

2009

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Yehuda Gruenberg

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Recommended Citation

Yehuda Gruenberg, *Not All Who Wander Should Be Lost: The Rights of Indigenous Bedouins in the Modern State of Israel*, 34 Brook. J. Int'l L. (2008).

Available at: <https://brooklynworks.brooklaw.edu/bjil/vol34/iss1/6>

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NOT ALL WHO WANDER SHOULD BE LOST¹: THE RIGHTS OF INDIGENOUS BEDOUINS IN THE MODERN STATE OF ISRAEL

INTRODUCTION

The past two centuries can perhaps best be described as the age of nationalism. Colonialism, the touchstone of the late eighteenth through the early twentieth centuries, began to wane, and indigenous peoples all across the globe began to take responsibility for the determination of their own social and political futures.² Among the weakest, poorest, and least-represented members of developing societies, indigenous peoples are often disregarded, at best, and discriminated against, at worst, within the legal and social frameworks of the countries in which they reside.³ In order to remedy past inequities, it is therefore necessary to explore the various mechanisms of international law as they relate to both indigenous peoples of the world and the governments that are their *de facto* rulers. Nowhere is this more apparent than in the modern State of Israel's relations with its Bedouin Arab inhabitants.⁴

Since its inception in 1948, Israel has dealt with the issues of the Bedouin minority within its borders in various ways, ranging from the discriminatory⁵ to the seemingly beneficial.⁶ This Note argues that Israel, as a democracy and as a signatory to various international treaties and conventions on human rights,⁷ has an affirmative duty to redress past inequities in the treatment of its Bedouin population as well as an incumbent responsibility to safeguard the rights of all its citizens. Part I of this Note describes the factual and legal history of the treatment of Bedouin Arabs in the State of Israel. Part II looks at the domestic legal framework within

1. Apologies to J.R.R. Tolkien for the bastardization of the passage, "All that is gold does not glitter, not all those who wander are lost." J.R.R. TOLKIEN, *THE FELLOWSHIP OF THE RING* 168 (Houghton Mifflin 2002) (1954).

2. See generally S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* (2004).

3. *Id.*

4. For a general overview of the history of Bedouin Arab minorities in Israel, see PENNY MADRELL, *THE BEDUIN OF THE NEGEV* (1990).

5. For a general discussion of Israel's discriminatory policies towards its Bedouin citizens, specifically in the sphere of housing rights, see Tawfiq Rangwala, *Inadequate Housing, Israel and the Bedouin of the Negev*, 42 *OSGOODE HALL L.J.* 415 (2004).

6. For discussion of a recent Israeli Supreme Court decision mandating the implementation of affirmative action in the assignment of counselors for Bedouin schools to remedy high dropout rates, see Adalah, Newsletter Vol. 9 (Jan. 2005), <http://www.adalah.org/newsletter/eng/jan05/1.php>.

7. See *infra* notes 88–89.

which Israeli conduct towards the Bedouin minority can be judged. Part III examines the international legal obligations Israel has to its citizens and discusses various sources of law that shed light on the responsibilities Israel must fulfill. Part IV surveys the obligations owed to the “stranger” in what can arguably be called one of the earliest systems of “international law”—Jewish law—and explores how these obligations instruct the conduct of the Jewish State. Finally, Part V looks at the current situation of Bedouins in Israel and the impact of recent legal developments. Ultimately, this Note calls for Israeli leaders and academics to unequivocally support proactive changes in how Israeli law and society treat Bedouin Arabs as a precursor and prerequisite to any lasting peace between Israel and its Arab neighbors.

I. NOMADS NO MORE: A BRIEF HISTORY OF BEDOUIN ARABS IN ISRAEL

The term “Bedouin” has varied meanings⁸ and connotations.⁹ The terminology used to describe Israel’s Arab citizens is in itself “highly politicized”¹⁰ and infuses the legal inquiry with biases and preconceptions. Regardless of the connotations, it is clear that the Bedouins in present-

8. Long utilized as a synonym for the term “Arab” in what is now known as the Middle East, the name “Bedouin” comes from the Arabic *badawiyin*, meaning people who hail from open areas such as the desert. “Bedouin” often has the further connotation of a “raider.” All of the nomadic tribes in the region were “Arabs” (“wanderers”), but some received the additional classification of “raiders.” THOMAS KIERNAN, *THE ARABS* 70 (1975).

9. See MADRELL, *supra* note 4, at 20 (“To Europeans the word ‘beduin’ evokes a strong and generally positive image. . . . [B]eduin are less romantic in Israeli eyes than in British. Where Englishmen see noble simplicity and the exhilaration of desert horizons, the Israeli thinks of smuggled hashish, trachoma and illiterate children.”).

10. Zama Coursen-Neff, *Discrimination Against Palestinian Arab Children in the Israeli Educational System*, 36 N.Y.U. J. INT’L. L. & POL. 749, 749–50 n.2 (2003) (choosing not to use the term Bedouin, instead calling them “Palestinian Arabs,” which the author concedes is not necessarily used by the Bedouins in describing themselves). For the purposes of this Note, when “Bedouin Israelis” or “Bedouins” are mentioned, the terms refer particularly to the Negev (Southern Israeli) Bedouin as opposed to their Northern Israeli counterparts. Having similar customs in general, the two are distinguishable most notably due to the fact that Bedouin of the Negev are much less integrated into Israeli society, in part due to their remote location in the Negev desert. See MADRELL, *supra* note 4, at 4.

day Israel are still considered the “nomadic other”¹¹ both within Israeli society and by many of their fellow Arabs.¹²

From their beginnings, the Bedouins were nomadic, desert-dwelling tribesmen who made a living as shepherds of camels and sheep.¹³ When the United Nations partitioned British Palestine in 1947,¹⁴ approximately 90,000 Bedouins¹⁵ were already living in the area that was to ultimately become modern-day Israel.¹⁶ As opposed to other Bedouin tribes in Middle Eastern and North African countries, Israeli Bedouin are an ethnic minority “with a distinct character and unique customs.”¹⁷ One logical side effect of the continued growth of the State of Israel in the 1950s was the need for more land for the agricultural development of the nascent Jewish State and the settlement of its people.¹⁸ This need was often fulfilled through executive policies¹⁹ of land expropriation²⁰ designed to

11. Ronen Shamir, *Suspended in Space: Bedouins Under the Law of Israel*, 30 *LAW & SOC’Y REV.* 231, 232 n.2 (1996).

12. MADRELL, *supra* note 4, at 3 (“[The Bedouin] are looked down upon by Jewish Israelis and other Palestinians alike as primitive The Bedouin of the Negev are truly a minority twice over.”).

