Chapter 3 / Improvement

NOTES FROM AL-ARAQIB

On a warm spring day in April 2014, we visited Al-Sira,[1] an unrecognized Bedouin village several kilometers away from the small outpost city of Bir Al Sabe, or Be'er Sheva as it's known in Hebrew. Khalil Al-Amour was our host. Khalil is head of Al-Sira's village council, representing his community and the Bedouin more widely at national and international forums. He explained to us the problem of the unrecognized Bedouin villages, took us on a tour of his house, and described to us the workings of the small village.[2] The large number of unrecognized Bedouin villages in the Naqab desert of southern Israel are denied the basic municipal services, including running water, electricity, sewage, health care, and education, enjoyed by Israeli citizens, even though the Bedouin hold Israeli citizenship.[3] Approximately 84,000 Bedouin reside in unrecognized villages, under crushing levels of poverty, denied the resources that they are entitled to. These villages, which bear the literal designation of nonrecognition, provide a near-transparent instance of the perilous effects of the state's refusal to recognize the legal and historically based rights of the Bedouin to their land.

We sat on the terrace of Khalil's house, listening to him summarize a long history of the ongoing struggles of the Bedouin for recognition of their land rights in a short span of time. It was his second meeting of the

day, and it became clear that this meeting was one stop on a tour of sites in the Naqab, surrounding Bir Al Sabe, designed to educate foreigners (journalists, politicians, nongovernmental organization [NGO] workers, academics, and diplomats for the most part) on the plight of the Bedouin. The brief conversations that we had with Khalil at this first meeting were confined to a well-honed discourse of advocacy that addressed the illegality of Bedouin dispossession, their rights, and environmental and economic concerns. This was traditional Bedouin territory, misappropriated under an abuse of the Ottoman doctrine of *mewat* land, as well as through the seizure of territory for military purposes, along with outright misappropriation. Legal precedent had established that the withholding of basic services such as water and electricity was a violation of their rights; they were actively fighting this long-standing dispossession in the courts and through political activism; and the Bedouin had environmentally sound economic plans for development of their villages, were their autonomy and land rights to be given their due recognition.

Later that afternoon, the confines of this well-rehearsed tour would be shattered by another kind of ritual, the destruction of Bedouin tents by the Israel Land Authority. Driving around the desert, grappling with the extreme differences in wealth and the standard of living between the unrecognized Bedouin villages and the neighboring suburban gated Israeli settlements, camouflaged by colorful bougainvillea and small saplings courtesy of God TV, a Christian Zionist evangelical television channel in the United States (whose billboards were yet another blight on the landscape), our party received a call from an activist about an impending demolition. We drove to the village of Al-Araqib, which has received a lot of international focus in media coverage of the Bedouin and the Prawer Plan.[4] While there, we witnessed a type of violence that had both ritualistic and performative dimensions, a display of brutal destruction characteristic of the Israeli settler colonial regime. The vehicles rolled up to several tentlike structures on the land outside of a cemetery. (Inside the cemetery, dozens of residents had taken shelter for weeks, thinking that the security forces would not destroy homes located on consecrated ground. In June 2014, however, the Israel Land Authority would order the demolition of even these homes.)[5] Bulldozers and a small pickup truck drove right onto the land adjacent to the cemetery-cum-village. After destroying the Bedouin tents, they planted their yellow flags, indicating their intention to evict and claiming the land as state property. After they drove off, several young boys from the village

immediately went up to the piles of rubble, extracted the flags, and helped each other to tear them up.

The destruction was ritualistic in the sense that what we witnessed was the seventieth such event since 2010.[6] The village has now been razed, at the time of writing, ninety-one times.[7] After the destruction, the community rebuilds. The repetition made it no less violent and, if anything, reflects the persistent harassment and oppression of the Bedouin in the Naqab region of southern Israel. As Hanna Nakkarah documented, the destruction of Bedouin homes and crops began in the 1970s, notably after the creation of the Green Patrol (discussed below) under Ariel Sharon's tenure as the minister of agriculture, which began in 1977.[8] Today, some Bedouin construct their homes out of makeshift materials not only due to high levels of poverty but because their pliable nature makes reconstruction somewhat easier after such demolitions. Atheel Athameen, committee chairman of the Khasham Zaneh unrecognized village near Bir Al Sabe, stated that several residents of the unrecognized villages demolish their own homes, to avoid the costs charged to the residents of the house when it is demolished by the state authority. He explained that if you are taken to court in the process of having an eviction order executed against you, you will be criminalized and will also have to pay the court costs. He paid for someone to build his house and paid the same person to destroy it.[9] The state's determination to deny the historic and contemporary presence of Bedouin on their land requires the constant and repeated destruction of the very evidence of their ownership rights—settlement in the form of homes, villages, and crops.

While the Bedouin had some interaction with early Zionist settlers in the first half of the twentieth century, the history of their displacement begins in earnest with the establishment of Israel in 1948. The expulsion of approximately 80 percent of the Bedouin population from their traditional territory began a struggle for reclamation that doesn't appear to have any end in sight, with every single land claim to reach the Israeli courts having, at the time of writing, been defeated. The legal claims, one of which I discuss in some detail below, focus on the facts of Bedouin ownership of their land, as evidenced by their cultivation of the land for centuries prior to the establishment of the state of Israel. Other forms of evidence, such as records relating to the payment of tax on agricultural produce during the period of Ottoman rule, and tax receipts relating to land transactions, are used

to establish proof of Bedouin settlement on their lands and to support the claim that they did indeed own and cultivate their lands. Cultivation plays a central role in defining who is entitled to own land in Israel/Palestine legally, but also, ideologically. In ways that are similar to the colonial settlement of indigenous lands in British Columbia, a lack of cultivation or, indeed, land cultivated according to traditional methods by non-Europeans, was the basis upon which early Zionists justified their encroachment on Palestinian lands. In keeping with the European colonial worldview of the nineteenth century, subsistence agriculture (or even agriculture bound for internal markets) was a sign of cultural and intellectual inferiority, a prime indicator of a backward, premodern people. Modern civilization meant modernizing agriculture, which was central to the early Zionist settlement mission in Palestine during the late nineteenth and early twentieth centuries. Cultivation became the prime basis for establishing a moral and legal right to land in Palestine, in the eyes of political Zionists.

However, cultivation in the context of Israel/Palestine is a primary legal determinant of ownership in indigenous land claims because of its imputed quality as a defining characteristic of ownership and, indeed, modernity itself, as explored in chapter 1. In the decades prior to the establishment of the state of Israel, cultivation figured prominently in many political Zionists' vision of how Jews ought to return to their primordial territory. It was through the mixing of his sweat with the soil of Palestine that the exiled Jew would redeem himself, re-forming his attachment to the land of Zion, while at the same time creating a viable and sustainable Jewish economy in Palestine.

Thus, when the Bedouin attempt to prove that they have been cultivating their lands as a means of establishing a legal ownership interest, they are not only confronting a racially inflected concept of ownership that is based on modern European forms of cultivation, but they are challenging the ideological basis of their dispossession as embedded in a very particular form of nationalism. For the founders of modern political Zionism, such as Theodor Herzl and Arthur Ruppin, Jews needed to reestablish themselves as the people of the land of Palestine, and this could only be accomplished, practically speaking, through an attachment to the soil through acts of cultivation. Moreover, the people who were already there, and who had indeed been cultivating the land for generations, needed to be cast as mere tenants of the land, unable to "make the desert bloom," as the hackneyed Zionist slogan goes.

In this chapter, I explore the place of cultivation in early Zionist thought, primarily through the writings of Arthur Ruppin, then examine the state of Jewish cultivation in Palestine leading up to 1948, and note the somewhat rapid decline of actual agricultural production in Israel in the first few decades of the state's existence. I argue that cultivation retains its force largely as an ideological bulwark against challenges to political Zionism that seek to expose its primary claims as recent historiographical inventions. In other words, the history of agricultural settlements of the late nineteenth and early twentieth centuries provides a basis (however thin) for the Zionist narrative of a successful return to the land, a negation of exile that was realized through working the land. Through the ideal of agricultural colonization, Zionist political claims came to have a territorial reality. Despite the fact that cultivation remains a heavily ideological phenomenon rather than a reflection of actual economic and social realities on the ground, its status as a flashpoint for contestations over proving entitlement to land remains undiminished. The Bedouin, who inhabited the lands of the Naqab for hundreds of years prior to the establishment of Israel in 1948, are reduced to claiming recognition of their land rights on the basis that they cultivated their land in a manner cognizable to what is in essence a European settler colonial project.

THE IDEOLOGY OF IMPROVEMENT IN ZIONIST THOUGHT

Zionism, as a modern political, cultural, and theological ideology, has always contained within it many different schools of thought. Here, my focus is on the brand of political Zionism that had, from its beginning, explicit territorial aspirations, which clearly prevailed in the mode of colonization pursued in Palestine. As Amnon Raz-Krakotzkin, Maxime Rodinson, Gershon Shafir, and Gabriel Piterberg, among others, have argued, the Zionism of Theodor Herzl, Arthur Ruppin, Chaim Arlosoroff, and other founding fathers of settlement was heavily influenced by, or indeed modeled upon, European colonialism. Furthermore, Herzl argued repeatedly that Britain should support the establishment of a Jewish homeland in Palestine because of its strategic location on the imperial map. As the crow flies from England to India, Palestine was located, geopolitically, in a position of prime importance to British colonial interests.[10]

As such, the notion that land that was not being cultivated according to European models of agriculture was waste, and capable of being legitimately appropriated, was certainly a formative notion in early Zionist thought. What is of significance, however, is that the early Zionists were influenced not primarily by Lockean property rationales based on the imperatives of a burgeoning agrarian capitalism, but by German idealism. The notion of the *volk* as being of the land, rooted in the soil of their national homeland, forms the basis for entitlement to a state based on their natural ties to that territory. Zionism was a political, spiritual, and territorial nationalist project.

Gabriel Piterberg has stressed the continuity between European colonial thought and early political Zionism. Herzl's novel *Altneuland* is analyzed by Piterberg as an example of utopian colonialism.[11] The aspirations of creating a territorial homeland for the people who had been hitherto spiritually defined by exile could be realized in Palestine, the utopian dimension of settlement rendered possible by acting as if Palestinians were not already there, on the land. Whether the early settlers were socialists or believed that collective forms of agricultural settlement were more feasible and efficient, at least initially (as with Ruppin, discussed below), they based their modes of colonization on European (first French and then English and German) colonization projects.[12] In the early twentieth century, Ruppin sought out expert advice from the American agriculturalist Professor Mead on how best to proceed with agricultural development based on the perceived similarity between the colonization of California and that of Palestine. It is difficult to understand how anyone can object to contemporary characterizations of Israel as a settler colony; the early founders and advocates of the Jewish colonization of Palestine had absolutely no difficulty in using the term "colonization" to describe their intentions and actions in Palestine. To differentiate the founding of Israel in 1948 from the early Zionist project to colonize Palestine is to engage in a revisionism that doesn't warrant further comment. Israel, like Canada, Australia, and a multitude of other places, remains a colonial project.

