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Dignity Takings and Dispossession in Israel

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This article examines the concept of dignity takings*, as developed by Bernadette Atuahene, and its applicability to the Israeli situation, focusing on takings from the Arab-Palestinian minority in Israel. Although I find dignity takings a valuable concept, as it emphasizes the interconnections between land dispossession and the denial of human dignity, I offer some qualifications and suggestions. I then examine the applicability of the concept to the dispossession of Arabs/Palestinians in Israel through two case studies: one, a close reading of the (in)famous Ikrit villagers' dispossession; the other, an examination of the dispossession of Negev (southern Israel) Bedouin citizens of Israel, which takes place, not unlike terra nullius, simultaneously with a denial of this very taking. The article concludes that with some modifications, the concept of dignity taking applies to the situation of Arab/Palestinian citizens of Israel.*

I. INTRODUCTION

This article examines the concept of *dignity takings*, as developed by Bernadette Atuahene, and its applicability to the Israeli situation, focusing on takings from the Arab-Palestinian minority. I find that dignity takings is a valuable concept, as it emphasizes the interconnections between land dispossession and the denial of human dignity. I offer some qualifications and suggestions, however. Contrary to Atuahene, I do not see it as an extraordinary occurrence and argue that much of the common operation of takings involves what she terms dignity takings. Furthermore, dignity takings take place within the context of a land regime, and include not only the taking of formal property from owners recognized as such by law, but also the ongoing processes that determine what constitutes or does not constitute property and who is entitled to its protection. Additionally, distinctions should be made between terms such as *displacement*, *dispossession*, and *deprivation*, while their relationship to dignity takings should be further clarified. Finally, the concept should apply not only to cases of dehumanization or infantilization, but also to additional instances of radical othering, such as takings from some perceived enemies.

To examine the applicability of the concept of dignity takings, I offer an overview of dispossession of Arab/Palestinian land in Israel, and place it within the larger context of making the Israeli land regime. This included not only land nationalization but simultaneously the control by state and Jewish institutions of 93

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percent of Israeli territory and a selective allocation of limited possessory rights in land. Through two case studies, I examine two major mechanisms for dispossession of Arab land in Israel in light of the concept of dignity takings.

One is the military regime imposed on villages that were inhabited by Arabs/Palestinians who formally became Israeli citizens after the establishment of the state in 1948. This case study highlights the ways this regime, in conjunction with special legislation enacted during that period that facilitated the takings, played a decisive role in dispossessing this so-called suspect class of citizens. Particularly, the long-lasting, tragic, and illustrative case of the villagers displaced from *Ikrit* demonstrates that with some qualifications, dignity takings serves as a fruitful concept to analyze their plight; it particularly helps to conceptualize their dispossession as generated from their construction as others and potential enemies.

My second case study examines Bedouin dispossession of their land in the Negev (southern Israel). This case also fits the dignity takings concept. Like the previous case, it helps us focus not so much on the physical loss of the land as on the harm that the taking inflicts on the core human dignity of the dispossessed. Furthermore, this case study highlights that dignity takings often take place by means of denial of this very taking and a simultaneous claim that possessors had no rights to the property, and thus nothing was taken from them. I conclude that with some modifications, the concept of dignity taking applies to the situation of Arab/Palestinian citizens of Israel.

II. DIGNITY TAKINGS

What Is Dignity Taking?

In her fascinating book, Bernadette Atuahene (2014) develops the twin concepts of *dignity taking* and *dignity restoration*, examining them in the South African context. Commenting on one of her protagonists' experience of dispossession and relocation, Atuahene writes: "The bulldozers that razed Kliptown did not just demolish physical buildings, they destroyed Adanna's vibrant community, stole her inheritance, and denied her dignity" (Atuahene 2014, 2). While the focus of her book is on South Africa, Atuahene stresses that "history is replete" with examples of such dignity takings (2).

Dignity takings occur when the state confiscates more than property; such takings simultaneously deny the dispossessed their dignity (Atuahene 2014, 3). Dignity presumes that human beings are of equal value, and entails a respect for each person's autonomy (45–46). As such, dignity takings deny these core values. In the South African context, dignity takings were part of the strategies aimed at dehumanizing and infantilizing the dispossessed (12).