13. ISSACHAR ROSEN-ZVI, *TAKING SPACE SERIOUSLY: LAW, SPACE AND SOCIETY IN CONTEMPORARY ISRAEL* 75 (2004).

14. G.A. Res. 181 (II), at 131, U.N. Doc. A/519 (Nov. 29, 1947).

15. Although population statistics from that era are speculative at best, the number of Bedouins in the partitioned territory under Israeli control was estimated in a report to the General Assembly on September 3, 1947. U.N. Special Comm. on Palestine [UNSCOP], Report to the General Assembly, U.N. GAOR, 2d Sess., Supp. No. 11, at 102, U.N. Doc. A/364 (Sept. 3, 1947).

16. Madrell posits that, prior to the 1947 partition, there were anywhere from 65,000 to 95,000 Bedouin in the Negev, with that number falling to fewer than 13,000 by 1951. MADRELL, *supra* note 4, at 6.

17. ROSEN-ZVI, *supra* note 13, at 76.

18. See Rangwala, *supra* note 5, at 438 (“The Negev represents a great mass of land available for future settlement and is prized for that reason above all others.”). See also MADRELL, *supra* note 4, at 7 (discussing the harsh rule under military government, probably due to the fact that “Israeli authorities were especially anxious to populate the Negev with Jews”).

19. See Shamir, *supra* note 11, at 236 (discussing the Israeli government policies that emphasized the Negev as empty and the Bedouin nomads as “part of nature,” resulting in the official narratives that the Negev is “an empty space that awaits Jewish liberation” and the Bedouins are a “nomadic culture that awaits civilization”).

20. For a general discussion on this issue, see HUSSEIN ABU HUSSEIN & FIONA MCKAY, *ACCESS DENIED: PALESTINIAN LAND RIGHTS IN ISRAEL* (2003); George E. Bisharat, *Land, Law, and Legitimacy in Israel and the Occupied Territories*, 43 *AM. U. L. REV.* 467 (1993); Alexandre (Sandy) Kedar, *The Legal Transformation of Ethnic Geography: Israeli Law and the Palestinian Landholder 1948–1967*, 33 *N.Y.U. J. INT’L L. & POL.* 923 (2001).

urge the Bedouins into urban settlements,²¹ effectively altering the very bases of their economy²² and leaving them ostensibly dependent on the administrative state for subsistence.²³ Approximately 87% of the land expropriated,²⁴ and thereafter regarded as state owned, was located in the Negev desert²⁵ where Bedouins are still largely concentrated.²⁶

Over the first few decades of its existence, as Israel developed into a modern industrialized nation, the institutional discrimination²⁷ against Israeli Arabs, and in particular Bedouins, continued virtually unabated in areas ranging from education,²⁸ health care,²⁹ water,³⁰ and land rights³¹ to

21. See Shamir, *supra* note 11, at 231. Shamir quotes the Minister of Agriculture, Moshe Dayan, as saying, "We should transform the Bedouins into an urban proletariat. . . . Without coercion but with government direction . . . this phenomenon of the Bedouins will disappear." *Id.*

22. For a discussion of the changing socioeconomic conditions of the Bedouins in the developing State of Israel, see AVINOAM MEIR, AS NOMADISM ENDS: THE ISRAELI BEDOUIN OF THE NEGEV 18 (1998). See also MADRELL, *supra* note 4, at 20 (discussing the remarkable change in the sources of livelihood for Arab Bedouins in Israel "from an almost entirely agricultural and pastoral community" in the 1940s and 1950s to "one overwhelmingly dependent on mainly unskilled wage labour" in the 1980s and beyond).

23. ROSEN-ZVI, *supra* note 13, at 55.

24. "By 1959 the State had expropriated 250,000 dunams [approximately 63,000 acres] from Bedouin Arabs in the Negev." MADRELL, *supra* note 4, at 8.

25. HUSSEIN & MCKAY, *supra* note 20, at 39 (using the term "Naqab" desert, which is the Arabic word for "Negev").

26. See MADRELL, *supra* note 4, at 3.

27. See DAVID KRETZMER, THE LEGAL STATUS OF THE ARABS IN ISRAEL 117 (1990) (discussing three interconnected modes of institutional discrimination often practiced under the guise of discretionary administrative power: budgetary discrimination, resource allocation, and implementation of laws).

28. "Schools in the government-planned settlements for beduin . . . still lag far behind the standard of Jewish-Israeli education and have smaller budgets." MADRELL, *supra* note 4 at 16.

29. See *id.* at 17 (citing an independent Israeli survey conducted in 1983 that concluded the Negev Bedouin receive medical care "below the minimum standard to which every citizen is entitled"). See also Rangwala, *supra* note 5, at 422-23 (discussing higher infant mortality rates among Bedouin and positing that "both the accessibility of health care services and the quality of care available to Bedouin living in both the townships and unrecognized villages remains grossly inadequate").

30. See MADRELL, *supra* note 4, at 12-13 ("Except the few who got some irrigated land as compensation after 1980, beduin farmers do not get water allocations.").

31. See Kedar, *supra* note 20, at 924 (discussing the Israeli legal system, "which by transforming land possession rules in ways that undermined the possibilities of Arab landholders to maintain their possession, brought about the transference and registration of ownership of this land to the Jewish State"). See also MADRELL, *supra* note 4, at 12 ("The Jewish settlements can lease land for up to [forty-nine] years Each year [the Bedouin farmers] must reapply and are likely to receive different lands or even no lands at all.").

herding and grazing rights.³² The Bedouin tribes were pressured to resettle within a military enclosure area³³ in townships³⁴ separated from Jewish Israeli settlements and cities, but still close enough for Bedouins to work in the areas from which they were residentially segregated.³⁵ The rest of the Negev Bedouin population (i.e., those who did not move to the government townships) lived in numerous villages unrecognized by the State.³⁶ These unrecognized villages provide even starker examples of Israel's disparate treatment of its Bedouin citizens, as "[t]he villages are characterized by a lack of basic services, such as running water, electricity, telephone lines, paved roads, schools, and other public institutions."³⁷ Furthermore, since it is impossible for Bedouins in these villages to obtain building permits, many Bedouins continue to be indicted every year for "illegal" construction activity, and the Israeli government has slated innumerable houses for demolition.³⁸ These legal obstacles cast the Bedouin as interlopers in their own homes.³⁹ Additionally, in order to put a positive legal veneer on its policy of land acquisition, the Israeli legislature passed a series of laws that, in both practice and effect, serve to legitimize the resettlement of the Negev Bedouin population.⁴⁰

This policy of state-sponsored sedentarization has resulted in modern-day Bedouins becoming "the most socially, politically and economically disadvantaged segment of the [Arab] Minority in Israel."⁴¹ In crafting a

32. See *id.* at 13. See also Rangwala, *supra* note 5, at 442–43 (discussing the Plant Protection Law of 1950 that required "Bedouin shepherds to get a permit from the ministry of agriculture to graze their goats" on certain lands and noting the consequential dwindling of Bedouin flocks).