However, as noted above, the Zionist colonization project was not primarily driven by economic or financial considerations of profit and resource exploitation, and herein lies one of the differences between the founding of Israel and other settler colonies. As I argued in chapter 2, the ethnonational imperatives of Zionism, which have as their primary objective populating

the land with Jewish settlers and diminishing the Arab presence, have precluded markets in land that are organized according to a capitalist rationality from taking hold. Ownership of land was a necessary precondition for the establishment of a homeland for the Jewish people, not, as with other settler colonies, a precondition for creating and growing a productive, capitalist economy that would enrich both individuals and the coffers of the imperial state. The collective nature of ownership pursued by settler organizations such as the Jewish Colonization Association during the Mandate and after 1948 attest to the primary objective of acquiring land for the Jewish people, as a collective national entity. Indeed, the Jewish National Fund, established in 1901, had the mandate of purchasing lands to be held in trust for the metaphysical entity called the Jewish people. Arlosoroff pointed out the explicit differences between European and Zionist colonial aspirations: "Contrary to the European colonial experience, in the case of Palestine, the land itself which is to be settled is not of any appreciable economic value, nor has the specific territory—Palestine—been chosen for economic reasons as the most profitable or potentially bountiful land. The choice was determined by considerations transcending economics—historical memory, national identity—and consequently the means required to carry out such a project cannot be articulated in purely economic terms."[13] However, despite the higher spiritual principles involved in Zionist colonization, the rationales devised to justify colonization, and, specifically, an idea of cultivation that was heavily inflected with a racial discourse of superiority, bear great similarity to European colonial models.

While early Zionists such as Arlosoroff were committed to Jewish socialism, Piterberg argues that "in terms of ideational flows from Europe to Palestine, ideas of colonization and race rather than socialism" were the ones that prevailed. Indeed, in examining the writings of Arthur Ruppin, one of the primary architects of the agricultural colonization of Palestine in the early twentieth century, it becomes quite apparent that his primary concerns lay with the economic viability of settlement, successful models of colonization that could prove useful to Jewish settlers, and the particular challenges of establishing a permanent presence on the land for European Jews who had a higher standard of life and greater intellectual capacities than the Arab fellahin. The primary economic concerns of Ruppin are thoroughly immersed in racial thinking about European Jews, Yemeni

Jews, and Arabs; these economic concerns and racial thinking produce, in dialectical fashion, a vision of the most appropriate mode of colonization that fuses together the value of land and the racially differentiated labor of the people living on it.

Arthur Ruppin grew up in a small town on the Prussian-Polish border and would later move with his family to Magdeburg, Germany. He describes a family life consumed by a crushing and persistent poverty. It seems that Ruppin's first experiments in political economy took place in the family household, where he attempted to master the provision of nourishing meals for a family of seven on a meager income.[14] Ruppin would go on to complete a law degree in Berlin and then a doctorate in philosophy (political economy) at Halle, and eventually find success as a businessman.[15] Ruppin writes in his memoirs of moving away from the strictly religious practices of his youth as a university student, while he faced increasing levels of anti-Semitism.[16]

In 1904, after he spent several weeks in the Whitechapel area of London, England, Ruppin published *The Jews of Today*, a book that was warmly received by Zionists. At this juncture, Ruppin recounts traveling to Berlin to acquaint himself with "practical Zionists," Martin Buber among them. He rejected the "diplomatic Zionism of Herzl" as "hopeless and unrealistic" and eventually joined the Zionist Organisation in 1905.[17] In his own words, he had by 1907 become "such an ardent Zionist" that he left for Palestine to study the conditions of the Jewish settlers in Palestine. He accepted the invitation of the Zionist Action Committee to emigrate to Palestine as the representative of the Zionist Organisation.[18] From that time onward, Ruppin devoted himself to analyzing, documenting, and advocating for the agricultural colonization of Palestine, based on European and American models of colonization.

In *The Agricultural Colonisation of the Zionist Organisation in Palestine*, published in 1926, Ruppin presents an analysis of the successes, failures, and future directions for Jewish settlers based on seventeen years of experience in the field. He remarks on the failure of the plantation-style settlements established in the years before the twentieth century, an initiative that was largely funded by Baron de Rothschild. These settlements of the "1st Aliyah" failed, in Ruppin's view, for a number of reasons. The plantations failed because the owners relied on "cheap Arab labour."[19] When Jewish settlers

hired Arab workers who knew more about agricultural production than the settlers, this prevented those settlers from developing a genuine and organic attachment to the land.[20] Attempts to cultivate extensive tracts of wheat also failed, because, in Ruppin's view, "the Jewish mentality cannot conform to its monotony, and the small produce is not enough for a European minimum of existence."[21] Right from the beginning of his analysis, the racial difference of Jews from Arabs is put forward as a rationale for why particular modes of cultivation could not succeed, and shapes his advocacy of particular modes of agricultural settlement. The formation of the racial regime of ownership in Palestine during colonial settlement encapsulated cultural, social, and scientific rationales that took specific economic and legal form.

The primary challenge for Jewish settlers, in Ruppin's view, lay in the fact that European standards of living were superior to those of the Arab fellahin, and were thus more costly. As such, Jewish settlers were at a distinct disadvantage; they could not compete with the low wages paid to Arab laborers, for whom such wages were perfectly adequate given their low standard of living.[22] What followed the observation that Jews would be competing with people who required less income, given their backwardness, was an indictment not only of Palestinians but of the entire geohistorical space that was imagined as the Orient:

> The whole Orient is characterised by a frightful exploitation of human labour, especially that of women and children. The woman, who in Anatolia or Persia sits in front of the carpet-loom from her childhood till her last days, and all the time scarcely earns a crust of dry bread; the fellah woman in Egypt, who, when but thirty years old, is turned into an old woman through a combination of the poorest of foodstuffs and the heaviest of labour; the Egyptian and Syrian children who work in factories then and twelve hours daily for 2–3 piastres (half gold-franc) a day, these are all examples of this terrible exploitation. Thus Palestine only shares the fate of the whole Near East if the standard of the life of its native population is wretched in the extreme, and if wages are at the lowest possible level.[23]

In this passage, the echoes of the well-worn European image of Oriental culture rife with despotism in which women and children in particular are

oppressed and exploited forms a core part of Ruppin's political anatomy of Palestine.[24] The wretched conditions he observes are then cast in historical-civilizational terms, with European Jewry belonging to modernity: "Even in Palestine, the Jew wishes to remain a product of the twentieth century."[25] As such, only those modes of colonization that could support the European standard of living that Jews were accustomed to would be pursued.

The racial typologies that Ruppin relied upon in assessing the viability of the agricultural colonization produced a racialized vision of labor. In turn, it is through agricultural labor and the act of cultivation that the European Jew—as an exilic figure with a higher intellectual aptitude than the Arabs, and also a European subject who had been rejected and cast out of Europe—would redeem himself in Palestine. The mistake that the earlier colonists made was precisely to ignore the spiritual imperative of agricultural labor, the basis of the Jewish future in Palestine:

> The present-day settlers are no less intelligent than the earlier colonists, and they have the same Jewish mentality, i.e. that same mental mobility and the same esteem for learning and the cultivation of the mind. This mentality is inseparable from the life and soul of the Jew. But it can be guided into another channel, namely that of an elevation and hallowing of agricultural work. . . . The new settlers look upon agriculture not only as the means of existence, but as the source of new national life. They feel that they are laying the foundations of a new Jewish community in Palestine, and that an immense responsibility rests on them, the founders and creators. The monotonous labour behind the plough is connected by many fine-spun threads with the distant future, in which the work will be continued by new generations of free Jewish peasants, increased a hundred times in number, continuing on the lines on which their fathers . . . have started.[26]

Unlike the backward styles of cultivation of the fellahin, the agricultural labor of the European Jewish settler was of a rather more elevated quality.

Mere ownership would not suffice. Ruppin viewed Palestine as a place of redemption for Jews who had labored under the accusation that as landless "middlemen and parasites" they had never produced and contributed to the economic and social life of European states.[27] For this reason, he emphasized that mere ownership of land in Palestine was not enough to over-

come this age-old prejudice. Ruppin took Lockean rationales for the moral legitimacy of ownership into the field of German idealism, and argued that only by mixing one's sweat with the soil of Palestine could an authentic possessive nationalism be borne: "We must not only own the land, but also till it in the sweat of our brow, and thus show the world that there are mighty forces latent in us, which only need suitable conditions in order to spring again to new life."[28] Mere investment in the land of Palestine could not sustain a genuine claim to the national home of the Jewish people, and while Ruppin emphasized the necessity for Jews in America and Europe to invest in the colonization effort, he did not think this was a sufficient criterion for establishing an authentic national home in Palestine.[29]

Ruppin had clearly adopted the racial-scientific thinking of his time. He had a firm belief in a racial difference that was biologically grounded in physical traits, appearance, and variations that were hereditary. Morris-Reich has noted that in the English edition of Ruppin's diary, a crucial entry is omitted, from August 16, 1933, which recorded a meeting between Ruppin and Hans F. K. Günther, who was none other than Himmler's mentor.[30] Ruppin accepted without question a deterministic racial theory that led him to warn against the pitfalls of interracial marriages, which would dilute the Jewish racial type. Exposing his Darwinist roots, Ruppin's views on how to manage immigration to Palestine is expressed in the article "The Selection of the Fittest":

> Since it is our desire to develop in Palestine our Jewish side, it would naturally be desirable to have only "race" Jews come to Palestine. But a direct influence on the process, via the selection of such immigrants as most closely approach the racial type, is not practically possible. On the whole, however, it is likely that the general type in Palestine will be more strongly Jewish than the general type in Europe, for it is to be expected that the more strongly Jewish types will be the ones which are most generally discriminated against in Europe, and it is they who will feel themselves most strongly drawn towards a Jewish community in Palestine.[31]

How are we to interpret the distinction that Ruppin makes between "racial Jews" and "Jewish types"? His concern here is whether it is possible to keep the "Jewish racial stock pure" in Palestine.[32] We know that Ruppin distinguished between those who were racially Jews, and those who

were not racially Jewish but part of the Jewish national body (such as the Falashas in Ethiopia, and converts to Judaism in Russia).[33] We also know that Ruppin held a firm belief in a Jewish racial difference that was internally differentiated according to metaracial categories of "white, yellow and black" as depicted in a "Diagram of Jewish Racial Populations" contained in his *Sociology of the Jews*.[34]

Ruppin's theory fit with the racial thinking of the time, as noted above, but also reflects the development and use of full-blown racial scientific thinking in determining the types of labor and modes of colonization that were appropriate for particular racial groups. For instance, the Yemeni Jews, who, facing persecution in Yemen circa 1910, immigrated to Israel, are viewed by Ruppin as incapable of performing the same types of labor as their superior Ashkenazi Jewish brethren. He writes that "[c]ompared with the Ashkenazic Jews, they [the Yemeni Jews] possess smaller powers of insight and organisation. It would thus be extremely difficult for them to undertake independent work."[35] Ella Shohat has argued that seeing Sephardic Jews as " 'natural workers' with 'minimal needs' . . . came to play a crucial ideological role, a concept subtextually linked to color."[36]

Given the particular nature and needs of Jewish settlers to form an organic attachment to the land of Palestine, and given their modern and civilized standards of living as compared to the native inhabitants, what modes of colonization would be most expedient and profitable for Zionist aspirations? Ruppin compared the agricultural settlements in Palestine to the ones that had been established during the Rothschild administration, the German colonies in Prussia, and the American colonization of California. On the basis of these comparisons, he advocated strongly for mixed farms over plantations, emphasized the need for the formalization of land rights for Jewish settlers, and believed that collective agricultural work required much more private capital investment than had hitherto been afforded the settlers. Collective forms of organizing agricultural settlement were understood to be the most expedient, but this form of colonization required, as in various British colonial contexts, a great deal of private investment.[37]

