.

[15] For a comparative perspective, see Wilkinson (1987:5), who praises American courts for "enforcing laws of another age in the face of compelling pragmatic arguments that tribalism is anachronistic, antiegalitarian, and unworkable in the context of contemporary American society."

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to the 1921 British enactment and posted it as the crucial time barrier beyond which all memory became amnesia. From this time onward, one story ended and a new one began:

> In 1921 the *Land Ordinance [Mawat]* was enacted and it provided a final opportunity to gain ownership rights on Mawat land, that had been previously revived, by giving notice within two months from the date the Ordinance came into effect. Civil Appeal 518/61, mentioned above, explains that whoever missed the time, cannot regain the right to secure Mawat land through registration, even if he revived the land before 1921. (*El-Huashlla* [1974]:147)

In the *El-Wakili* [1983] case, decided in 1983, a number of Bedouins claimed ownership rights over various plots that had already been registered as state property under a 1953 law. This law—the Land Acquisition (Validation of Acts and Compensation) Law—stipulated that if a certain land was not in the possession of its owner in April 1952, and if this land had been designated for development purposes between May 1948 and April 1952 and was still required as such, and if the Minister of Agriculture would issue a certificate stating that these said conditions were present, then said land would become state property and would be registered as such with the Land Registrar. This law, extremely harsh in itself, created a particular hardship for Bedouins who wished to establish their ownership rights, because in 1952 many of them were not present on their original lands; most of them, if not all, had been driven off their lands and forcibly concentrated in an area known as the "Enclosure Zone" for the next 25 years (Jirys 1976; Goering 1979). This massive transfer is treated in legal texts as a mere contingency—as a natural event that coincides with the asocial attributes of the Bedouins—that does not raise any particular problems when ownership and possession rights are established. Further, the *El-Wakili* decision repeated the legal ruling that the issuance of such certificate was in itself conclusive evidence for its truthfulness and could not be challenged on factual grounds. "The law," the court ruled, "a priori prevents any practical possibility of appealing or contradicting the facts before the certificate comes into effect" (p. 179).

Nonetheless, the court acknowledged in passing the theoretical possibility of challenging the validity of the certificate *after* the fact, but went on to create a complex series of other temporal signposts that prevented the appellants from using this narrow opening. The court ruled that the legal time barrier that appellants faced was an Israeli 1969 Land Rights Settlement Ordinance [New Version], which stipulated that the only way to challenge a decision to register land as state property was through an appeal to a district court within a given period of time. Appellants did not appeal on time and hence could not now be heard. Finally, the court established another insurmountable time bar-

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rier. According to the 1969 law the registration of land with the registrar automatically abolished any previous conflicting right unless fraud or technical mistakes were proven. Thus the history of the Bedouins comes to an end no later than 1969 when a new legal history begins.[16]

In the *Abu-Solb* [1986] case, decided in 1989, Bedouins attempted to take advantage of the "fraud" opening as means of challenging their dispossession. Thirteen appellants argued for ownership rights on certain plots which they claimed to have possessed and worked "for years." They asked the court to declare as null and void the transfer of said lands to state ownership on the basis of the 1969 Land Rights Settlement Ordinance [New Version] on grounds that they had not been notified—as required by law—that such proceedings were underway, and they entered the fraud argument as a possible construction of this omission. The state responded that appellants were "nomads who never resided permanently in any place whatsoever and certainly not in the said areas." Further, the court relied on a witness who argued that "at said period there were no Bedouins in the southern Negev because they were concentrated in the Enclosure Zone, under military Rule. . . . [T]hroughout my period of work in the southern Negev I met only one Bedouin in an overall area of twelve and half million Dunams."[17] The empty desert vision acquires a new force here: it is empty because the state emptied it. Nonetheless, the court treats this argument as a natural fact and moves to uphold the ruling of the lower judicial instance on dual grounds: The definitive rule of the 1969 law excludes evidence to the effect that Bedouins resided in the southern Negev in said period; and the fact that the Bedouins were not aware of the new registration proceedings is rendered irrelevant because a notice had been published in (Jewish) towns that were the only settlements in the area. The court summarizes: "There is no evidence that at the time of registration appellants were present in the southern Negev as residents of a 'settlement' in the meaning of this term as it is defined in . . . the law. Evidence for the mere presence of Bedouins in the southern Negev is irrelevant" (p. 522). The fraud argument, consequently, is flatly dismissed. A double bind is completed: The lands were legally and justly registered as state property because the Bedouins did not hold the lands in said period (they were rounded up and held elsewhere, yet this is rendered irrelevant). Alternatively, Bedouins may have been in said area but as invisible nomads who cannot prove any-