33. The enclosure area consisted of roughly ten percent of the land that was previously inhabited exclusively by the Bedouin community. Rangwala, *supra* note 5, at 420.

34. Ar'ara, Houra, Kuseifa, Laqiah, Rahat, Segev-Shalom, and Tel-Sheva. ROSEN-ZVI, *supra* note 13, at 46.

35. *Id.*

36. For a general discussion of these so-called "unrecognized villages," see HUSSEIN & MCKAY, *supra* note 20, at 255–81.

37. Rangwala, *supra* note 5, at 421.

38. See Shamir, *supra* note 11, at 246–47.

39. See Rangwala, *supra* note 5, at 435.

40. Two laws in particular enabled the Israeli government to redefine the nature of property ownership in the area and utilize land newly defined as "abandoned" for predominantly Jewish settlement interests. Land Acquisition (Validation of Acts & Compensation) Law, 5713-1953, 7 LSI 43 (1952–1953) (Isr.); Absentees' Property Law, 5710-1950, 4 LSI 68 (1949–1950) (Isr.). For an in-depth discussion of the Absentees' Property Law and its repercussions on Israel's Arab population in general, see Bisharat, *supra* note 20, at 512–14. For a more detailed look at both of these laws, as well as others on point, and their effects on the Bedouin population of the Negev in particular, see Rangwala, *supra* note 5, at 439–49.

41. Rangwala, *supra* note 5, at 416–17.

possible future solution to this past and present-day inequity, it is imperative, therefore, to survey domestic Israeli legislation that has enabled this unfairness to occur in the past as well as Israel's international legal commitments that should prevent it from continuing in the future.

II. SEPARATE AND UNEQUAL: DOMESTIC ISRAELI LEGAL SOURCES FOR BEDOUIN RIGHTS

In order to elucidate the responsibilities Israel has to its citizens, one must first have a basic understanding of the complex structure of Israeli law. Israel has no written constitution, so the domestic rights granted its citizens must be gleaned from other sources, specifically the Declaration of the Establishment of the State of Israel and the Law of Return, the judicial case law of the Israeli Supreme Court, and the Basic Laws promulgated by the Knesset, Israel's parliament.

A. The Declaration and the Law of Return

The Declaration of the Establishment of the State of Israel provides: "The State of Israel . . . will be based on freedom, justice and peace . . . [and] it will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race or sex."⁴² At first glance, it seems rather clear that the drafters of the Declaration intended complete equality to mean just that. Soon after the creation of the State, however, the Knesset passed a law that seemingly contradicts this idea of complete equality. In 1950, the Knesset promulgated the Law of Return, which gives every Jew born in or immigrating to Israel the right to Israeli citizenship.⁴³ This law was not merely a public relations campaign for Jewish immigration in the 1950s. It was, and remains to this day, the legislative embodiment of the very idea of a Jewish State, acknowledging the most basic principle of Zionist ideology⁴⁴—the inextricable link between the Jewish Diaspora and the Jewish State.⁴⁵ Still, this raises questions of how this law, which clearly grants preferential treatment to Jews as op-

42. Declaration of the Establishment of the State of Israel, 5708-1948, 1 LSI 3, (1948) (Isr.) [hereinafter Declaration].

43. Law of Return, 1950, 51 S.H.159. ("Every Jew has the right to come to this country as an *oleh* [Jewish immigrant to Israel].").

44. Zionism is a modern political ideology that developed in Europe in the eighteenth and nineteenth centuries. The main ethos of Zionism is the founding and cultivation of a Jewish State in biblical Canaan to serve as a homeland for the Jewish populations of all nations. For a detailed discussion of the rise of Zionism and its most basic principles, see WALTER LAQUEUR, A HISTORY OF ZIONISM (1976).

45. KRETZMER, *supra* note 27, at 18. The term "Diaspora" refers to those Jews who live outside of the land of Israel.

posed to citizens of any other religion, can coexist with the principle of complete equality that the Declaration mentions.

While equality is clearly an important principle at the heart of Israeli law, it is not without limitation.⁴⁶ First, the term itself is hard to define, as it signifies a dynamic idea that depends on unique factors in a given society. As societal values and attitudes change, so too must the conception of what equality entails.⁴⁷ Second, like any principle of Israeli constitutional law,⁴⁸ equality is “subordinate to the supremacy of [Knesset] legislation.”⁴⁹ Hence, if a conflict arises between the principle of equality from the Declaration and the plain meaning of a Knesset statute, the statute is dispositive.⁵⁰

B. Judicial Law

The Israeli judiciary has identified equality as an important, albeit unwritten, constitutional principle.⁵¹ Additionally, the Israeli Supreme Court reasoned that the principle of equality should be given special status due to the unique historical experience of the Jewish people:

When we were exiled from our country and removed from our land we became victims of the nations of the world among whom we lived, and

46. See HUSSEIN & MCKAY, *supra* note 20, at 281 (discussing the weak status of equality in Israeli law in regard to competing policy considerations). See also KRETZMER, *supra* note 27, at 11 (discussing the principle of equality in Israeli law as a “soft legal principle” that cannot overcome “contrary provisions in primary legislation”).

47. As an anecdotal example from American history, although equality is an integral concept in both the Declaration of Independence and the U.S. Constitution, it took almost 200 years for that equality to be implemented for African Americans.

48. The term “constitutional law” is purposefully not capitalized here and throughout this Note, as it does not relate to laws of a particular constitution, rather the body of laws that constitute the general legal apparatus of the State of Israel.

49. KRETZMER, *supra* note 27, at 77.

50. *Id.* at 8. (citing HCJ 10/48 Zeev v. Gubernik, [1948] IsrSC 85(1) 89 (holding that the Declaration is not a “Constitutional law which determines the validity or invalidity of ordinances and statutes”).

51. See HUSSEIN & MCKAY, *supra* note 20, at 281 (citing HC 953/87 Poraz v. Mayor of Tel Aviv, [1988] IsrSC 42(2) 309. The High Court held that public authorities must give “reasonable weight” to the principle of equality and seek to find alternative ways, congruent with the principle of equality, to achieve the ends of the particular policy sought. The court reasoned further that the test for whether a public authority had in fact acted in a discriminatory fashion was comprised of three elements: (1) the authority must present evidence that it considered the infringement upon the principle of equality; (2) the authority must show that it evaluated the competing considerations and gave “reasonable weight” to equality; and (3) after balancing the competing considerations, the authority had come to the conclusion that there was no other way to effect the particular policy choice. *Id.*

throughout the generations we tasted the bitterness of persecution, oppression and discrimination merely because we were Jews. . . . Given this sorrowful experience, which deeply affected our national and human consciousness, it is to be expected that we will not adopt these aberrant ways of the nations of the world, and now that our independence has been renewed in the State of Israel we must be careful to prevent any hint of discrimination towards any law-abiding non-Jew among us who wishes to live with us in his own way, according to his religion and belief. . . . We must exhibit a human and tolerant attitude . . . and maintain the great rule of equality in rights and obligations between all persons.⁵²