Thus the influence of European colonial endeavors on the founding fathers of modern political Zionism, such as Herzl and Ruppin, was not solely in regard to racial ideologies of European superiority, but was also about the legal and economic form that colonization would take. Arrangements for

private investment to fund settlement, backed by legal pronouncements as to the legitimacy of investment schemes and settler land ownership, were central to the Zionist vision. In what can now be read as an ironic twist of history, given the repeated violations of international law by the state of Israel since its founding, Herzl's address to the first Zionist Congress, held in Basel, Switzerland, in 1897, proclaimed that "[t]he Aim of Zionism is to create for the Jewish people a home in Palestine secured by Public [International] Law."[38] Herzl emphasized the need for any Jewish settlement to be recognized by the laws and legal structures that govern relations between sovereign states, for the political protection that this would afford.[39]

Herzl emphasized, as Ruppin would after his death, the necessity to establish a bank that would fund the establishment of colonies, whether they were to be held collectively or individually. In his pamphlet *The Jewish State*, published in 1896 (shortly after Herzl had attended the Dreyfus trial in Paris), he outlines in some detail a proposal for a Jewish Company that would, like its precursors, be a joint stock company subject to English jurisdiction. Partially modeled "on the lines of a great land-acquisition company," this Jewish chartered company would be "strictly a business undertaking" that was to facilitate the private acquisition of land in Palestine for settlers.[40] The company would raise capital through appeal to big banks, small banks, and public subscriptions, would acquire large areas of land in Palestine, and through this centralized mode of purchase the Jewish Company would facilitate settlement and receive "an indefinite premium" when selling the land onward to its officials.[41] At the same time, this arrangement would avoid the perils of excessive land speculation to which many settler societies fell prey.

Subsequent to the proposals set out in *The Jewish State*, Herzl would author a charter that he believed ought to be the basis of an agreement between the World Zionist Organization and the Ottoman government.[42] The charter, and specifically the proposed entitlements and jurisdiction of the Jewish-Ottoman Land Company (JOLC), was modeled, like the Jewish chartered company described above, on the colonial charters that had hitherto empowered joint-stock companies, such as the East India Company and the Dutch East India Company, to inaugurate European colonial endeavors in the eighteenth and nineteenth centuries.[43] Herzl's proposal provided that the JOLC would have varying degrees of property rights over

land that it acquired: ownership and usage of land that it purchased outright from private landholders; ownership of land belonging to the sultan for a yearly payment; and the right to occupy land to which there was no legal title, also in return for a yearly payment.[44] With the right of ownership in article 1 came the entitlement to use the land for purposes of settlement, including the building of roads, bridges, houses, and industry and having the right to use the lands for agriculture, forestry, mining, and horticulture. The JOLC would also have powers of taxation over its areas of jurisdiction. Walid Khalidi has commented on the "impressively extensive" powers that the JOLC would attain through such a charter, pointing out that population transfer was perhaps the "most crucial right requested by the JOLC." Colonization was to happen through private investment structured according to English laws of contract, property, and company law.[45]

A number of different companies were established at the turn of the twentieth century in order to finance settlement, both for individuals and for collective associations. Herzl's blueprint as set out in his pamphlet would be realized with the establishment of the Jewish Colonial Trust Fund, brought into being at the second Zionist Congress in 1898. The trust's primary aim was to finance settlement. The Anglo-Palestine Bank was formed in 1902 as a subsidiary of the trust, to carry out its activities in Palestine. The trust would operate with mixed success until 1934, when it was dissolved and became a holding company for shares of the Anglo-Palestine Bank.[46] The Jewish National Fund would be established at the fifth Zionist Congress in 1901. The purpose of the Jewish National Fund was, as it is today, to buy land in Palestine as "the permanent possession of the Jewish people."[47] The Palestine Land Development Company, an institution established under the auspices of the Zionist Organization, had as its purpose "systematic land purchases" in Palestine, in order to resell these purchases without profit to private persons.[48] The need for private investment to colonize Palestine, wherein land would be held collectively, distinguished the Zionist project from other European colonial endeavors.[49]

One complicating factor for the Zionist Organization was existing laws that would determine to a large extent the legal forms that settlement could take. Unlike colonists in British Columbia or South Australia, the Jewish colonists could not impose a legal tabula rasa that allowed for blanket experimentation in legal form. There was the Ottoman legal system to contend

with, and then the application of British common laws under the Mandate. Shafir has argued that changes in the Ottoman Land Code (OLC) of 1858 facilitated the Jewish purchase of Arab lands in Palestine from the late nineteenth century. The "centralising and modernising reforms" inaugurated by a significant period of reform changed both the social strata and the laws governing ownership that subtended it, in ways that made it easier for large landowners to sell their land.[50] "The Tanzimat, a grand movement of top-down internal reforms between 1839 and 1878, reformed taxation, land tenure, public administration, and many other facets of life and concomitantly transformed the social hierarchy in the Empire and, within it, in Palestine. By so doing the Tanzimat created the specific legal and economic preconditions that served as the backdrop to Jewish colonisation."[51] Specific to land reforms and taxation, Shafir describes how reforms in 1867 liberalized rights of succession, encouraged land improvement, and increased the freedom of landowners to rent their land.[52] These changes were one aspect of the attempt to reform the agricultural sector to increase cash crops and exports to Europe. Wheat and oranges in particular were integrated into an international market and "gave rise to a capitalist industry."[53] The gradual rise in land values (and, accordingly, revenue for the Ottoman administration) and the increasing commodification of land made the sale of land by notables and large landowners an attractive option. As Shafir notes, between 1878 and 1936, only 9.4 percent of the land sold to Jewish settlers and settlement companies was sold by fellahin; over 75 percent was sold by big landowners, "most of whom had acquired their land in the last half of the nineteenth century."[54]

Ultimately, despite the complexities, the model of colonization was, as discussed above, similar to other settler colonies in its use of private investment in property ownership facilitated by companies and associations to establish a colonial presence on the land, and to lay the scaffolding for a future state. In addition to the land being held collectively, the other striking difference was that unlike other settler colonial contexts, profit was not the driving motivation; in the words of Patrick Wolfe, Zionists had "freedom from the discipline of the bottom line."[55]

Territorial acquisition was the means through which the Jewish Question could finally be settled. And of course, settling the land of Palestine and creating a homeland for the Jewish people is what differentiates political Zionism

from other forms of settler nationalism. While settler colonial nationalisms in Canada, the United States, and Australia were also racial formations, it would be a mistake, as Raz-Krakotzkin has argued, to fail to account for the theological dimension of political Zionism. Indeed, in the writings of Herzl one sees precisely the collapsing of theological and political treatments of exile, resolved through the ideal of territorial acquisition. This is distinct from the civilizational imperatives of white settlers in Canada and Australia, which while cast in indisputably Christian terms, did not purport to carry with them the biblical burden of a return to history through the appropriation of lands to which they had a divine right.

Raz-Krakotzkin invites us to reject the distinction between the religious and secular and, instead, identifies a secularized messianism of political Zionists.[56] The settlement of Palestine becomes the return to their ancient homeland but, more than that, signifies the return to history of the Jewish peoples, cast out of history after the destruction of the Second Temple. This return to history, argues Raz-Krakotskin, is premised upon a "Christian attitude concerning Jews and their destiny."[57] While I cannot engage with Raz-Krakotzkin's arguments in much depth here, I want to emphasize one of his insights. The concept of history that is deployed by the Zionists is one that emerges from Enlightenment thought, based on a linear-teleological model that emphasizes human progress.[58] The Zionist return to Palestine incorporated both Christian theological and Enlightenment perspectives on history that posited the Jews on the side of modernity in opposition to the Orientalist world of the Arab, who became for the Jewish, as for Christian Europeans, a backward, inferior people. The ideology of improvement and progress, informed entirely by a European episteme, was an inherent part of modern political Zionist ideology.

The return to history has a companion concept, the negation of exile, which was effected through the territorial acquisition of Palestinian lands. Ruppin's writings on the agricultural colonization of Palestine exemplify the Zionist desire to negate the physical and spiritual exile of Jews through settlement.[59] The Jew was "unable to feel 'at home' anywhere and at any time" because of political persecutions that kept the East European Jew on the move. The only thing that could create an attachment "to a locality, a house, a garden, property in general" was "long-lasting possession."[60] In keeping with a Lockean rationale for (land) ownership premised on labor,

and a German romanticism that posited an ideal of ethnonationalism rooted in the possession of land, the Zionists believed that an organic attachment to the land of Palestine could be cultivated, literally and metaphorically. This aspect of Zionist thought also involved a transformation in the self-conception of the Jewish subject as a strong, masculinized farmer, as opposed to the effeminate Jewish figure of the Diaspora, who was unable to sufficiently defend himself from anti-Semitism.[61]

But to what extent did agricultural settlement prevail in the decades leading up to 1948 and in the first decades of Israel's existence? It is clear that today, agricultural production accounts for a very small proportion of the Israeli economy. In fact, in 2010, total agricultural produce in Israel accounted for a mere 1.9 percent of Israel's GDP.[62] The agricultural kibbutzim that were at the center of Zionist attempts to establish a landed presence in Palestine from the late nineteenth century suffered a sharp decline from the 1960s onward.[63] Scholars mapping the social, cultural, and economic changes in the kibbutzim after 1948 have identified a number of different causal factors. The shortage of water for cultivation and the inability of kibbutz members to meet the demands of the quotas for the production of various crops produced a labor crisis, which led to the need to hire laborers from surrounding immigrant and refugee camps, something which contravened the social and cultural objectives of the kibbutzim movement. As Vallier noted, as early as 1962, "The concept of self-labor was so important to the whole of Zionist objectives that it had visibly dominated the land settlement and colonization program for fifty years. To hire laborers was tantamount to rejecting the very core of the kibbutz social order."[64] Necessity, however, required just such a rejection. Vallier documented how, on one particular kibbutz, the "hirelings" who were mainly migrants from Eastern Europe and North Africa were excluded from the social life of the community and assigned "subordinate occupational roles" throughout the kibbutz economy.[65]

Other challenges included government support for industrialization, the desires of older kibbutz members for alternative and less taxing forms of work, and those of well-educated Jewish immigrants for types of labor suited to their work experience.[66] Some scholars have noted that the early emphasis on "productive work" in the kibbutzim movement facilitated the transition from agricultural to industrial activity.[67] By the 1980s, crisis in

the agricultural sector led to an economic restructuring that increased the amount of private ownership in the kibbutzim. Today, many kibbutzim are home to private enterprises that are run like any other business. Twenty-two kibbutzim were, as of 2010, listed on the stock exchanges in Tel Aviv, London, and New York.[68] While agriculture and cultivation remain important to Israeli nationalist ideals, it is clear that the model of communal landholding and collective agricultural labor began to diminish not too long after the founding of the state in 1948.

The legal scaffolding of the kibbutzim has also undergone radical transformations since the early 1990s, whereby collectively held land designated specifically for agricultural use has been rezoned to allow for private land ownership. As Oren Yiftachel writes:

> [I]n the beginning of the 1990s a profound change occurred in the status of agricultural landholders. Starting in 1992, the ILA [Israel Land Authority] passed a number of resolutions allowing rezoning and redevelopment of agricultural land, thus greatly increasing the property rights of agricultural landholders. Contrary to the contract and ILA Resolution 1, landholders would now be able to rezone their land and acquire ownership over part of the redeveloped land. This increased the transfer of funds to the farmers by a thousand-fold, as compared with the previous regulation, and granted control over a large portion of Israel's land reserves to a small group.[69]

Israel embarked on further land privatizations in 2009.