[16] The court also added that the state must be protected from the reopening of 30-year-old disputes. Compare this sense of historical time with the U.S case of *County of Oneida v. Oneida Indian Nation* (1985), in which a 1795 agreement that transferred 100,000 acres to the State of New York was held invalid because it lacked federal approval. In this case, the play of time did not work against the Indians. See Wilkinson 1987.

[17] Four dunams = one acre.

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thing because the temporal signpost prevents them from doing so.[18]

In these legal cases, the events of the 1950s and the 1960s become a remote prehistory that may be told as an inconsequential tale. This is the description which appears in the *El-Wakili*[1983] case:

> There is no dispute that appellants are Bedouin citizens of Israel who held lands in the Lakiaa area since the establishment of the state and until 1952 . . . when they were transferred for security purposes from the Lakiaa area to the Tel-Arad area. Appellants were permitted to return to the Lakiaa area in 1975, in exchange for the lands they held in the Tel-Arad area. . . .
>
> The agreement entered in 13.3.75 between Israel Land Authority and the Sheikh (Chief) of the El-Sanaa tribe to which appellants belong stipulated that the tribe would move to Lakiaa . . . and that Israel Land Authority would lease it a 5000 Dunams area in return for leasing fees. . . .
>
> Appellants claim . . . that they and their predecessors held and worked the land for many generations . . . and have rights of ownership in these lands. . . . . .
>
> The facts reveal that appellants did know when they returned from the Tel-Arad area that the lands . . . were not theirs (or were not theirs any more), and therefore agreed to lease them. (Pp. 176–82)

Curious inversions occur. Lands from which the Bedouins were uprooted were registered as state property during the time of their forced stay in another area. When they return, with permission, or claim their original ownership rights, they enter into a new spatial universe and a new temporal order. They cannot challenge the change of ownership due to new legal time barriers that have since been erected. At the same time, they return to their original lands under the guise of newcomers. What once was theirs is not theirs anymore, and their refusal to enter into leasing agreements results in their criminalization as trespassers (as indeed happens in a corresponding legal proceeding), while their consent to enter into such leasing agreements serves as evidence that the land had never been theirs. In the final instance, these inversions are grounded in a dialectical scheme which puts the law first and history later. It is this reordering that ultimately allows the court to articulate a taken-for-granted narrative in which the returning Bedouin is "transubstantiated" into a lawbreaking trespasser; a narrative that, as we shall see, also supports other ways in which the court retells the Bedouin history.

[18] On the legal consequences of the common law's concept of time in a colonial setting, see Moore 1990. Moore shows that the common law's demand for fixed periods of limitation on claiming and proving legal rights conflicted with an African "indeterminate time frame" for remembering a grievance, a title, or a debt, resulting in the former's view of the latter as "defective."

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Bedouin Townships: Nature Overcome

From 1975 onward, the Bedouins have been threatened with the prospect of yet another mass transfer: this time, from their scattered forms of "spontaneous settlements" into planned townships where they would modernize, develop new habits, and become accustomed to life in permanent houses. Yet the Bedouins—suspecting that by moving into the townships they waive their ownership rights over lands they consider as their own—are more than reluctant to respond to these resettlement plans. It is estimated that nearly half of the Bedouin population of the Negev, after 20 years of the state's transfer attempts, still resists their forced uprooting.