The court draws a direct connection between the historical sufferings of the Jewish people and an affirmative duty to treat *all* inhabitants of the modern State of Israel with the humanity and dignity that the founders of the State sought for themselves.⁵³ Accordingly, the Israeli Supreme Court has asserted that “discrimination on grounds of religion or race will be regarded as improper use of administrative discretion, even if that discretion is absolute,”⁵⁴ and that the construction of statutory language must further the principle of equality under the law.⁵⁵

In the spring of 2000, the Israeli Supreme Court decided a case called *Qa'adan v. Israeli Lands Administration*, where it held that the State is forbidden from utilizing national institutions to carry out actions on its behalf that have discriminatory purpose or effect.⁵⁶ In this case, a Bedouin family challenged the administration's refusal to allow them to purchase a home in Katzir on the grounds that Katzir only accepted Jewish residents.⁵⁷ The court found that state discrimination based on nationality, overt or otherwise, was illegal and that the State could not circumvent this prohibition by delegating land allocation authority to institutions that then allocate the land in a discriminatory fashion.⁵⁸ That same year, in a landmark decision on equality rights vis-à-vis Israeli Arab minorities, the court clearly stated that “[t]he resources of the State . . . belong to all citizens and all citizens are entitled to enjoy them ac-

52. KRETZMER, *supra* note 27, at 9. (citing CA 56/71 Emma Berger v. Dist. Planning Comm. [1972] IsrSC 27(2) 764, 771).

53. *Id.*

54. *Id.* (citing CA 16/61 Registrar of Companies v. Kardosh [1961] IsrSC 16(1) 1209, 1224).

55. *See id.* (citing HC 707/81 Abu-Hatzeira v. Attorney Gen. [1981] IsrSC 35(4) 561).

56. Rangwala, *supra* note 5, at 427 (citing HCJ 6698/95 Qa'adan v. Israeli Lands Admin. [2000] IsrSC 54 (1) 258).

57. *Id.*

58. *Id.*

ording to the principle of equality, without discrimination, based on religion, race, sex or other prohibited consideration.”⁵⁹

C. Basic Laws

Instead of delineating certain fundamental rights and liberties in a constitution, the founders of Israel decided to empower the Knesset to enact a series of “Basic Laws”⁶⁰ that would form, along with regular substantive Knesset legislation and decisions of the judicial courts, the foundation and backbone of modern Israeli law.⁶¹ In 1992, paralleling the reasoning of its judicial counterparts, the Knesset passed two Basic Laws that signified a “first step towards entrenching certain fundamental rights and freedoms in Israel.”⁶² Prior to the promulgation of these Basic Laws, the Israeli High Court of Justice did recognize certain rights as fundamental.⁶³ The court also ruled that the Basic Laws have constitutional significance giving greater force to their various provisions.⁶⁴ The practical significance of this ruling, in light of the lack of a single constitutional document guaranteeing fundamental rights, is that the Basic Laws

59. *Id.* at 427 n.69 (citing H CJ 1113/99 *Adalah v. Minister of Religious Affairs* [2000] IsrSC 54(2) 164, 165). *Adalah*, the Legal Center for Arab Minority Rights in Israel, challenged the legality of two budget provisions that allocated funding exclusively for Jewish cemeteries. Ruling in favor of the petitioners, the court specifically noted the Ministry’s failure to point to any reasonable justification for the budget discrepancy. For more information on this case in particular, as well as other cases on point, see *Adalah*, <http://www.adalah.org/eng/legaladvocacyreligious.php> (last visited Oct. 28, 2007).

60. Eleven Basic Laws have been enacted since 1948, mostly dealing with the institutional and administrative workings of the State. Basic Law: The State Comptroller, 1998, S.H. 30; Basic Law: Jerusalem, Capital of Israel, 5740-1980, 34 LSI 209 (1980) (Isr.); Basic Law: The Army, 5736-1976, 30 LSI 150 (1976) (Isr.); Basic Law: The State Economy, 5735-1975, 29 LSI 273 (1975) (Isr.); Basic Law: Israel Lands, 5720-1960, 14 LSI 48 (1960) (Isr.); Basic Law: The Judiciary, 5744-1984, 38 LSI 101 (1984) (Isr.); Basic Law: The Government, 2001, S.H. 158; Basic Law: President of the State, 5724-1964, 18 LSI 11 (1964) (Isr.); Basic Law: The Knesset, 5718-1958, 12 LSI 85 (1958) (Isr.); Basic Law: Freedom of Occupation, 1992, S.H. 114; Basic Law: Human Dignity and Liberty, 1992, S.H. 150.

61. For a general discussion on the makeup of Israeli law, see KRETZMER, *supra* note 27.

62. HUSSEIN & MCKAY, *supra* note 20, at 23.

63. See Aeyal M. Gross, *The Politics of Rights in Israeli Constitutional Law*, 3 ISRAEL STUD. II 80, 83–84 (1998) (including the examples of freedom of speech, and more importantly for this discussion, equality).

64. CA 6821/93 *United Mizrahi Bank, Ltd. v. Migdal Coop. Village* [1993] IsrSC 49(4) 221.

have become the bedrock of civil and human rights in the modern Israeli legal structure.⁶⁵

The tension between the Law of Return—“the sole Israeli Law that explicitly discriminates on the basis of ethnicity or national origin”⁶⁶—and the guarantees of equality in the Declaration and Basic Laws is evident.⁶⁷ Civil liberties and civil rights, though perhaps not as ingrained and protected as in the American system, do play an important role in the Israeli legal structure.⁶⁸ Still, the existential conundrum persists: when the continued Jewish nature of the State is in direct conflict with principles of equality, what is the outcome? This tension was illustrated vividly in a case dealing with election candidates whose platform included advocating for the destruction of the State of Israel and denial of its sovereignty.⁶⁹ The Israeli Supreme Court ruled that, short of clear legislative action to the contrary, it could not bar them from running for office, with one justice adding in dicta that the Jewish character of the State is a “fundamental constitutional fact.”⁷⁰ The Knesset responded by amending the Basic Law: the Knesset precluded from being considered eligible for elections candidates who tried to negate “the existence of the State of

65. HUSSEIN & MCKAY, *supra* note 20, at 146 (discussing the Basic Laws, in comparison to other streams of Israeli law, as “the most entrenched kind possible in the Israeli constitutional system”).

66. Bisharat, *supra* note 20, at 509 n.209.

67. See Concluding Observations of the Committee on Economic, Social, and Cultural Rights: Israel, 16, U.N. Doc. E/C.12/1/Add.90 (May 23, 2003) (“The Committee reiterates its concern that the excessive emphasis upon the State as a ‘Jewish State’ encourages discrimination and accords a second-class status to its non-Jewish citizens.”). See also ROSEN-ZVI, *supra* note 13, at 2 (discussing an offshoot of the Law of Return that prohibits the State from extraditing Jewish citizens, ostensibly “collapsing the distinction between the notions of citizenship and ethnicity”).