The Naqab has become a focal point for Israeli agribusiness. The Ministry of Agriculture and Rural Development, in a booklet produced for "Overseas Visitors" presumably engaged in the agro-biotechnology industries, describes the presence of Israeli agricultural settlement in the Naqab as follows: "Population dispersion and a national economic and development policy made it necessary to inhabit this region, while simultaneously meeting challenges posed by the desert conditions."[70] "Population dispersal," a bureaucratically rendered euphemism for the Nakba, belies the nature of Israeli settlement in the area in the aftermath of 1948. The laws that were used to dispossess Palestinians of their land from 1948 onward have been detailed by many scholars, and it is not my intention to reiterate them here.[71] However, a brief overview of the legal regime imposed on the Naqab

is essential prior to analyzing the Israeli Supreme Court's rejection of the al-Uqbi family's claim to their land in *el-Okbi v. the State of Israel* (June 2, 2014, Case 4220/12).

The Bir Al Sabe (Be'er Sheva) district in Southern Israel currently makes up about 62 percent of Israel's territory.[72] The Naqab, an arid desert that stretches from the Gulf of Aqaba in the south to the city of Bir Al Sabe in the north, has been inhabited by the Bedouin for centuries, and evidence of their presence on and cultivation of the land has been noted over the course of centuries by travel writers, geologists, archaeologists, and eventually colonial administrators during the Mandate. As Abu Sitta writes, the British Mandate records of the area document the presence of seventy-seven "official Arab clans (ashiras) grouped into 7 major tribes in the district," in addition to the Bedouin presence in the town of Bir Al Sabe.[73] Throughout the Ottoman period, Bedouin customary law prevailed, determining the way in which land was owned, sold, inherited, mortgaged, or divided.[74]

While some Jewish settlements had been established in the Naqab prior to 1948, Jewish ownership of land that was registered, at the time of the UN recommendation to partition Palestine in 1947, did not amount to more than 0.5 percent of the Bir Al Sabe district.[75] The mass expropriation of Bedouin lands occurred during 1948 and its aftermath, when Israeli forces occupied the entire area, expelling most of the Bedouin inhabitants of the Naqab to Gaza, Jordan, and the Sinai, and imposed military rule on those who remained, about 12 percent of the original population. The military zone, or *siyag*, to which the Bedouin were confined, operated much like a reserve. The siyag constituted a very small proportion of the total area of the Bir Al Sabe district, approximately 7 percent.[76] The Bedouin required permits to leave the siyag, making it extremely difficult for them to maintain a presence on their land. The Israeli authorities leased a small amount of land to Bedouin to cultivate, in the amount of approximately 250,000 *dunams*. Military rule, imposed upon all Palestinian villages, was not lifted until 1966.[77]

The legal architecture of Bedouin dispossession, as noted at the outset, has been well documented by others. However, three aspects of the legal devices used to dispossess the Bedouin are germane to the contours of the legal claims explored in the third section of this chapter. The first relates to the role of title registration in the dispossession of the Bedouin; the second

is the creation of the Green Patrol, a paramilitary force that was established to displace the Bedouin under the pretense of nature preservation and environmental protection; and the third is the manipulation of the mewat land doctrine.

As noted above, the Ottoman regime recognized Bedouin ownership and customary laws of property ownership. The 1858 OLC initiated reforms that were intended to increase revenues for the Ottoman administration and, relatedly, to modernize landholding so as to render land more fungible.[78] The Land Code divided all lands into five different categories of ownership: (1) *miri* land, which was owned by the state but vested a usufruct right in the individual holder; (2) *waqf* land, which was controlled by the Supreme Muslim Council and reserved for pious or religious purposes; (3) *mulk* land, which was privately owned by individuals; (4) *matruka* land, "owned by the state but preserved for public use"; and (5) mewat, uncultivated land that was owned by the state but could be claimed by individuals for cultivation and use under certain conditions.[79] In 1913, the Ottoman government reformed the law to allow a much wider range of uses to holders of miri land, which is translated as a right to possess state land and is likened to the common-law concept of a usufruct, including the right to lease, lend, and mortgage the land as security for a debt.[80] This was accompanied by the requirement that miri land be registered by individual titles in newly established Land Registry offices.[81] As Bisharat and others have noted, many Palestinians did not register their lands in order to avoid tax liability.[82] Kedar notes that "only 5% of the land in Palestine had been registered by the end of the Ottoman period."[83]

However, in the Naqab, such land reforms did not take hold. The Ottoman land registers were not based on cadastral surveys, and Hadawi asserts that the Naqab was never surveyed by the Ottomans.[84] In any case, the Ottoman administration did not require the Bedouin to register title to their lands as a precondition for recognition of their ownership. The British also recognized Bedouin ownership of the land, implicitly at least, as evidenced by two ordinances that encouraged the Bedouin to register their title in the Land Registry. The Mewat Land Ordinance of 1921 provided for the registration of Arab land that had been claimed and cultivated according to the Ottoman land doctrine of mewat (discussed in detail below). Hanna Nakkarah has written that this law was designed to "curtail Arab

ownership and increase state lands with a view to implementing Article 6 of the British Mandate."[85] Article 6 of the Mandate provided that the British administration of Palestine would encourage "close settlement by Jews on the land, including State lands and waste lands not required for public purpose" (Mandate for Palestine, 1922, article 6). The 1928 Land (Settlement of Title) Ordinance required residents to register their land claims, but promised those holding land under customary law would not be affected.[86]

The British would again provide for the registration of Arab ownership under the auspices of the Land Acquisition for Public Purposes Ordinance of 1943. The drive to survey and register land title, as discussed in chapter 2, has been interpreted as one means through which the British acquired as much land as possible in order to facilitate Jewish settlement in Palestine.[87] Prior to the 1943 ordinance, the British land reforms during the Mandate were premised on the belief in the superiority of the English common law of property, a civilizational imperative to modernize the natives, and the desire to fulfill their promises under the Mandate to facilitate Jewish settlement in Palestine. Despite the fact that Palestine was designated as an A mandate by the League of Nations, meaning it was to be administered by Britain as a trustee until such time as it was ready for self-government, in practice, notes Martin Bunton, it was treated like a Crown colony.[88]

During the period of Mandate rule, the Bedouin did not, as a general matter, register their title pursuant to the ordinances of 1921 or 1943. The cost of registering their title, the failure of authorities to adequately inform the Bedouin of the registration provisions (such as the two-month time limit on registrations after the publication of the 1921 ordinance in the Official Gazette, which, as Abu Sitta notes, few Bedouins read), and the fact that the Bedouin, who had lived according to their own laws for centuries, saw little need to prove their ownership in a foreign system of registration, have all been cited as the reasons why the Bedouin did not register their land for the most part.[89] The failure of the Bedouin to register their ownership in the British registry is now, as we will see below, used by the state to deny their land rights, with the additional irony that Jewish purchases of land prior to 1948 from Bedouin have been honored as legitimate on the basis of title documents held in "old defective registers."[90]

However, the use of registration as a means of dispossessing the Bedouin has happened in conjunction with two other notorious laws, as in many other

parts of Palestine. In 1948, as mentioned above, the Israeli state declared that tribal lands in the Bir Al Sabe district were mewat, according to article 103 of the OLC, and therefore state land. The 12 percent of the Bedouin population that remained in the area after the Nakba were relegated to the category of landless nomads.[91] In 1953, the Land Acquisition (Validation of Acts and Compensation) Law allowed the state to endorse expropriations undertaken directly after 1948 and, crucially, "allowed the state the right to register previously confiscated land in its name if various conditions were met, including that the owner was not in possession of the property on April 1, 1952."[92] This effectively formalized the expropriation of the Bedouin, who had been captive in the military zone and were unable to meaningfully access their lands until 1966.

Here, two modern property logics work in concert to foreclose Bedouin land rights. In the face of a long history of political autonomy and ownership that was recognized by both the Ottomans and the British, the Israeli state renders the type of cultivation and land use of the Bedouin, so clearly marked on the terrain and documented in photographs, travel literature, and Ottoman legal instruments, as illegible. Upon treating Bedouin lands as unsettled, inhabited only by transient nomads, the system of land registration is used to formalize this expropriation. As explored in chapter 2, the system of title by registration renders prior ownership claims legally irrelevant.

The second technique that was utilized to harass and dispossess the Bedouin was the Green Patrol, which was established in 1976–77 as a "paramilitary unit to pressure the Bedouin to move into urban settlements."[93] While the unit is located within the Ministry of Environmental Affairs, its directors include representatives from the Jewish National Fund, the Israeli military, the Ministry of Agriculture, the Ministry of the Interior, and the Israel Land Authority.[94] The creation of the Green Patrol (Amara, Abu-Saad, and Yiftachel note that the Bedouins refer to the unit as the Black Patrol) reflects a perverse and cynical use of environmental concerns as a means of expelling the Bedouin.[95] Echoing the colonial tendency toward putting the welfare of flora and fauna above that of colonized human beings, the Green Patrol remains a constant threat to the Bedouin of the Naqab.

Finally, perhaps the most significant means of appropriating Bedouin land in southern Israel (as in the West Bank) is the manipulation of the

legal doctrine of mewat land. Alexandre (Sandy) Kedar, Oren Yiftachel, and Ahmad Amara have written extensively on what they term the "Dead Negev Doctrine," which is their term for the persistent and erroneous use of the mewat land doctrine by the Israeli state to dispossess the Bedouin in the Naqab. They have examined, in forensic levels of detail, the Israeli state's abuse of this doctrine on historical-geographical and legal bases. The mewat category of land, as noted above, was defined in articles 6 and 103 of the 1858 OLC as having the following characteristics: it is vacant; it is grazing land not possessed by anybody; it was not assigned to the use of inhabitants *ab antique* (from ancient times); and it is land where no human voice can be heard from the edge of habitation, estimated to be a distance of approximately 1.5 miles.[96] Bedouin land in the Naqab was never deemed by the Ottoman administrators to be mewat, the implication being that Bedouin ownership and cultivation of their lands was not challenged or in question. Nor was the land deemed by the Mandate Authorities to be mewat. The Mewat Land Ordinance of 1921 modified Ottoman law in two respects: first, it required individuals who had cultivated mewat land to register title to their land within two months of the publication of the ordinance in the Official Gazette of Palestine (as noted above); second, it stipulated that occupiers of mewat lands who had not sought permission would be deemed illegal trespassers.[97] The Mandate law thus changed the nature and character of the concept of mewat land in important ways. During the Ottoman period, the category of "trespasser" did not exist as such; creating the legal category and idea of illegality pertaining to occupiers of mewat who did not register their interests clearly had devastating consequences for autonomous Bedouin populations who did not see the need or, perhaps in a gesture that reflected their sovereignty, preferred not to register their lands in the Land Registry.