Consequently, a whole series of practices were developed in order to make the lives of recalcitrant Bedouins as unbearable as possible. In the 1980s, as the transfer of the Bedouins to the emerging townships was still moving at a very slow pace, the government accepted the recommendation of an intergovernmental committee and began to aggressively implement the 1965 Law of Planning and Construction as means of preventing the Bedouins from expanding and improving their "unrecognized" (i.e., legally unseen) places of residence outside the townships. The principle is remarkably simple: The Law of Planning and Construction requires permits for constructing houses and for making changes in existing constructions. It further provides for a penal mechanism that includes administrative and legal demolitions orders for violators of its regulatory provisions. By definition, the designated areas for the townships were declared as the only lands on which Bedouins could legally asked for permits and construct houses. All other areas—unregulated under the state's planning law—are forbidden zones. Consequently, new constructions cannot be legally built even if the Bedouins wish to acquire permits, thousands of already existing dwelling units become potential targets for demolition, and a massive number of demolition orders are routinely issued to Bedouins all across the Negev.[19]

The Bedouins are trapped. From possible claimants in land ownership disputes between them and the government they are turned into criminal defendants under the provisions of the Law

[19] Report of the Markovitz Committee (State of Israel Ministry of Interior 1986). The report recommended the demolition of 6,601 Bedouin constructions in the Negev and explicitly stated that "the enforcement of the Law of Planning and Construction in the Bedouin sector is tightly connected to the policy of settlement in the urban existing and planned towns" (p. 59). It is noteworthy that under the Law of Planning and Construction the local population, through a network of local committees, takes responsibility for developing construction guidelines. The Bedouins were invited to participate in neither the discussions on the Negev's planning programs and nor on their own resettlement policies. The Markovitz Committee did not hear or consult the Bedouins of the south in its deliberations.

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of Planning and Construction. The original lands from which the Bedouins were deported have been appropriated, they are denied the possibility of developing the lands on which they currently reside, and their refusal to cooperate with another forced transfer turns them into lawbreaking citizens. Most important, the strict and context-blind implementation of the Law of Planning and Construction allows the authorities to avoid having to confront the Bedouins' claims of ownership. The original collective conflict over land is diffused and fragmented into an endless series of minute and meticulous acts in which the Bedouins are targeted as *individual* lawbreakers.[20]

Demolition orders for illegal construction are a primary source of litigation that brings Bedouins to court. In these proceedings, there are strong pressures against attempts to convince judges that the formal application of the law to the Bedouins unjustly ignores and, worse still, perpetuates historical injustice and cultural oppression. First, the tendency of many lawyers for the defendants is to look for that which makes the particular case an exceptional one, hoping that special circumstances will ease punishment and result in a considerable postponement of the demolition order. The tendency, in other words, is to individualize the case and not to throw it into a collective pool. "I represent a person, not an idea," one lawyer aptly puts it, acknowledging the greater readiness of courts to hear arguments that particularize and individualize the case rather than those which speak in the name of a cause (Shamir & Chinski 1995). Second, both the prosecution and the judges have on their side an impressive body of precedents that denies the relevance of the past to the lawbreaking activities of the present. Even when the general context and the particular history of the Bedouins is acknowledged, judges tend to emphasize the prime and overriding importance of the rule of law; that is, the necessity to demonstrate that courts will severely punish those who show flagrant disrespect for the formal provisions of the law.[21]

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[20] On the criminalization of nomads as a means of social control, compare Campbell 1995.

[21] See, e.g., *District Committee v. El-Sanaa* [1987]. In general, I fully agree with the reviewer of this article that any discussion of Bedouin land claims needs at least to mention the lawyers behind some recent assertions of Bedouin land rights, because law consists not only of courts and litigants but also of lawyers who represent those litigants. The issue of Bedouin representation by both public interest and private lawyers and the way these patterns of representation affect the legal situation of the Bedouin population is discussed at length in Shamir & Chinski (1995), reporting to a comparative "cause lawyering" project organized by Austin Sarat and Stuart Scheingold. In that paper, we create links between the structure of the organization of the legal field, professional ideologies, and resources available to lawyers, on the one hand, and the form and quality of Bedouin representation at court on the other hand. Here I only refer to this issue in passing and imply that lawyers for the Bedouin find it difficult to transcend common forms of argumentation and to develop new concepts of collective historical rights. The few lawyers who are committed to the Bedouin cause often tend to reproduce, rather than disturb,