68. KRETZMER, *supra* note 27, at 8 (discussing a line of Israeli Supreme Court cases that held that basic civil rights, though largely not codified, exist as legal principles in Israeli jurisprudence). This is further evidenced by the fact that the Constitution, Law and Justice Committee of the Knesset has been working for years on drafting Israel’s written constitution and plans to include such rights in the eventual draft: “[t]he proposed constitution will reiterate the state’s commitment to equal rights for all, including minorities. The constitution will emphasize universal human rights, and forbid state discrimination among its citizens on the basis of race, religion, or ethnicity.” Knesset Committee Debates on the Constitution for Israel, <http://www.cfisrael.org/a134.html?rsID=89> (last visited Oct. 28, 2007).

69. *Id.* at 24 (citing EA 1/65 Yardor v. Cent. Elections Comm. for the Sixth Knesset [1965] 19(3) 365).

70. *Id.* at 24–25.

Israel as the State of the Jewish people”⁷¹ or those who wished to incite racism.⁷²

Although Israel’s legal system is formally committed to equality, the historical encroachments upon equality “reflect the ambiguity in the notion of Israeli nationhood”⁷³ and cast existential uncertainty on the true nature of Israel’s identity. On the one hand, Israel is a democratic State belonging equally to all of its citizens, regardless of religion, race, or sex.⁷⁴ On the other hand—as the eponymous ancestor of the Jews—Israel the people may lay claim to Israel the State as theirs and theirs alone.⁷⁵ The coexistence of these two conceptions of statehood is of particular significance to Bedouin Israelis⁷⁶ as full-fledged citizens of a state that technically belongs to someone else.⁷⁷

In 1992, the Knesset promulgated the Basic Law: Human Dignity and Liberty, which guarantees rights to dignity, life, freedom, privacy, and property.⁷⁸ Interestingly, missing from this Basic Law is any mention of equality.⁷⁹ This was remedied, in part, two years later when the Knesset amended it to include “fundamental human rights . . . in the spirit of the

71. See Amendment No. 9 to section 7A of the Basic Law: The Knesset, 1985, S.H. 196, available at http://www.knesset.gov.il/laws/special/eng/basic2_eng.htm.

72. This part of the Amendment was utilized to preclude controversial Rabbi Meir Kahane, known in Israel and the United States for his anti-Arab and racist viewpoints, from running for Knesset elections. For a more detailed discussion of the case and its ramifications, see KRETZMER, *supra* note 27, at 26–31.

73. *Id.* at 176.

74. Declaration of the Establishment of the State of Israel, 5708-1948, 1 LSI 3, (1948) (Isr.).

75. See Rangwala, *supra* note 5, at 425–26 (The language of the Declaration itself “defines the national character of the state as privileging one group, namely the Jewish people. . . . Thus[,] as quickly as the principle of equality became an element of the Israeli state via its founding *Declaration*, it simultaneously became neutralized by its Jewish characterization.”).

76. See *id.* at 430 (referring to the “system of unequal citizenship” experienced by the Negev Bedouin).

77. See MADRELL, *supra* note 4, at 21 (“Many in the beduin community feel this anguish . . . and the consequent sense that as a community they are fully acceptable neither to the nation they feel part of nor to the state they are citizens of.”).

78. Basic Law: Human Dignity and Liberty, 1992, S.H. 150, available at http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm.

79. For a discussion on the Basic Law: Human Dignity and Liberty and its shortcomings in granting complete equality, and even more interestingly, its usage in opposition to its stated purpose, see HUSSEIN & MCKAY, *supra* note 20, at 23–24 (discussing Section 8 of the Basic Law: Human Dignity and Liberty, which allows certain laws that may be facially discriminatory if they serve a “proper purpose” and “will be used to legitimize laws that discriminate in favour of Jews,” preserving the character of Israel as a Jewish State even at the expense of fundamental civil rights).

principles set forth in the Declaration of the Establishment of the State of Israel.”⁸⁰ Although the inclusion of equality in Israel’s Basic Law: Human Dignity and Liberty is, at best, indirect, it “is no substitute for a direct provision, and the question must be asked why this principle [of equality], which the Israeli high Court has said on a number of occasions is a fundamental principle of Israeli law, was omitted.”⁸¹ The unanswered question of Israel’s domestic legal commitment to true equality among its citizens leads one to look to other sources of substantive law, specifically international law, to see whether Israel has more concrete obligations to its Bedouin citizens.

III. GLOBAL PERSPECTIVES, LOCAL RESPONSIBILITY: ISRAEL’S INTERNATIONAL LEGAL OBLIGATIONS

International law often provides a much sturdier basis than domestic law for protecting the rights of indigenous peoples.⁸² In its infancy in the seventeenth and eighteenth centuries, international law was understood predominantly as a device for governing relations between nation states.⁸³ The role of individuals,⁸⁴ unless acting as state representatives, was relatively nonexistent under this rudimentary conception of international law.⁸⁵ Perhaps the seminal moment in the development of modern international law came in the aftermath of World War II with the establishment of the United Nations.⁸⁶ The statute of the International Court of Justice, which the Member States adopted along with the U.N. Charter (“Charter”), discusses in the notes the sources of international law: treaty,

80. Amendment to Section 1 of the Basic Law: Human Dignity and Liberty, 1994 S.H. 90, available at http://www.knesset.gov.il/laws/special/eng/basic3_eng.htm (last visited Oct. 28, 2007).

81. HUSSEIN & MCKAY, *supra* note 20, at 25.

82. *Id.* at 33.

83. See ANAYA, *supra* note 2, at vii (discussing international law specifically in regard to human rights, “which has moved international law away from an exclusively state-centered orientation”).

84. See Eric S. Kobrick, *The Ex Post Facto Prohibition and the Exercise of Universal Jurisdiction over International Crimes*, 87 COLUM. L. REV. 1515, 1520–21 (1987) (citing Hill, *International Affairs: The Individual in International Organization*, 28 AM. POL. SCI. REV. 276 (1934) (describing the shift from state-centered international law and the emergence of the view that individuals are subject to international law)).

85. See Marek St. Korowicz, *The Problem of the International Personality of Individuals*, 50 AM. J. INT’L L. 533, 537–39 (1956) (examining the shift toward recognition of international personality of individuals, particularly in their claims of individual rights).

86. See generally ANAYA, *supra* note 2 (discussing the development of international law through the lens of indigenous rights and the United Nations).

custom, and general principles.⁸⁷ Applied to Israel, each of these international law sources sheds light on the obligations Israel has to its Bedouin minority, and together they instruct how Israel must act more fairly towards them in the future.