As Kedar, Yiftachel, and Amara note, the Israeli state deemed in 1953 that all mewat land was state land and defined mewat in contradistinction to land that was "permanently settled."[98] Much of the critical literature on the Dead Negev Doctrine focuses on conflicting accounts of whether the land was cultivated during the nineteenth century, in the years prior to the establishment of the Mandate and then the state of Israel. Both Palestinian and Israeli historians, geographers, sociologists, and lawyers have somewhat exhaustively proven that indeed, the Bedouins cultivated their lands,

belying the Israeli narrative that the land was dead, barren, and vacant.[99] Uncovering evidence of travel writers' accounts, maps created by foreign missionaries and explorers, Royal Air Force aerial photographs, tax records, records of land sales, and other material, they have roundly demonstrated that the Israeli appropriation of Bedouin land is based not only on a refusal to accept reams of recorded evidence—in both written and visual forms—proving Bedouin ownership and use of their land, but also on a rather antiquated and cynical refusal to acknowledge that the Bedouin had forms of ownership and land use that were significantly different from European legal norms of ownership and settlement. Differences in economic systems and forms of cultivation, and a mode of life that required movement across and through desert territories, have led successive foreign observers to conclude that tents, unlike houses, do not constitute a sign of settlement. What is seen as at best an encampment has enabled the Israeli state to act as if the Naqab was literally uninhabited, even though early Zionists knew better.[100] As Ronen Shamir has noted to the contrary, the tents of the Bedouin in fact operate as a "rigid structure that orders social life according to strict spatial rules."[101]

Unlike other jurisdictions, such as Canada and Australia, where deeply flawed forms of recognition have at the same time acknowledged that First Nations had different systems of law and landholding that do not conform to Anglo-European ideas of property ownership, the Israeli courts have rejected over two hundred Bedouin claims, without even the promise, it seems, that a strong dissenting judgment can leave open for future change.[102] In this respect, the Israeli settler colonial regime does seem to differ from others, which can perhaps be explained by the difference that demographic factors make to the settler colonial project. The Bedouin, along with Orthodox Jewish communities, have the highest birthrate in Israel. Beyond the demographic factors, however, to conclude that the recognition of indigenous rights to land and resources in jurisdictions such as Canada and Australia are politically more advanced, or more liberatory, belies the cunning of recognition evident in aboriginal rights jurisprudence, as many scholars have argued.[103] Aboriginal rights jurisprudence in Canada, as noted in chapter 1, has developed on the basis of denying First Nations sovereignty and reaffirming Crown (colonial) sovereignty. In the Australian context, this amounts to recognizing the "radical underlying title" of

the Crown. The "jurisprudence of regret" that characterized the Australian High Court's decision in *Mabo* has developed into a "regrettable jurisprudence," as Alex Reilly argues, with the political potential of native title increasingly limited by subsequent judgments.[104] It took decades of litigation and political struggle before First Nations and their advocates achieved an actual declaration of aboriginal title; only in 2014 was the Tsilhqot'in First Nation in British Columbia recognized as holding aboriginal title to a portion of their traditional territory. As I argued in chapter 1, while not diminishing this important political and legal victory, the Canadian Supreme Court recognized aboriginal title based on forms of customary land use within the world of the somewhat suspect anthropological category of the seminomad.[105]

"NOMADS AGAINST THEIR WILL"

Resistance against the appropriation of Bedouin lands has a long history.[106] Right from the establishment of the state of Israel in 1948, the Bedouin and their supporters have attempted repeatedly to enforce their legal and political rights to their lands. The struggle of the Bedouin came to have greater international prominence recently with the very effective international advocacy of organizations such as Adalah, the Arab Centre for Minority Rights, based in Haifa, Israel; the Association for Civil Rights in Israel; and Zochrot, the latter of which are both Israeli NGOs. Adalah and other lawyers have undertaken countless cases for Bedouin clients, to defend them from being criminalized due to their presence on their land, enforcing their right to water and other basic services, and to halt house demolitions and evictions.

The precedents relevant to the determination of the al-Uqbi land claims generally revolve around the question of whether the land being claimed is mewat; and as early as 1962, the Israeli Supreme Court shaped and changed the legal criteria for establishing what is mewat in order to maximize the appropriation of Palestinian land by the state. The transformations of the content of the legal doctrine of mewat were based on a conception of property ownership that privileged cartographic measurement over oral practices of determining what is sufficiently isolated land to be deemed to be vacant, and a vision of what constitutes a settlement that ran counter to Bedouin modes of land use and ownership.

In *Badaran*, Bedouin claimants (respondents at the Supreme Court) argued that two parcels of land were not mewat but miri according to article 78 of the OLC, having been possessed and cultivated for longer than the period of prescription.[107] At trial, they were successfully awarded two parcels of land, and the state appealed this ruling. They counterclaimed against the registration of a third disputed parcel of land in the name of the state. The Israeli Supreme Court overturned the trial division's ruling and rejected the counterclaim, awarding all of the disputed land to the state. At issue was whether or not the disputed land was in fact mewat.

As noted above, article 6 of the OLC provides for two ways of measuring the distance of a parcel of land from the nearest settlement, for the purposes of determining whether a piece of land can be considered mewat. The Israeli Supreme Court, in *Badaran* (1962), eschews part of the original definition of mewat land on the basis that the oral/aural basis for determining whether a parcel of land is sufficiently distant from a settlement lacks the precision of units of measurement cognizable to a putatively more modern, scientific worldview.[108] Justice Berenson concludes, "in the contest between distance by measurement and distance by hearing, distance by measurement wins and is the determining one."[109] The denigration of oral cultures as inferior and also in some contexts as subversive, as they could not be controlled or regulated, finds expression in a range of British settler colonial regimes, including both Ireland and Canada. For instance, as David Lloyd has persuasively argued in *Irish Culture and Colonial Modernity, 1800–2000*, the transformation of oral space in Ireland was intimately connected to the dispossession of land and the creation of colonial subjectivities. "Orality," writes Lloyd, "has been understood as a stage antecedent to literacy in the gradual evolution of increasingly sophisticated human civilisations."[110] However, Lloyd argues that the focus on temporality (and the developmental telos of oral cultures to literate ones) occludes the "spatial formations" that both underpin oral cultures and are also transformed by the advent of literacy.[111] If literacy is the precondition for the interior life of the civilized subject, it also occasions affective, spatial, and material enclosures characteristic of modernity and modern law.

In Canada, as discussed in chapter 4, the colonial authorities made traditional indigenous ceremonies of dance, of which song was an integral dimension, illegal. The significance of indigenous oral histories for

determining legal relationships of ownership and use, some of which are transmitted through song, was only recognized in 1997 in *Delgamuukw v. British Columbia* by the Supreme Court of Canada, who confirmed the importance of oral history testimony to indigenous rights claims. At trial, which stretched over a four-year period, the claimants had presented oral history testimony only to be told, in what would become an infamous dismissal of such testimony by Chief Justice McEachern, that "the songs would do no good" as he had a "tin ear." In step with the late chief justice, the oral history testimony of Nuri al-Uqbi was dismissed outright at trial in *El-Uqbi v. State of Israel* (2009) on the basis that the collective memory of settling the land in Al-Araqib, to which Nuri al-Uqbi testified, was inadmissible as witnesses could only testify to "what they had experienced first-hand."[112]

In *Badaran*, counsel for the appellants, Hanna Nakkarah, argued that the land was not more than one and a half miles away from the village of Arab al-Suweid. The disputed land had been determined to be more than that distance away from Bi'na village. In rejecting Nakkarah's argument, the court concluded that the buildings constructed in Arab al-Suweid were wool tents, and that the presence of only seven families in such dwellings could not possibly constitute a permanent settlement.[113] In addition to imposing a vision of what constitutes a permanent settlement that does not account for the landholding practices of the Bedouin, Justice Berenson imposed a new condition relating to the "legal point of measurement," which was that the place of settlement needed to be established before the enactment of the OLC.[114] Kedar argues that the imposition of this condition was not based on legislation or any other legal precedent, and constituted a very heavy burden on the Bedouin claimants because it "curtailed those categories of settlement that demarcated inner (non-*Mewat*) and outer (*Mewat*) lands."[115] This also had the effect of disqualifying Bedouin who had "gradually moved into permanent dwellings at the end of the nineteenth and the beginning of the twentieth century."[116] By refusing to recognize Bedouin settlements that consisted of very few buildings and/or tents, or indeed settlements that contained cemeteries or mud houses, the state authorized itself to declare much more land as mewat.[117] Here, it is also apparent how different rationales for ownership work recombinantly to dispossess indigenous communities—land that was not registered, and was deemed to be

more than a mile and a half from permanent settlements, could be appropriated by the state.

The court also noted that the Mandate Ordinance of 1921 "completely changed the situation" regarding mewat land by introducing the charge of trespass for anyone reviving and cultivating dead land without receiving government permission. On this basis, the court concluded that the respondents lost their right to claim ownership as they failed to follow the instructions of the ordinance. Property rights could not be claimed for land that was revived without permission from the British authorities after 1921, and as the respondents had failed to provide sufficient evidence, in the judge's view, that their ancestors had cultivated the land from 1858, he upheld the state's appeal and denied the counterappeal of the respondents. Unlike later claims that were to follow, the court at least refrained from awarding costs to the state.

The *Badaran* ruling set an immovable precedent for Bedouin claims and was reaffirmed in the *al-Huashela* ruling that followed in 1984. In *al-Huashela*, the Israeli Supreme Court heard an appeal from a 1972 ruling of the Bir Al Sabe District Court, in which thirteen members of the al-Huashela tribe claimed ownership of several parcels of land pursuant to the provisions of the Land Settlement Ordinance (New Version) 1969. The relevant provisions of this act provided that any land belonging to the mewat category would be registered in the name of the state, and that where a person had received a title deed for mewat land pursuant to article 103 of the OLC, he would be entitled to have his ownership of property registered in his name (s. 155). Their claim was rejected on the basis that the parcels of land were deemed to be mewat according to articles 6 and 103 of the OLC. At trial, the appellants had claimed ownership of the disputed plots of land on the basis of possession and cultivation. They did not hold title deeds, and their claim was based on "unregistered rights which had been passed down by many generations." They also claimed that the land was not mewat but was cultivable from "the outset."[118]

When the court reiterated the definition of article 3, the definition of mewat did not include the alternate measurement for the requisite degree of isolation of the dead land. In the words of Aharon Ben-Shemesh, whom the court quoted, the land must lie "at such a distance from towns and villages from which a human voice cannot be heard at the nearest inhabited

place."[119] Similarly, legal commentator Moshe Doukhan, whom the court also cited, notes that mewat lands are "one and a half miles or one half an hour's walk from an inhabited area."[120] Despite the emphasis on the aural means of establishing the relative isolation of mewat lands, the court reaffirmed *Badaran* and the primacy of establishing distance by a standardized imperial measurement.