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The *El-Sanaa* [1987] case, decided at the District Court of Beer-Sheva in 1987, is an extreme example of the reasoning that the court applies when it acknowledges a gross injustice that had been incurred in the *particular* case and yet wishes to distinguish it from the general state policies regarding the Bedouins. In this case, demolition orders had been issued to Bedouins who had moved into a planned township but could not obtain construction permits because their designated plots were as yet unregulated. Consequently, these Bedouins were fined and sentenced to one year in prison for failing to comply with the demolition order that the court issued. On appeal, the district court stated that it could not approve of the invasion of state lands and the uncontrolled practice of building without permits in unregulated zones, "especially in the Negev area with its vast open spaces, which are difficult to inspect, and in which the phenomenon of illegal construction on invaded state lands by Bedouins is obvious." Yet the court went on to observe that while "the Bedouins must not be allowed to take over lands of the state," one must distinguish one case from another. In this case, appellants were Bedouins who took part in the process of moving from nomadic life to permanent housing: "Appellants agreed to clear the area in which they resided and were responsive to requests or demands that were grounded in security and national interests of the state. They did not move to another area that they freely chose but to a designated area that was meant to serve as their place of residence" (p. 402). Under such circumstances, the court decided to uphold the fine, to condition the prison sentence, and "to recommend the prosecution authorities to postpone the application of the demolition order."

The inversions in law have completed a full circle: the image of the Bedouins as nomads who threaten the state-owned lands is upheld and affirmed and yet individual Bedouins are singled out for a more lenient treatment. This ruling allows the court to appear as a benevolent keeper of both justice and the rule of law. Origins, history, and the roots of the conflict are set aside by the court and replaced with the primordial factual existence of the Negev as a state-owned open space. Entering an established legal grid, the Bedouins can either become invaders and subversive lawbreakers or, as in this case, nomads who wish to be civilized by responding to "state requests." In the latter case, some legal remedy is provided and yet one that individualizes the case in a manner that turns the *collective* illegal practices of the Bedouins into an objective fact.

So pervasive is the presumably objective framework that the court applies to the Bedouins that even cases in which Bedouin

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the legal system's systemic pressure toward diffusing the collective issue. This does not mean, however, that novel forms of argumentation will not be developed in the future.

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culture seems to be protected rest on a foundation that robs them of their own history and culture. In the *Avitan* [1988] case, the court seemed to acknowledge the historic particularity of the Bedouin collectivity, yet ended up revealing other reasons for affirming the permanent settlements plan. This case involved a petition to Israel's High Court of Justice in which the Association for Civil Rights in Israel represented a Jewish police officer who asked the court to overturn an administrative decision that denied him the right to lease land in a Bedouin township and hence to benefit from the reduced leasing fees that Bedouin residents enjoyed. The court dismissed the petitioner's claim that the special privileges enjoyed by the Bedouins amounted to unfair discrimination against Jews. The decision affirms the particular tribal culture and history of the Bedouins and yet unfolds a complementary narrative that merits attention:

> At stake are Bedouins that for many years lived as nomads and their attempts to permanently settle in one place failed and further involved law-breaking activities, until a state interest to help them had been established, in order to achieve important public goals. (P. 304)

The possibility of developing the Bedouins' own places of residence never occurs to the court. The dozens of permanent settlements in which the Bedouins are already residing permanently are dismissed as failed, inappropriate, and illegal "concentrations," in contrast to the carefully planned state-sponsored townships. The court explains that a modern society must solve the "problem of the nomads" and must facilitate the change in the Bedouins' values and traditions. Further, in a magical inversion, state law precedes the history of the Bedouins, and it is this framework that provides the court with a conceptual scheme that constructs the state's practices as intended for the Bedouins' own well-being:

> Therefore, a policy has been crystallized already in the 1960's according to which there is a need to settle the Bedouins in planned permanent settlements, in order to prevent illegal construction and the capturing of state lands, and in order to enable the supply of proper public services, such as education, health, sanitary and other municipal services, something that may only be done in planned permanent settlements. (P. 301)

Further, the court provides another important, perhaps decisive, rationale for the relocation of Bedouins: "[T]he Bedouins have claimed rights of land ownership concerning hundreds of thousands of dunams in the Negev. The establishment of permanent settlements would facilitate the ability to reach agreements with the Bedouins in regard to the rights over the disputed lands" (p. 301); "the state has thus a clear interest to encourage Bedouin settlement . . . and it is for this reason that the authorities offer Bedouins who agree to permanently move into settle-

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ments, state subsidized plots of land for considerably reduced prices" (p. 303). Compelling state interests, rather than concern for the well-being of Bedouin culture, thus underlie the court's decision.[22]

All the contradictory and yet persistent narratives converged in this case: socializing nomadic Bedouins as an enlightened measure, protecting the empty Negev from invasion, criminalizing Bedouin practices as lawbreaking activities, and setting the stage for the final showdown on the Bedouins' claims of ownership. The convergence has been further consolidated in the *El-Sanaa* [1991] petition to the High Court of Justice.

The *El-Sanaa* case was an attempt to develop a general claim on behalf of the Bedouin population as a whole. The petition detailed the history of the Bedouins under Israeli rule since the establishment of the state and argued that the Bedouins in the Enclosure Zone were at least implicitly promised by the authorities that they would be able to construct their houses in the area in exchange for the lands from which they were originally uprooted. On the basis of these claims, the petition asked the court to order the authorities to suspend attempts to target Bedouin constructions for demolition under the provisions of the 1965 Law of Planning and Construction. In short, the idea was to convince the court that the application of planning regulations to the Bedouin case served purposes foreign to the law's intent: the forced concentration of Bedouins in designated townships or means for forcing the Bedouins to give up their lands.

The *El-Sanaa* case was unsuccessful. Spread across four and a half pages, the short decision of the court dismissed the petitioners' claims that historic injustice had been inflicted on them, that they were promised by the government that they would be able to freely settle in the Enclosure Zone, and that the Law of Planning and Construction had been abused by the authorities.[23] Justice Bach, who spoke for the court, outlined a historic and cultural narrative that was fundamentally at odds with the Bedouin version: The Bedouins of the Negev were nomads who resided in temporary units of residence without any appropriate infrastruc-

[22] According to one source, there are currently 3,200 pending claims of ownership by Bedouins, involving 1,650,000 dunams. From 1976 to 1988, the state has negotiated and settled claims for only 25,000 dunams. Most Bedouins refused to negotiate over the proposed terms. Letter of Gideon Vitkon, Commissioner of Israel Land Authority, to M.P. Haim Oron, 30 May 1989.

[23] The Israeli court ignored the attempt of petitioners to offer a legal construction that drew on the approach of the U.S Supreme Court. Petitioners argued that their rights over the lands in the Enclosure Zone [to which they were transferred by force] had to be secured on the basis of a governmental promise. By analogy, the U.S Supreme Court held that "the canon of construction applied over a century and a half by this Court is that the wording of treaties and statutes ratifying agreements with the Indians is not to be construed to their prejudice. . . . The construction, instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of a weak and defenseless people, who are wards of the nation, and dependent wholly upon its protection and good faith." *Antoine vs. Washington* 1975:199–200.