As a member of the United Nations, Israel has bound itself to numerous international treaties, including the Charter as well as the International Covenant on Civil and Political Rights (“ICCPR”)⁸⁸ and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”).⁸⁹ The protection of human rights and fundamental freedoms is one of the main reasons behind the conception of the United Nations in the aftermath of World War II, as evidenced by Article 1 of the Charter, which, *inter alia*, states that the purposes of the United Nations are

[t]o develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace; [t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.⁹⁰

Moreover, in Article 55, the Charter reiterates that one of its primary functions is the promotion of “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to

87. Statute of the International Court of Justice art. 38, June 26, 1945, 59 Stat. 1055, 33 U.N.T.S. 993. The Restatement (Third) of Foreign Relations Law of the United States provides a more concise definition of international law:

(1) A rule of international law is one that has been accepted as such by the international community of states (a) in the form of customary law; (b) by international agreement; or (c) by derivation from general principles common to the major legal systems of the world. (2) Customary international law results from a general and consistent practice of states followed by them from a sense of legal obligation. (3) International agreements create law for the states parties thereto and may lead to the creation of customary international law when such agreements are intended for adherence by states generally and are in fact widely accepted. (4) General principles common to the major legal systems, even if not incorporated or reflected in customary law or international agreement, may be invoked as supplementary rules of international law where appropriate.

RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES §102 (1987).

88. International Covenant on Civil and Political Rights, Dec. 19, 1966, 999 U.N.T.S. 171.

89. International Covenant on Economic, Social and Cultural Rights, Dec. 19, 1966, 993 U.N.T.S. 3.

90. U.N. Charter art. 1, paras. 2–3.

race, sex, language, or religion.”⁹¹ This function is imputed to the Member States in that “[a]ll Members pledge themselves to take joint and separate action . . . for the achievement of the purposes set forth in Article 55.”⁹²

Israel ratified the ICCPR and ICESCR on October 3, 1991.⁹³ The ICCPR⁹⁴ includes numerous provisions that hold direct relevance to Israel’s continued mistreatment of its Bedouin minority:

In no case may a people be deprived of its own means of subsistence.⁹⁵

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.⁹⁶

Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.⁹⁷

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁹⁸

91. *Id.* art. 55(c).

92. *Id.* art. 56.

93. See Office for the U.N. High Commissioner for Human Rights, Ratification Page for the ICCPR, <http://www2.ohchr.org/english/bodies/ratification/4.htm> (last visited Oct. 28, 2007); Ratification Page for the ICESCR, <http://www2.ohchr.org/english/bodies/ratification/3.htm> (last visited Oct. 28, 2007).

94. For a detailed discussion of the ICCPR, see MELISSA CASTAN, SARAH JOSEPH & JENNY SCHULTZ, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS AND COMMENTARY* (2004).

95. ICCPR, *supra* note 88, art. 1(2).

96. *Id.* art. 2(2)–(3).

97. *Id.* art. 12(1).

98. *Id.* art. 26.

Within this broad framework it is absolutely clear that Israel's policy of resettlement for the Bedouin of the Negev after 1948 and its continued governmental actions⁹⁹ in perpetuating this initial policy violate the principles set forth in the ICCPR.¹⁰⁰ While it could be argued that Israeli Supreme Court decisions, discussed *supra*, fulfill the obligation to "take the necessary steps . . . to adopt such laws . . . as may be necessary to give effect to the rights recognized"¹⁰¹ within the ICCPR, it is evident that the effects of past discriminatory policies still weigh heavily on the civil¹⁰² and political rights¹⁰³ of the Bedouin Arab minority and, therefore, much more needs to be done in order for Israel to fulfill its obligations under the ICCPR.

The ICESCR also provides rights that elucidate the international legal obligations that Israel must abide by in its dealings with its Bedouin Arab population.¹⁰⁴ First, Article 11(1) states:

The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.¹⁰⁵

Two issues arise out of this language, first, the right to adequate housing¹⁰⁶ and, second, the idea of free consent in the realization of this right. As discussed above, the idea of free consent can hardly be reconciled with Israel's post-1948 policy of Bedouin resettlement in townships within the enclosed military zone.¹⁰⁷ In terms of adequate housing, besides the fact that Bedouin settlements are clearly substandard in compar-

99. See *supra* notes 27–32 and accompanying text (discussing the various discriminatory effects of Israeli policy toward its Bedouin minority).

100. In resettling the Negev Bedouin population in townships that lack adequate infrastructure, irrigation, and basic services, the Bedouin population is in effect "deprived of its own means of subsistence," and is deprived of its "right to liberty of movement and freedom to choose [its] residence," as set forth in the ICCPR. ICCPR, *supra* note 88, arts. 1(2), 12(1).

101. ICCPR, *supra* note 88, art. 2(2).

102. See generally HUSSEIN & MCKAY, *supra* note 20.

103. See generally MADRELL, *supra* note 4.

104. See Rangwala, *supra* note 5, at 454 ("As a party to the ICESCR, Israel is bound by its terms, and obligations under it should be reflected in Israel's domestic policy.").

105. ICESCR, *supra* note 89, art. 11(1).

106. For a general discussion of the adequacy of housing for the Negev Bedouin, see Rangwala, *supra* note 5.

107. See *supra* notes 33–35.

ison to Jewish settlements of similar size and location,¹⁰⁸ there is also a more disturbing undercurrent at play since the lack of adequate housing can substantially diminish the realization of other fundamental rights (including those set forth in the ICCPR).¹⁰⁹ Israel has also not fulfilled its obligations under Article 12 of the ICESCR¹¹⁰ to reconcile discrepancies in providing proper health care to Negev Bedouin communities.¹¹¹ Given that Israel is a signatory to these treaties, it is abundantly clear that it has an international legal responsibility, not just a moral or ethical imperative, to actively remedy its treatment of the Negev Bedouin.

Customary international law also imposes international legal obligations upon Israel regarding its conduct toward Bedouin Arabs. The strongest such evidence is found in the U.N. Universal Declaration on Human Rights ("Universal Declaration").¹¹² The Universal Declaration is commonly considered a reliable expression of customary international law¹¹³ and has been deemed so by Israeli courts.¹¹⁴ Article 7 secures the right to equal protection under the law,¹¹⁵ and Article 8 grants the right to an "effective remedy" for the violations of the fundamental rights that the Universal Declaration guarantees.¹¹⁶ Israel's history in relation to its

108. See generally MADRELL, *supra* note 4

109. See Rangwala, *supra* note 5, at 454 ("For example, it may be impossible to maintain the right to security of person, public assembly, or education where the right to adequate housing is compromised.").

110. ICESCR, *supra* note 89, art. 12 ("The State Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for: (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child.").

111. See MADRELL, *supra* note 4, at 17 ("Beduin children in the Negev have a higher rate of hospitalization than their Jewish counterparts. A third of Negev Beduin children are hospitalized at least once in their first year . . . [and many] infants also suffer malnutrition and consequently stunted growth.").