As with *Badaran*, the court dismissed arguments by the claimants about the nearest relevant settlement for the purposes of establishing whether or not the disputed lands were sufficiently isolated to constitute mewat. A settlement claimed by the appellants to be close to the disputed lands was deemed irrelevant as it was "only a police station standing next to a Bedouin encampment, and nothing else."[121] In the course of rejecting the appeal, the court created an image and narrative of Bedouin lands as terra nullius. Emphasizing the term "vacant" to describe the concept of mewat lands, the court concluded that the disputed land was "desolate for ages"; and based on the observations of British scholar Palmer from the 1870s along with the arid nature of the climate, juxtaposed the Bedouin "preference" for nomadism with the "orderly and profitable cultivation of land" that the Bedouin apparently rejected. Mandate-era legal judgments redefining cultivation to mean permanent improvement of the land are noted, only to reaffirm the trial court's rejection of the oral testimony of Bedouin elders attesting to the cultivation of their lands.[122]

In many ways, the al-Uqbi claim is unremarkable, similar in nature to many other Bedouin land claims that came before it. What is novel, however, are some of the legal arguments that were put to the courts, including the claim that the Bedouin have rights as an indigenous minority to their ancestral lands. The decades-long activism of the Bedouin, their persistence in fighting the appropriation of their lands, their displacement and impoverishment, bears obvious similarities to the struggles for land and autonomy of other indigenous communities around the world. The growing prominence of international indigenous activism, including the United Nations Declaration on the Rights of Indigenous Peoples (2007) and the Standing Committee on Indigenous Rights have shaped recent land claims brought forth by the al-Uqbi family in particular.

Nuri al-Uqbi was born in Al-Araqib, as were several generations of his family before him. At trial, he gave evidence of his family's presence on their

ancestral lands in Al-Araqib, testifying to their gradual settlement of the area from the eighteenth century onward. He recalled in some detail the crops that were grown, the methods of cultivation employed, and the conditions of village life for his family.[123] In 1948, the majority of Bedouin living in the Naqab were violently expelled, leaving only 12 percent of the original population in the area.[124] The al-Uqbi tribe were ordered by the military governor to leave their land in 1951 for military training exercises, a common mechanism that has been continually used to remove Palestinians from their land. They were transferred to the town of Hura, which was established by the Israeli state for resettlement of the Bedouin, and were continually refused permission to return to their land. In the 1970s, Nuri al-Uqbi founded an NGO, the Association for the Defense of Bedouin Rights, to consolidate and collectivize their ongoing resistance to the dispossession of their lands.[125]

Indigenous struggles for land have often been articulated by scholars and activists as a struggle for recognition. The legal recognition of aboriginal rights in jurisdictions such as Canada and Australia has failed, for the most part, to diminish the power of the colonial settler state to define the legal subject of aboriginal rights according to the figure of the possessive individual, subtended by the common law of property. That is, as discussed in chapter 1, even in the moment of recognizing aboriginal rights to land and resources, there is simultaneously a capturing of the rights claim into a juridical framework that denies First Nations sovereignty, laws, and concepts of ownership and use.

In the al-Uqbi judgment of the Israeli Supreme Court, and as a reflection of the larger political context, there is a degree of nonrecognition of Bedouin rights that is truly striking. To begin with, there is virtually no background discussion of the claimants, their history, and what has brought them to the court. There is, in other words, a peculiar lack of narrativization by the court. Compared with their colleagues in other settler colonial jurisdictions, the Israeli Supreme Court justices display a profound lack of interest in the claimants' situation. While this could, of course, simply be a matter of style, it is also arguable that this indifference is reflected in the wholesale dismissal of the claims, the evidence presented, and the argument pertaining to the land rights of the Bedouin in Israel.

As laid out by the court, the al-Uqbi claim revolves around a process of land settlement that began in 1971, pursuant to the 1969 Land (Settlement

of Title) Ordinance (discussed above). The al-Uqbi claimants (six different lawsuits had been combined before the district court) argued that the confiscation of their land by the state in 1954, under the Land Acquisition (Validation of Acts and Compensation) Law, was invalid. Drawing on a wide range of evidence, they argued that they had cultivated their lands between 1858 and 1921, and that according to Ottoman land law and the Mandate mewat doctrine, the lands were miri and not wasteland. The main issue before the court was what constitutes a settlement for the purposes of establishing ownership.

Before ruling on the issue of whether or not the disputed lands were miri or mewat, the court addressed itself to the "unique characteristics" of the Acquisition Law of 1952.[126] In a mode of legal reasoning that can only be described as astonishingly conservative, the court held that despite the "constitutional difficulty" that arises from the blatant violation of the right to property enshrined in the Basic Law, there is no possibility of reinterpreting the Acquisition Law in light of the fact that it is grossly out of step with contemporary provisions for constitutionally protected rights. The historical imperative of Israeli settlement on Bedouin lands was rendered in the language of "unique historical circumstances" that led to the execution of the Acquisition Law.[127] By refusing to entertain the argument that such a blatantly unjust law ought to be reinterpreted, or at least amended with more flexible tests for interpreting the necessary conditions for confiscation, the court dramatically closed off legal avenues for a just resolution to Bedouin dispossession.

Analysis of the court's ruling on the issue of whether or not the land was cultivated and settled can be summarized by stating that the court unequivocally reinforced a notion of settlement based on the idea of permanence, rooted in the English common law of property and Ottoman law (arguably refracted through an English legal consciousness). The appellants argued that the "restrictive definition of the term 'settlement' in the Ottoman Land Law . . . according to which only a permanent settlement with stone houses is a settlement whose surrounding lands are miri lands, causes grave harm to the Bedouin and discriminates against them due to their culture and nomadic way of life."[128] This is precisely the argument put forth by the appellants in *Tsilhqot'in Nation v. British Columbia* ([2014] 2 S.C.R. 256), which, after thirty-two years of litigation under section 35

of the Canadian Constitution Act, the court accepted. However, it is clear from the discussion above that the Bedouin have been seeking remedies before the Israeli courts since 1948. The temporality of dispossession and the legal recognition of this dispossession is certainly not linear; while one could argue that settler colonialism in Canada began hundreds of years prior to 1948, this does not account for or explain the contemporary refusal of Israeli courts to adhere to norms of legal reasoning that account for constitutionally enshrined human rights, as well as international legal norms pertaining to the rights of indigenous peoples.

The forms of evidence put forth by the claimants to prove that the land was miri oscillate between written acknowledgment of Bedouin ownership and other media, particularly photographic evidence that demonstrates the existence of cultivation. The court rejected the spectrum of evidence provided, whether it was in the form of records of taxes paid on agricultural produce, registration documents kept within an internal Bedouin system of land ownership, or photographs showing evidence of cultivation, mainly on the basis that they deemed the records to be untrustworthy in their physical form (one document was excluded because it was poorly photocopied, for instance) or relevant to the general area but lacking sufficient specificity to prove ownership over the areas claimed.[129]

Of relevance to the arguments pursued in this book about the recombinant and fractured nature of how legal rationales for ownership are used to dispossess indigenous peoples of their land is the sleight of hand used to dismiss the evidence of sales transactions to Zionist bodies by the Bedouin. The appellants argued that many Bedouins registered great swaths of land in the Naqab in the Tabu, the Ottoman registry that was recognized by the Mandate government as the official land registry, proving Bedouin ownership of their lands.[130] Furthermore, land transactions between the Bedouin and Zionist settlers were recorded in the Mandate "transaction registry."[131] The court proceeded, however, to conclude that a purchase for sale of lands does not necessarily prove ownership, and that the reason why Zionist settlers paid for the lands was because they were aware that the "Bedouins' rights in Negev lands had not yet been clarified and that this could pose difficulties when they asked to be registered as the owners of the land."[132] One of the sources for this finding is a book titled *From Wilderness to an Inhabited Land*, authored by one C. Porat.

The court found that the Mandate government itself recognized that Bedouins had certain rights in the Naqab, but that these were of an indeterminate nature, mirroring the indefinite character of the use of land itself. As quoted by the court, the Simpson Report of 1930 stated, "Their [the Bedouins'] rights have never been determined. They claim rights of cultivation and grazing of an indefinite character and over indefinite areas."[133] These "attractive" and "picturesque" fixtures in the countryside were "an anachronism" in the onward march of development. Sir John Hope-Simpson emphasized the need to recognize Bedouin rights, but their mode of land use and ownership was uncognizable within an English common-law paradigm in which property interests had to be of a definite, bounded nature in both physical parameters and time.

It is difficult to reconcile the purchase and sale of land with the conclusion of the court, that the Bedouin had no recognized ownership rights over the land. Essentially, the court inferred that Zionist settlers paid for the land in order to indemnify themselves against potential future claims by the original inhabitants of the land. However, it is clear that even the Mandate government recognized Bedouin rights in the land, a fact that disappears in the outright rejection of any Bedouin interests by the court.[134] Bedouin cultivation and occupation of land was deemed to be lacking in both permanence and the requisite signs of permanent improvement, reinscribing Anglo and European notions of civilization that have informed Zionist settlement from the late nineteenth century. There is continuity in the primary place that agricultural improvement occupies in settler colonial law in Palestine.

Improvement of the land through types of cultivation that mimicked European (and American) agricultural practices was a central part of early Zionist ideology. Improving the land was the means of redemption for the Jewish people, a return to history. The profound significance of cultivation and improvement to Zionist nationalism occupies central ground in Palestinian claims for the restitution of their land. As explored throughout this chapter, the ideology of improvement in the context of Israel/Palestine is constituted through Lockean notions of wasteland, which were legally encoded by the British during the Mandate, as well as a German idealism that posited a connection to the soil as the organic foundation of a people's nationalism. Nationalist and ethnoreligious identities were bound to land,

and this land accordingly had to be as cultivated as the people whose civilization was rooted within it.

The ideological weight of the equation that renders cultivation, civilization, and Israeli national identity each to be the necessary precondition of the other means that Palestinian cultivation must be denied, ignored, or erased in order to sustain the Zionist fantasy of making the desert bloom. Between 2000 and 2001, Aziz Alturi's crops in al-Araqib were sprayed with Roundup two to three times by Israeli crop-dusting planes. The pesticide killed hundreds of livestock, and the al-Turi tribe attributed the death of one man and several miscarriages to the toxicity of the spray.[135] In the West Bank, the decades-long uprooting of Palestinian olive groves and crop destruction has been a mechanism routinely deployed by settlers to harass Palestinians and initiate a process of displacement.[136] The Israeli courts' insistence in defining what cultivation is and what constitutes evidence of the same, according to their own cultural norms and Zionist imperatives, is a central feature of the attempt to create a relationship between Zionist nationalist identity and the land.

The more general connection between land and identity, as I explore in chapter 4, is bound together from the nineteenth century in British North America through the juridical concept of status. Rendering indigenous peoples' access to reserve land contingent upon their status, as determined by the colonial government, became a primary mechanism of controlling the lives, livelihood, and relations to land of First Nations. The notion that one's legal status could determine one's mobility and ability to reside upon and use one's land marks a specific development in modern law. Status was no longer a mutable legal designation that was contingent upon time, place, and one's circumstances, but became a somewhat more rigid juridical instrument used to discipline and control racialized populations. Identity and property relations become fused in the concept of status, and status, as we will see in chapter 4, comes to function as a form of property in and of itself.

127 Forman, "Settlement of the Title in the Galilee."

128 Martin Bunton, " 'Home,' 'Colony,' 'Vilayet': Frames of Reference for the Study of Land in Mandate Palestine," paper presented at workshop, Brown University, March 2014.

129 Martha Mundy and Richard Saumarez Smith, *Governing Property, Making the Modern State: Law, Administration and Production in Ottoman Syria* (London: I. B. Tauris, 2007), 7.

130 Mundy and Saumarez Smith, *Governing Property*.

131 Bunton, " 'Home,' 'Colony,' 'Vilayet.' "

132 See "Land Registration and Settlement of Rights Department," Land Regulation and Registry, Israel, accessed July 14, 2014, http://index.justice.gov.il/En/UNITS/LANDREGISTRATION/Pages/default.aspx.