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ture and, as such, had a severe "dwelling problem" that Israel tried to resolve by offering a "permanent solution to . . . the Bedouin section." The current planning programs of the authorities—settling the Bedouins in modern planned towns—now provided adequate housing alternatives for the Bedouins:

> The [authorities] employed and employ numerous means in order to ease the plight of the Bedouins and to facilitate their transition from nomadic life to convenient permanent settlements. These means include substantial incentives to every Bedouin over the age of 21 who agrees to move to a permanent settlement and a grant to any Bedouin who destroys the illegal construction in which he resides. (P. 711)

As this judicial text illustrates, there is more than one way of discerning facts out of reality. The Bedouins' claims of injustice are answered with a completely different framework in mind. The version that the court articulates sees virtue where the former speaks of evil, salvation and good intentions where the former emphasizes oppression, and progress, order, and modernization where the former complains of silencing and denial. The authorities, in the court's account, both sympathize with the Bedouins and seek ways to help them in their times of trouble. The Bedouins are constructed as rootless nomads in search for permanent solutions rather than as a people who wish to cling to lands which they consider as their own and to habits they are reluctant to give up. Their plight, in this account, is not a result of state oppression but of primitive living conditions or, in other words, a problem of disorder. The decision ends with a conciliatory tone:

> Under the circumstances, and with an overall perspective of the historical developments that the Bedouins in this area experience, it is difficult not to sympathize with these people and to feel a desire to help them in their distress, and it seems that this is also the sentiment of the authorities. . . . But this sentiment cannot drive us to allow the existence of constructions that were illegally constructed or to order the authorities not to implement the law. (P. 712)

The (hi)story of the Bedouins, in short, does not give ground to any legal, moral, or political cause.[24] Yet the rejection should not be interpreted as an expression of flagrant injustice, and the rationale of the court must not be seen as a case of judicial obliviouness. It is hard to believe that professional judges con-

[24] Two points are in order here. First, an important "working assumption" had been established in 1979 when the government, following imperatives resulting from the peace treaty with Egypt, negotiated the resettlement of the Tel-Malchata Bedouins. Negotiations took place *as if* the Bedouins had rights of possession over their lands (Marx 1988). Second, and in contrast to the above principle, the government so far declined to consider proposals to allow the Bedouins to establish agricultural settlements or "shepherds villages," more in line with their traditional ways of living than the urban settlements to which they are currently being pushed (letter of G. Cohen on behalf of the Association for the Protection of Bedouin Rights to Israel Land Authority, 3.7.91).

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sciously avoid the grievances of the Bedouin population only when one already holds a perspective which is sensitive to the possibility of conflicting narratives. Yet as the *El-Sanaa* [1991] decision demonstrates, we are not dealing here with mere denials of injustice but with bold assertions of the rational and graceful problemsolving orientation of both the administrative and judicial apparatuses of the state. Therefore, it is not the case that judges cannot decide Bedouin cases differently or that their assertions are a mere sham; rather, having a particular conceptual model in mind, judges are in fact celebrating present policies as bearing the traits of improvement and progress, hence preventing the development of a "jurisprudence of regret" (Webber 1995). Working with the culturally and historically grounded model of modern conceptualist law, the individual plight of any particular Bedouin may still be acknowledged, but the validity of a collective counternarrative is flatly denied.

Postscript

> You must never flee in a straight line. Napoleon III, following the example of the Savoys in Turin, had Paris disemboweled, then turned it into the network of boulevards we all admire today. A masterpiece of intelligent city planning. Except that those broad, straight streets are also ideal for controlling angry crowds. Where possible, even the side streets were made broad and straight, like the Champs-Elysees. Where it wasn't possible, in the little streets of the Latin Quarter, for example, that's where May '68 was seen to its best advantage. When you flee, head for alleys. No police force can guard them all, and even the police is afraid to enter them in small numbers.

This brief on city planning—which Belbo lectures to Casaubon in Umberto Eco's *Foucault's Pendulum* (1989:109)—is not only about possibilities of resistance. It also speaks of the Gordian knot that inseparably binds power and culture. The ordering of space, a derivative of intellectual conceptualism, is an act of violence executed through aesthetic means.

It is the subtle critique of this violence, if not arrogance, that underlies Peter Greenaway's film *The Draughtsman's Contract* (1982): An artist is hired to draw 12 sketches of an estate. He demands perfection and precision: No visible change must be allowed from one day to the other. All must stand still, so he can truly produce a true representation. An easel is positioned, a perspective is set, and a grid seems to capture the estate in all of its fixed properties. But little changes creep in, challenging the desire to freeze time and space: A window is left open, a ladder is put against a wall, and the boundaries are repeatedly transgressed.