112. Universal Declaration of Human Rights, G.A. Res. 217A, art. 27(2), U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 10, 1948) [hereinafter Universal Declaration].

113. HUSSEIN & MCKAY, *supra* note 20, at 34.

114. *Id.*

115. Universal Declaration, *supra* note 112, art. 7 ("All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.").

116. *Id.* art. 8 ("Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.").

treatment of Bedouin Arabs¹¹⁷ at best disregards and at worst defies the substantive guarantees of Articles 7 and 8 of the Universal Declaration. Furthermore, Article 17(2) states that “[n]o one shall be arbitrarily deprived of his property.”¹¹⁸ Israel’s policies of land expropriation¹¹⁹ after the establishment of the State in 1948, as well as its continued demolition of Bedouin houses,¹²⁰ can certainly be viewed as arbitrary deprivation of property in stark violation of the Universal Declaration. Article 22¹²¹ “articulates an overarching emphasis on the right to human development, and integrates all branches of human rights (civil, political economic, social, cultural) within the rubric of greater human development.”¹²² Accordingly, Israel must consider how its treatment of the Bedouin Arab minority fits within this framework, and must not only redress specific incidents of human rights abuses, but also align its legislative, judicial, and executive policies with the goal of “greater human development.”¹²³

In addition, Israel’s legal obligations under customary international law can be inferred from the text of the Wye River Memorandum (“Memorandum”),¹²⁴ which delineates responsibilities for Israel and the Palestine Liberation Organization in their ongoing peace talks. Although the Memorandum is just a small link in the seemingly unending chain of back-and-forth “peace agreements,”¹²⁵ one of its provisions is especially relevant to the rights of Bedouin Arabs. As a requisite condition for Israel’s agreeing to transfer nature reserve land to the Palestinians in Gaza, the Palestinian side agreed not to change “the status of these areas, without prejudice to the rights of the existing inhabitants in these areas, including Bedouins.”¹²⁶ It is ironically telling that in its negotiations with an entity that has been its enemy for decades, Israel made a point of including the protection of Bedouin rights. Although anecdotal, it can be inferred from

117. *See supra* Part II.B.

118. Universal Declaration, *supra* note 112, art. 17.

119. *See supra* notes 19–20 and accompanying text.

120. *See, e.g., infra* note 140.

121. *Supra* note 112, art. 22 (“Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.”).

122. Rangwala, *supra* note 5, at 452–53.

123. *Id.*

124. Wye River Memorandum, Oct. 23, 1998, 37 I.L.M. 1251.

125. For evidence of the constant cycle of peace talks, one need only look at any daily newspaper on any given day, and the odds are strong that there will be some talk of the never-ending struggle for “peace in the Middle East.”

126. *See supra* note 124.

this Memorandum that Israel sees the rights of Bedouin Arabs as worthy of protection, notwithstanding its own failure to do so over the last sixty years.¹²⁷ If Israel expects its enemies to treat Bedouin Arabs responsibly, it should follow both logically and ethically that it bears the same responsibility to its own Bedouin citizens.

IV. STRANGERS IN A STRANGE LAND: RESPONSIBILITIES TO “OTHERS” IN JEWISH LAW¹²⁸

Beyond the classical examples of international law discussed above, Israel's legal obligations can also be inferred from what perhaps can be described as one of the first systems of “international law”—Jewish law.¹²⁹ If, in fact, Israel is to be considered a Jewish State¹³⁰ as opposed to a completely egalitarian democracy, its conduct should, at the very least, be in line with the tenets and teachings of Jewish law.

The legal status of the “other” in Israel is founded in the Bible “upon the special protection and love of the God of Israel for the stranger.”¹³¹ This special status is embodied by the divine command to “befriend the stranger, for you too were strangers in the land of Egypt.”¹³² Beyond general pronouncements, the Torah¹³³ further lays down specific rules regarding the treatment of strangers by the people of Israel, illustrating “the degree to which Judaism has been willing to include the non-Jew within the framework of a Jewish society governed by universally applicable rules of ethical conduct.”¹³⁴ Understandably, not all of Jewish law was applied to those who were not followers of the religion, but still “the Torah nevertheless took care to grant them special protection and to

127. See *supra* note 117.

128. Special thanks to Rabbi Aaron Brusso for his help in researching and conceptualizing the arguments for this section of the Note.

129. See Joseph Levi, *Stranger*, in CONTEMPORARY JEWISH RELIGIOUS THOUGHT: ORIGINAL ESSAYS ON CRITICAL CONCEPTS, MOVEMENTS, AND BELIEFS 917, 919 (Arthur A. Cohen & Paul Mendes-Flohr eds., 1987) (discussing Judaism's conception of its own laws as having a “universal mission”). Furthermore, it can be argued that Jewish law is international in scope, since it has been followed by its adherents over thousands of years wherever in the world they may happen to reside.

130. Recently, Israeli Prime Minister Ehud Olmert stated unequivocally that the precondition for any and all peace negotiations with the Palestinians is their recognition of Israel as first and foremost a “Jewish State.” See Barak Ravid, *Erekat: Palestinians Will Not Accept Israel as 'Jewish State,'* HAARETZ, Nov. 12, 2007, available at <http://www.haaretz.com/hasen/spages/923076.html>.

131. Levi, *supra* note 129, at 918.

132. *Deuteronomy* 10:19.

133. This is the Hebrew word for the Jewish bible.

134. Levi, *supra* note 129, at 918.

equalize their legal status with that of the Jewish majority.”¹³⁵ Specifically, the Torah seeks to ensure that the stranger is not oppressed¹³⁶ and prohibits the perversion of justice where the rights of the stranger are concerned.¹³⁷ This protection of the stranger’s rights in Jewish law is also evidenced by modern thinkers who discern “a similar message of civil egalitarianism in the attitude of the laws of the Torah regarding the [stranger].”¹³⁸

While one could certainly argue that the rules of religious law have no relevance to the conduct of modern Israel towards its Bedouin minority, what is clear from the development of Jewish law throughout the ages is that it is “no longer theological principles that are central, but rather social and legal principles, such as equality before the law, which are drawn from humanistic philosophy and whose precursors are now seen in the ancient laws of the Bible.”¹³⁹ Accordingly, Israel has a clear legal and ethical obligation, rooted in the traditions of the Bible and developed by subsequent social, philosophical, and legal thought, to treat the “strangers” in its land with the same decency and respect it presently reserves exclusively for its Jewish citizens. Moreover, this makes the existential question of Israel’s continued viability—is it a Jewish State or a true democracy?—inapposite in the context of Bedouin rights, for no matter which principles govern (i.e., religious or democratic) the outcome should be the same.