133 The difference between unsettled land described here, and unregistered land in jurisdictions such as the United Kingdom, is that in the latter context, the land is automatically registered upon sale, or alternately can be initiated as a "first registration" in the land registry pursuant to its guidelines.

134 Daniel Seidemann, interview with author, Jerusalem, July 2011.

135 Seidemann, interview.

136 Seidemann, interview.

137 Elias Dauoud Khoury, interview with author, Jerusalem, July 2011.

138 Jac Isac and Fida' Abdul-Latif, *Jerusalem and the Geopolitics of De-Palestinianisation* (Jerusalem: Arab League Educational, Cultural and Scientific Organisation, 2007), 53.

139 Khoury, interview.

140 Khoury, interview.

141 See Forman, "Settlement of the Title in the Galilee."

142 In Jerusalem, the construction of the light rail system led to the expropriation of occupied land in East Jerusalem, and literally "cements the presence of settlements in East Jerusalem, making their presence more permanent and perhaps irreversible." See Hanna Baumann, "The Heavy Presence of Jerusalem Light Rail: Why Palestinian Protestors Attacked the Tracks," Open Democracy, July 6, 2014, https://opendemocracy.net/north-africa-west-asia/hanna-baumann/heavy-presence-of-jerusalem-light-rail-why-palestinian-protesters-attac.

143 Dawood Hamoudeh, interview with author, July 12, 2011; and see Nadera Shalhoub Kevorkian, "Stolen Childhood: Palestinian Children and the Structure of Genocidal Dispossession," *Settler Colonial Studies* 6, no. 2 (2016): 142–52.

144 Edward Said, *After the Last Sky* (Somerset: Butler and Tanner, 1986), 82.

3. IMPROVEMENT

1 That day, I was traveling through the area with Fazal Sheikh, Alberto Toscano, Eyal Weizman, and Ines Weizman.

2 As Haneen Naamnih has pointed out (pers. comm.), the term “unrecognized village” is a creation of the Israeli government and works to discursively situate the displaced Bedouin as a problem to be solved.

3 Oren Yiftachel, *Ethnocracy: Land and Identity Politics in Israel/Palestine* (Philadelphia: University of Pennsylvania Press, 2006), 202.

4 The Prawer Plan, or, in its most recent legislative iteration, the Prawer-Begin Bill, “will result in the destruction of 35 unrecognised Bedouin villages and the forced displacement of up to 70 000 people.” Adalah, “Demolition and Eviction of Bedouin Citizens of Israel in the Naqab (Negev)—the Prawer Plan,” accessed January 27, 2017, https://www.adalah.org/en/content/view/7589#What-is-the-Prawer-Plan. The plan was officially suspended in 2013, but the destruction of Bedouin villages continues into the present.

5 Shirly Deidler, “Israel Begins Razing Bedouin Village of Al-Arakib—for 50th Time,” *Haaretz*, June 12, 2014, http://www.haaretz.com/news/israel/.premium-1.598414; and see Eyal Weizman and Fazal Sheikh, *The Conflict Shoreline: Colonization as Climate Change in the Negev Desert* (New York: Steidl, 2015), 9.

6 Alison Deger, “Bedouin Village Razed 83 Times Must Pay $500,000 for Demolitions, Israel Says,” *Mondoweiss*, May 9, 2015, http://mondoweiss.net/2015/05/bedouin-village-demolitions.

7 Thabet Abu Ras, “Land, Power and Resistance in Israel,” lecture, Leo Baeck Institute, London, December 3, 2015.

8 Hanna Nakkarah, unpublished manuscript, on file with author, 154. Nakkarah (1912–84) was one of the first legal advocates for Palestinian rights.

9 Atheel Athameen, interview with author, Khasham Zaneh, April 2014, translator Thabet Abu Rasa.

10 Josef Fraenkl, *Herzl: A Biography* (Jerusalem: Ararat, 1946), 111, 126.

11 Gabriel Piterberg, *Returns of Zionism: Myths, Politics and Scholarship in Israel* (New York: Verso, 2008).

12 Piterberg, *Returns of Zionism*, 65, 85.

13 Shlomo Avineri, *Arlosoroff* (London: Peter Halban, 1989), 46.

14 Alex Bein, ed., *Arthur Ruppin: Memoirs, Diaries, Letters*, trans. Karen Gershon (London: Weidenfeld and Nicolson, 1971), 22–24.

15 Bein, *Arthur Ruppin*, xiii.

16 Bein, *Arthur Ruppin*, 60–63.

17 Bein, *Arthur Ruppin*, 75–76.

18 Bein, *Arthur Ruppin*, 76.

19 Arthur Ruppin, *The Agricultural Colonisation of the Zionist Organisation in Palestine* (London: M. Hopkinson, 1926), 5.

20 Ruppin, *The Agricultural Colonisation*, 23.

21 Ruppin, *The Agricultural Colonisation*, 5–6.

22 Ruppin, *The Agricultural Colonisation*, 2, 66–68.

23 Ruppin, *The Agricultural Colonisation*, 2.

24 The focus on the specific exploitation of women recurs throughout Ruppin's writings, and the significance that Ruppin places on women's role in the colonization effort is discussed below.
25 Ruppin, *The Agricultural Colonisation*, 3.
26 Ruppin, *The Agricultural Colonisation*, 28–29.
27 Ruppin, *The Agricultural Colonisation*, 28–29.
28 Ruppin, *The Agricultural Colonisation*, 29. The notion of possessive nationalism can be understood as a corollary of possessive individualism. The psychoaffective dimensions of the possessive individual, including the desire to possess exclusively, to fulfill the need for security and to calm the fear of losing one's property, are transmuted to the stage of the nation-state; the possessive individual develops a close identification with national identity. Frank Cunningham describes possessive nationalism as a coalescence of the "worst aspects of national or ethnic chauvinism and aggressive capitalism" with the values of the self-possessive individual, including greed and selfishness. Frank Cunningham, "Could Canada Turn into Bosnia?," in *Cultural Identity and the Nation-State*, ed. Carol C. Gould and Pasquale Pasquino (Lanham, MD: Rowman and Littlefield, 2001), 36–37. Judith Butler observes, in relation to Palestine, "In the early years of Zionism, it was clear that Jews invoked Lockean principles to claim that because they worked the land and established irrigation networks, this labouring activity implied rights of ownership, even rights of national belonging grounded on territory. We can see how, in fact, the aims of both the nation and the colony depended upon an ideology of possessive individualism that was recast as possessive nationalism." Athena Athanasiou and Judith Butler, *Dispossession: The Performative in the Political* (London: Polity, 2013), chapter 1.
29 Ruppin, *The Agricultural Colonisation*, 33.
30 Amos Morris-Reich, "Arthur Ruppin's Concept of Race," *Israel Studies* 11, no. 3 (fall 2006): 1–30.
31 Arthur Ruppin, *Three Decades of Palestine: Speeches and Papers on the Upbuilding of the Jewish National Home* (Jerusalem: Schocken, 1936), 78–79.
32 Ruppin, *Three Decades of Palestine*, 78.
33 Morris-Reich, "Arthur Ruppin's Concept of Race," 11.
34 Reproduced in Morris-Reich, "Arthur Ruppin's Concept of Race," 20.
35 Ruppin, *The Agricultural Colonisation*, 51.
36 Ella Shohat, "The Narrative of the Nation and the Discourse of the Modernization: The Case of the Mizrahim," *Critique: Critical Middle Eastern Studies* 6, no. 10 (1997): 11.
37 Ruppin, *The Agricultural Colonisation*, 134–35.
38 Fraenkel, *Herzl*, 70.
39 Fraenkel, *Herzl*, 75–76.
40 Theodor Herzl, *The Jewish State* (1896), trans. Sylvie D'Avigdo, 15–16, MidEastWeb, http://www.mideastweb.org/jewishstate.pdf.
41 Herzl, *The Jewish State*, 16.

42 Walid Khalidi, "The Jewish-Ottoman Land Company: Herzl's Blueprint for the Colonisation of Palestine," *Journal of Palestine Studies* 22, no. 2 (winter 1993): 30.
43 Khalidi, "The Jewish-Ottoman Land Company," 31.
44 Articles 1 and 2, Khalidi, "The Jewish-Ottoman Land Company," 44.
45 Khalidi, "The Jewish-Ottoman Land Company," 33–34. See Stuart Banner, where he argues that the colonization of New Zealand occurred primarily through the use of contracts that enabled individuals to make truly massive land purchases on behalf of colonization companies. Stuart Banner, "Conquest by Contract: Wealth Transfer and Land Market Structure in Colonial New Zealand," *Law and Society Review* 34, no. 1 (2000): 47–96.
46 The Anglo-Palestine Bank went on to become Bank Leumi, one of the most important banks in Israel and a core part of what would become the capitalist class. Adam Hanieh, personal correspondence, December 10, 2015.
47 Fraenkel, *Herzl*, 71.
48 Ruppin, *Three Decades of Palestine*, 148.
49 The tension of using private-law mechanisms for the acquisition of land held collectively by an ethnonational entity produced certain legal complexities. For instance, until 1920, there was no legal recognition of cooperative activity in Palestine. As of 1920, the Kvutzah, the primary type of cooperative agricultural settlement in Palestine, gained the right to be registered as a cooperative society with a definite legal status. However, when the American professor Mead visited Palestine in 1923 on the invitation of Ruppin, he identified the lack of contracts between individual settlers and the colonization company as a dangerous omission; it was virtually impossible to account for the financial obligations owed by settlers to the companies that had supported their endeavors financially. Investing in Palestine could hardly be an attractive proposition for Jews in the diaspora under these conditions. Ruppin, *The Agricultural Colonisation*, 172.
50 Gershon Shafir, *Land, Labor and the Origins of the Israeli-Palestinian Conflict, 1882–1914* (Cambridge: Cambridge University Press, 1989), 41.
51 Shafir, *Land, Labor and the Origins*, 23.
52 Shafir, *Land, Labor and the Origins*, 33–34.
53 Shafir, *Land, Labor and the Origins*, 29.
54 Shafir, *Land, Labor and the Origins*, 41; and see Patrick Wolfe, "Purchase by Other Means: The Palestine *Nakba* and Zionism's Conquest of Economics," *Settler Colonial Studies* 2, no. 1 (2012): 155–59.
55 Wolfe, "Purchase by Other Means," 153.
56 Carlo Ginzburg, preface to Amnon Raz-Krakotzkin, *Exil et Souveraineté: Judaïsme, sionisme, et pensée binationale* (Paris: La Fabrique, 2007), 11.
57 Amnon Raz-Krakotzkin, "Exile, History and the Nationalisation of Jewish Memory: Some Reflections on the Zionist Notion of History and Return," *Journal of Levantine Studies* 3, no. 2 (winter 2013): 42.
58 Raz-Krakotzkin, "Exile, History and the Nationalisation of Jewish Memory," 42.
59 Piterberg, *Returns of Zionism*, 78.

60 Ruppin, *The Agricultural Colonisation*, 127.

61 Patrick Wolfe, in discussing the conquest of labor as a primary strategy of settlement in Palestine, argued that it was sustained ideologically through the figure of the "New Jew, whose distinctive iconography bore the marks of the extreme nationalisms that were emerging in Europe." This observation is accompanied by a Jewish National Fund poster calling for Zionist colonization of the Galilee from 1938 titled "The New Jew" and depicts a strong, muscular man wielding an axe as he looks across at a plowed field and mountains. Wolfe, "Purchase by Other Means," 152.