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For the law, as for the draughtsman, the unhindered flow of time and the undetected movement in space subvert and threaten the order of things. The unplanned *is* the uncontrolled and the unbounded *is* the untamed. The search for order, for a Plan, for a Design, is more than means to an end. It is that which constitutes the identity of the modern vis-à-vis the chaotic, the evasive, the unsocial; it is that which constitutes one culture's moral superiority over another; and it is that which allows the closure—and hence the distinction—of the modern legal system.

In this article I have tried to demonstrate the legal consequences that flow from the conceptualization of Bedouins as rootless nomads and from the imposition of certain legal categories as means of solving disputes across the indigenous/nonindigenous divide. I tried to show that the law which applies to the Bedouins shares the arrogance of the draughtsman and the controlling cultural agenda of Napoleon III. It is this aspect of the law, above and beyond any historically specific political agenda, that renders it highly effective in denying counterclaims, erasing alternative narratives, and objectifying the history and experience of one culture as the only sensible one. The strict application of the rule of law permits judges to deny rights, history, culture, and context to a constructed other. This application expects conquest: controlling space and ordering time; placing people within definite spatial boundaries and holding histories in check at temporal signposts. The protagonists, therefore, must first be dispossessed of their own sense of time and place. They must be told that one cannot establish ownership of land by relating to one's ancestors. One must provide documents and establish dates. The Bedouins must be liberated from their history before they can be entrapped in legal time capsules and within spatial enclaves. At the same time, spatial and temporal practices of Bedouins who resist must be framed as violations of the law before punishment may be incurred.

But we are not dealing here with a mere silencing of a hostile "other." Rather, the law has a cultural role to play. The constitution of *nomadism* as a conceptual toolbox that freezes Bedouins in time and suspends them in space gives rise to a series of binary oppositions that underlie the distinctions between "us" (Western pilgrims) and "them" (Oriental nomads): society versus nature, order versus chaos, progress versus backwardness, bounded time versus unbounded time, individual rights versus collective trajectories, and a specially adapted version of formal versus substantive law. Nomads, so the modernist story goes, head nowhere. With no clear destination in mind, they are doomed to an eternal roundabout in both space and time. A purposeless trip ensues. Unable to explain when to go where and where to go when, the nomads are unlike us, the pilgrims, who calculate and syn-

https://doi.org/10.2307/3053959 Published online by Cambridge University Press

chronize the movement, who never leave home without a map and a watch and a pretty clear idea of why we are heading at our planned destination. "They" trip, "we" make a journey, and the law works within a framework of a journey that is premised on the conceptual ordering of time, space, and identity.

There is an irony involved. Bauman (1989), in his *Modernity and the Holocaust*, discusses the "conceptual Jew" in European history. The conceptual Jew, separated from the living Jewish men and women, represented the defiance of order and the specter of chaos and devastation. As a concept, the wandering Jew embodied "the horrifying consequences of boundary-transgression, of not remaining fully in the fold" (p. 39). It is perhaps the playfulness of history that the new Jew (i.e., the Zionist), escapes this conceptual identity by an act of transference in which the Bedouin inherits, in a different context, similar conceptual properties.

In sum, the acceptance of nomadism as a chaotic state of nature immediately produces its affirmative juxtaposition to a modern model of order and progress. It is on the basis of this fundamental opposition that the legal genre obeys its own grammatical rules. It must establish chaos if it wishes to order, it must establish the priority of law to life if it wishes to subject the latter to the former, it must reify the rule if it wishes to objectify its rule. It is only then that the law may satisfy not only its surveillance and controlling force over the subjected but its constitutive authority over the identity of subjectors and subjected alike. Only then does the story have meaning, and it is this fusion of force and reason in the law, as I have tried to show, that licenses judicial narratives to neutralize the process by which the Bedouins disappear and the Negev—qua desert—is successfully redeemed.

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