V. ALMOST HOME: THE PRESENT AND FUTURE OF BEDOUIN RIGHTS IN MODERN ISRAEL

Unfortunately, the maltreatment of Bedouin Arabs in Israel continues to this day.¹⁴⁰ The Israeli government continues its policy of forced evacuations and home demolitions in Bedouin villages in order to pave the way for more Jewish settlements in the Negev region.¹⁴¹ Perhaps even more disturbing is the fact that the domestic legal remedies for Israel’s violation of Bedouin rights seem, at best, hard to come by and, at worst,

135. *Id.* (citing *Leviticus* 19:33–34).

136. *Exodus* 22:21.

137. *Deuteronomy* 24:17.

138. Levi, *supra* note 129, at 923 (discussing the opinions of heralded philosophical minds like Martin Buber and Leo Baeck).

139. *Id.* at 924.

140. See International Human Rights Day, Dec. 10, 2007, <http://adalah.org/eng/hrw.php>.

141. *Id.* (“In order to establish . . . three new Jewish communities, the state is using multiple means and procedures to evacuate the entire Arab Bedouin population of Atir-Umm al-Hieran, including filing lawsuits to evict them and requests for demolition orders against their homes to the courts.”).

unenforceable.¹⁴² Even if the Bedouins could appeal to the highest international legal bodies and raise causes of actions relating to Israel's obligations under the various treaties and conventions to which it is a signatory,¹⁴³ it is unclear what effect, if any, such appeals would have on Israeli conduct.¹⁴⁴ Although organizations like Adalah¹⁴⁵ exist for the purpose of protecting and defending the rights of Arab minorities in Israel,¹⁴⁶ the fight for equality will clearly continue to be one fraught with ineffectiveness and frustration.¹⁴⁷

But there is hope, albeit somewhat dim. As discussed above,¹⁴⁸ the Constitution, Law and Justice Committee of the Knesset is continuing to negotiate a draft of Israel's written constitution and has said that it intends to "reiterate the state's commitment to equal rights for all, including minorities."¹⁴⁹ Contrary to this claim, however, the head of the Constitution, Law and Justice Committee, Menahem Ben-Sasson, recently admitted that the constitution now taking shape in the committee is likely to weaken, not strengthen, the rights of Israeli minority groups, including the Bedouins.¹⁵⁰ If this were the case, it would fly in the face of what is arguably the "primary role of a constitution in a democratic state—protecting minority rights by anchoring them in the constitution"¹⁵¹ so that the executive, legislative, and administrative branches of government cannot infringe upon these rights. Furthermore, the president of the Israeli Bar Association recently remarked that the requisite function of a

142. *See id.* ("Despite court orders to freeze the home demolitions requested by Adalah, the Israel Lands Administration demolished some houses in June 2007 leaving many families homeless.").

143. *See supra* notes 88–89.

144. There are many examples of U.N. Resolutions that have tried to change the state of affairs in the region, with little or no success (too many to list here). Also, if Israeli court orders are not followed by the administrative bodies performing the evacuations and the demolitions, it would be highly unlikely that an outside tribunal's decision would carry much weight either.

145. Adalah, The Legal Center for Arab Minority Rights in Israel, www.adalah.org (last visited Sept. 29, 2008).

146. *See supra* note 140 ("Adalah is . . . representing village residents in lawsuits challenging all these [demolition and evacuation] orders, and is demanding an investigation and disciplinary proceedings against those responsible for the illegal demolitions.").

147. *Id.* (discussing continued evacuations, segregation, and other quasi-legal mechanisms that only further entrench Bedouin inequality).

148. *See* Knesset Committee Debates on the Constitution for Israel, *supra* note 68.

149. *Id.*

150. Yuval Yoaz, *Head of Knesset Panel Admits Draft Constitution Liable to Weaken Rights of Gays and Other Minorities*, HAARETZ, Oct. 22, 2007, <http://www.haaretz.com/hasen/spages/915321.html>.

151. *Id.*

constitution is “to protect weak sectors of the population” and that the price of a constitution “cannot be paid at the expense of minority groups within the population.”¹⁵²

As is so often the case in the region, as soon as one has reason to hope for progress (i.e., a constitution granting unalienable minority rights) something happens to dampen that hope (i.e., the head of the committee admitting minority rights are not the paramount consideration in the drafting process and may not even factor in at all in the final document). In order to begin to find a solution to the inherent inequality of Bedouin Arabs in Israel, the first step is for Israel to cease requiring recognition of Israel as a Jewish State as a precondition for peace talks.¹⁵³ This prerequisite, which may seem elementary to its proponents, speaks to the heart of the problem faced by the Bedouins in modern Israel: they are second-class citizens in a democratic state that should grant them full and equal rights, but chooses not to. The second step is to finish the drafting of a truly democratic and egalitarian constitution that guarantees, explicitly and unequivocally, the unalienable right to equality of all Israel’s inhabitants. The final step is to recognize the shortcomings of the past and recommit to making positive and proactive institutional changes so that Israel will be a home for all its citizens, regardless of classifications such as Jew, Palestinian, or Bedouin.

CONCLUSION

Israel has numerous obligations under international law to treat all of its citizens with the same amount of decency and respect that it affords to its Jewish citizens. Moreover, the treaties and conventions to which it has committed place an affirmative duty upon the government of Israel to remedy its historical maltreatment of its Bedouin minorities and safeguard their rights in the years to come. Moreover, even Jewish law requires better treatment of Bedouin minorities than what they experience at present. If Israeli leaders, as they are constantly claiming in the media, are truly interested in forging a lasting peace in the region, it is incumbent upon them to clean up their own house, before extending the olive branch to their neighbors. The political, intellectual, and academic elite in Israel must actively make their voices heard and declare that “not all who wandered should be lost,”¹⁵⁴ in calling for Israel to fulfill its international legal obligations in granting full economic, social, and political

152. *Id.*

153. See Ravid, *supra* note 130.

154. See *supra* note 1 and accompanying text.

rights to all Israeli citizens—then, and only then, will Bedouin Israelis truly be nomads no more.

*Yehuda Gruenberg**

* B.A., Philosophy and B.A., Judaic Studies, Binghamton University (2000), J.D. Brooklyn Law School (expected 2009). I am profoundly grateful to my Ima and Abba, Jack and Sandy Gruenberg, who instilled within me early on that life is not about being good, but about doing good. Thank you to my siblings, Hana, Josh, and Hillel who are my biggest supporters and best friends, and without whom I would be lost. Thank you to Aaron and Elissa for bringing joy into my life, in the form of Sari, Zoe, Ilan, Sam, and Kayla. I am very thankful and fortunate to have Orlee in my life—her patience and positivity are constant examples of how love can truly overcome any and all obstacles. This Note is dedicated to two men whose names I share: Uncle Jules, who bequeathed to me his fervent love of Israel, and 'Uda, the Bedouin father from Ein Gedi who welcomed me into his tent, shared his story with me and with whom I share not only a name, but also a hope for a brighter future.