62 *Israel's Agriculture*, a pamphlet produced by Orit Noked, Minister of Agriculture and Rural Development (Tel Aviv: The Israel Export and International Cooperation Institute), 8, http://www.a-id.org/pdf/israel-s-agriculture.pdf.

63 Michael Palgi, "Organization in Kibbutz Industry," in *Crisis in the Israeli Kibbutz: Meeting the Challenge of Changing Times*, ed. U. Leviatan, H. Oliver, and J. Quarter (New York: Praeger, 1998).

64 Ivan Vallier, "Social Change in the Kibbutz Economy," *Economic Development and Cultural Change* 10, no. 4 (July 1962): 341–42.

65 Vallier, "Social Change in the Kibbutz Economy," 343.

66 Palgi, "Organization in Kibbutz Industry."

67 Palgi, "Organization in Kibbutz Industry."

68 Tobias Buck, "The Rise of the Capitalist Kibbutz," *Financial Times*, January 26, 2010, http://www.ft.com/cms/s/0/d50b3c20-0a19-11df-8b23-00144feabdc0.html#axzz3gXdG9hgy.

69 Yiftachel, *Ethnocracy*, 144.

70 Noked, *Israel's Agriculture*, 30.

71 See Hussein Abu Hussein and Fiona McKay, *Access Denied: Palestinian Land Rights in Israel* (London: Zed, 1993); Raja Shehadeh, *Occupier's Law: Israel and the West Bank* (Beirut: Institute for Palestine Studies, 1988); George Bisharat, "Land, Law and Legitimacy and the Occupied Territories," *American University Law Review* 43 (1994): 467–561; Salman Abu Sitta, *An Atlas of Palestine, 1917–1966* (London: Palestine Land Society, 2010).

72 Abu Sitta, *An Atlas of Palestine*, 1.

73 Abu Sitta, *An Atlas of Palestine*, 54.

74 Abu Sitta, *An Atlas of Palestine*, 54.

75 Abu Sitta, *An Atlas of Palestine*, 56.

76 Abu Sitta, *An Atlas of Palestine*, 141.

77 Abu Sitta, *An Atlas of Palestine*, 142.

78 However, Oren Yiftachel, Alexandre (Sandy) Kedar, and Ahmad Amara argue that the 1858 reforms merely codified already existing practices in land ownership. Oren Yiftachel, Alexandre (Sandy) Kedar, and Ahmad Amara, "Questioning the 'Dead (*Mewat*) Negev Doctrine': Property Rights in Arab Bedouin Space," paper prepared for "Socio-Legal Perspectives on the Passage to Modernity in the Middle East," Ben Gurion University, Be'er Sheba, June 2012, 13, on file with author.

79 Bisharat, “Land, Law and Legitimacy,” 493–94.
80 Nakkarah, unpublished manuscript, 141.
81 Bisharat, “Land, Law and Legitimacy,” 494.
82 Bisharat, “Land, Law and Legitimacy”; Alexandre (Sandy) Kedar, “The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948–1967,” *NYU Journal of International Law and Politics* 33, no. 4 (2001): 933.
83 Kedar, “The Legal Transformation of Ethnic Geography,” 933.
84 Sami Hadawi, *Land Ownership in Palestine* (New York: Palestine Arab Refugee Office, 1957), 12–14. Sami Hadawi worked at the Mandatory Land Registration Office and the Land Settlement Department until he was forced into exile in 1948.
85 Nakkarah, unpublished manuscript, 144.
86 Oren Yiftachel, “ ‘Ethnocracy’ and Its Discontents: Minorities, Protests and the Israeli Polity,” *Critical Inquiry* 26, no. 4 (summer 2000): 725–56.
87 Zeina B. Ghandour, *A Discourse on Domination in Mandate Palestine: Imperialism, Property and Insurgency* (London: Routledge, 2009), see discussion in chapter 2.
88 Martin Bunton, *Land Legislation in Palestine* (Cambridge: Cambridge University Press, 2009).
89 Nakkarah, unpublished manuscript; Abu Sitta, *An Atlas of Palestine*; Yiftachel, “ ‘Ethnocracy’ and Its Discontents.”
90 Abu Sitta, *An Atlas of Palestine*, 46.
91 Abu Sitta, *An Atlas of Palestine*, 49.
92 Ahmad Amara, Ismael Abu-Saad, and Oren Yiftachel, eds., *Indigenous (In)Justice: Human Rights Law and Bedouin Arabs in the Naqab/Negev* (Cambridge, MA: Harvard University Press, 2013), 28.
93 Amara, Abu-Saad, and Yiftachel, *Indigenous (In)Justice*, 42.
94 Amara, Abu-Saad, and Yiftachel, *Indigenous (In)Justice*, 42.
95 Amara, Abu-Saad, and Yiftachel, *Indigenous (In)Justice.*
96 Abu Sitta, *An Atlas of Palestine*, 46–48.
97 Bunton, *Land Legislation in Palestine*, 55; and see Kedar, “The Legal Transformation of Ethnic Geography,” 936.
98 Yiftachel, Kedar, and Amara, “Questioning the ‘Dead (*Mewat*) Negev Doctrine,’ ” 4.
99 See Abu Sitta, *An Atlas of Palestine*; Bisharat, “Land, Law and Legitimacy”; Kedar, “The Legal Transformation of Ethnic Geography.”
100 Bisharat, “Land, Law and Legitimacy,” 490.
101 Ronen Shamir, “Suspended in Space: Bedouins under the Law of Israel,” *Law and Society Review* 30 (1996): 236.
102 Yiftachel, Kedar, and Amara, “Questioning the ‘Dead (*Mewat*) Negev Doctrine,’ ” 2. For a detailed analysis of some of these judgments, see Kedar, “The Legal Transformation of Ethnic Geography.” Kedar analyzes the ethnocratic definitions of landholding that transform the mewat doctrine into a tool of

expropriation of Bedouin lands, exposing the inherently political nature of the Israeli land regime.

103 See, for example, John Borrows, *Recovering Canada: The Resurgence of Indigenous Law* (Toronto: University of Toronto Press, 2007); Irene Watson, "Aboriginal Laws and the Sovereignty of Terra Nullius," *borderlands* 1, no. 2 (2002), http://www.borderlands.net.au/vol1no2_2002/watson_laws.html.

104 Alex Reilly, "From a Jurisprudence of Regret to a Regrettable Jurisprudence: Shaping Native Title from *Mabo* to *Ward*," *Murdoch University Electronic Journal of Law* 9, no. 4 (December 2002), http://www.austlii.edu.au/au/journals/MurUEJL/2002/50.html.

105 For further discussion, see Brenna Bhandar and Rafeef Ziadah, "Acts and Omissions: Framing Settler Colonialism in Palestine Studies," *Jadaliyya*, January 14, 2016, http://roundups.jadaliyya.com/pages/index/23569/acts-and-omissions_framing-settler-colonialism-in-.

106 The subheading is taken from the title of a publication by 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, Arab Centre for Minority Rights, 2011). This report sets out in great detail the means by which the Bedouin have been cast out of their land and homes, focusing on the case of al-Hieran in particular, rendering them "nomads against their will."

107 *The State of Israel v. Tzalach Badaran*, P.D. 16(3) 1717 [1962], 2.

108 Kedar, "The Legal Transformation of Ethnic Geography," 955.

109 *The State of Israel v. Tzalach Badaran*, P.D. 16(3) 1717 [1962], 2.

110 David Lloyd, *Irish Culture and Colonial Modernity, 1800–2000* (Cambridge: Cambridge University Press, 2011), 61.

111 Lloyd, *Irish Culture and Colonial Modernity*, 62.

112 Weizman and Sheikh, *The Conflict Shoreline*, 55.

113 *Badaran*, 2.

114 Kedar, "The Legal Transformation of Ethnic Geography," 961.

115 Kedar, "The Legal Transformation of Ethnic Geography," 961.

116 Kedar, "The Legal Transformation of Ethnic Geography," 962.

117 See Kedar, "The Legal Transformation of Ethnic Geography," 964–65.

118 *Selim 'Ali Agdi'a al-Huashela et al. v. State of Israel* [1984], Civil Appeal No. 218/74.

119 Aharon Ben-Shemesh, *Land Law in the State of Israel* (Masadeh, 1953), cited in *al-Huashela v. State of Israel* (1984), para. 3.

120 Moshe Doukhan, *Land Law in Israel*, 2nd ed. (Ahva, 1952), 47, cited in *al-Huashela v. State of Israel* (1984), para. 3.

121 *Al-Huashela v. State of Israel* (1984), para. 4.

122 See Shamir, "Suspended in Space."

123 Weizman and Sheikh, *The Conflict Shoreline*, 54–55.

124 Bishara and Naamnih, *Nomads against Their Will*, 5.

125 Weizman and Sheikh, *The Conflict Shoreline*, 46.
126 *Al-Uqbi v. the State of Israel* (2015), para. 29.
127 *Al-Uqbi v. the State of Israel* (2015), para. 29.
128 *Al-Uqbi v. the State of Israel* (2015), para. 15.
129 *Al-Uqbi v. the State of Israel* (2015), para. 40.
130 *Al-Uqbi v. the State of Israel* (2015), para. 41.
131 *Al-Uqbi v. the State of Israel* (2015), para. 41.
132 *Al-Uqbi v. the State of Israel* (2015), para. 41.
133 *Al-Uqbi v. the State of Israel* (2015), para. 42.
134 Evidenced by the voluminous amount of Mandate-era correspondence, reports, and ordinances established in order to survey and register the land surrounding Be'er Sheva, which was driven by the needs, as noted above, to improve cultivation and settle land rights in a determinate way. See Bunton, *Land Legislation in Palestine*.
135 Aziz Alturi, interview with author, al-Araqib, April 2014.
136 Here I refer to the specific settlers encroaching on Palestinian land in the West Bank that is under the jurisdiction of the Palestinian Authority, as opposed to the general category of Israeli settlers.

4. STATUS

1 *McIvor v. The Registrar, Indian and Northern Affairs, Canada* [2007] BCSC 827, para. 7.
2 The British Columbia Court of Appeal radically narrowed the basis upon which Madame Justice Ross's judgment was made, by restricting the group of people against which those in McIvor's position were to be compared. Whereas Madame Justice Ross found that the registration provisions of the 1985 Indian Act "continue to prefer descendants who trace their Indian ancestry along the paternal line over those who trace their Indian ancestry along the maternal line" (para. 7), the Court of Appeal decided that the matrilineal and patrilineal dimensions of status determination were not "analogous grounds" under the charter (para. 99–100), and that the case was to be adjudicated simply on the basis of sex discrimination under section 15 of the charter. Finding that section 6 was discriminatory on the basis of sex, the Court of Appeal went on to find that the discrimination applied only to "the group caught in the transition between the old regime and the new one" (para. 122). They narrowed the question to whether section 6(1) of the 1985 Registration Provisions was underinclusive. They found, under the section 1 analysis (a four-part test devised to determine whether the charter violation is legally justifiable), that section 6(1) did not "minimally impair" the rights of Sharon McIvor's son, Mr. Grismer. The comparator group were those who had a modified status as a result of the Double Mother rule, a 1951 amendment which provided that children whose mother and paternal grandmothers had not been entitled to status except through marriage to an Indian man would have Indian status only to the age of twenty-one. This restriction was reversed in 1985 but created a distinction between the comparator