Dignity taking entails five major elements (Atuahene 2014, 26): (1) "A state directly or indirectly" takes property (26–27). (2) "Destroys or confiscates property." Such dignity takings are often effectuated through brutal and unilateral state force (38). Additionally, following Margaret Radin's approach, Atuahene emphasizes the function of property as personhood. Accordingly, when persons are displaced from

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their homes and properties, they suffer great emotional harm. Displaced persons also suffer tremendous and enduring economic harm, since the taking decimates "assets accumulated by multiple generations" (Atuahene 2014, 43). (3) "From owners or occupiers" (30). (4) "Whom it deems to be sub persons." This includes *dehumanization*, "the failure to recognize an individual or group's humanness" (31). It can also occur via *infantilization*, which is the "restriction of an individual or group's autonomy based on the failure to recognize and respect their full capacity to reason" or treating them as if they were minors (32). (5) "Without paying just compensation or without a legitimate public purpose" (34).

Atuahene clarifies that "just compensation" is not sufficient. If the landholder cannot reject the compensation offered and remain on the property, and the taking was not the result of a "legitimate public purpose" but part of a "larger strategy to dehumanize or infantilize" a specific group (South African blacks in the case studied by Atuahene), this qualifies as a dignity taking (Atuahene 2014, 34, incl. n53, 40–41).

Suggestions and Qualifications

While Atuahene's analysis of South Africa demonstrates that dignity takings have been a standard and ongoing process, I believe that in order to employ the concept in other settings, it would be helpful to make some refinements to the above characterization.

First, it seems that Atuahene adopts too quickly a liberal property paradigm. Following Carol Rose, Atuahene understands dignity taking as a "class of *extraordinary* takings" that take place during "revolutions, warfare and regime change" and result in "massive restructuring of property rights (Atuahene 2014, 23)."[1] I disagree. As the case study of Atuahene demonstrates, dignity takings took place in South Africa as part of the regular construction of its land regime. More generally, I believe that much of the normal working of property systems involves ongoing processes of dignity takings.

Similarly, Atuahene does not sufficiently elaborate on the nature of the property taken. As we have seen, Atuahene includes, as her third component, takings not only from owners but also from occupiers. However, a core issue in many systematic dignity takings has to do with the question of whether a property right was taken at all. The determination of the kinds of relationships with land that give rise to property rights is, of course, highly racialized and political.

In fact, some of the major Western theories of property rest on "radical othering." As the scholarship of seventeenth- and eighteenth-century thinkers demonstrates, much of the development of liberalism in general, and modern property theories in particular, took place with an eye on the European colonization project and still bears its imprint (Seipp 1994, 34; Pitts 2010, 216–18; Mennen and Morel 2012, 41; Fitzmaurice 2014, 19, 34). For instance, as Atuahene observes, John Locke constructed his property theory in ways that excluded Native Americans and

1. Emphasis added. Compare Rose (2000).

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other nonwhites from entitlement to property (Atuahene 2014, 24–26). This should not surprise anyone. Locke was deeply involved in British colonial projects (Tully 2007, 140). Locke's famous mixed labor theory of property in his *Second Treatise on Government* (1690) conditions the acquisition of property rights on the removal of resources from nature and combining them with one's labor, a concept in conflict with holistic conceptions characterizing many indigenous peoples' attachment to land (Locke 1948, 17; Mennen and Morel 2012, 41).

Such exclusion rests at the core of many Western property regimes, and therefore it cannot be simply bracketed as an extraordinary type of taking, a point upon which I elaborate in Section V. In fact, most settler societies' property regimes are based on such radical othering at their foundational moment, and much of their working is geared toward erasing this origin.[2] Often, land dispossession and the concomitant taking of dignity occurs hand in hand with the determination—by those having the power to do so—of what qualifies or does not qualifies as property. This not only happens during a remote moment in a distant and bygone past, but also constitutes a central component in many contemporary land and property regimes. As an anonymous reviewer of this article commented, "property systems, particularly liberal property systems, are systems of exclusion, and time and time again legal definitions or redefinitions of property have been used by states to shift property from one population to another." Indeed, property is constantly in the making, and involves an ongoing drawing of lines in relation to what constitutes property. Think, for example, of the convoluted drawing of lines between trespass, license, and adverse possession (see Kedar 1998, 2001, 2003).

Second, as I argue in Section III, dispossession is only one—though crucial—component in the regular workings of land regimes. Therefore, the taking of dignity should be explicated within this context, which also includes the opportunity or lack of opportunity to acquire land. The drawing of lines involves not only *what* qualifies as property, but also *who* is entitled to acquire it. When certain groups are systematically excluded from acquiring certain property rights, and this denial derives from illegitimate criteria such as race, ethnicity, or gender, the protection of this exclusionary property is tantamount to the perpetuation of the taking of the excluded groups' dignity.

In this sense, I agree only partly with Carole Rose in her article in this issue regarding racially restrictive covenants (Rose 2016). Rose argues that "[t]he motivation of racially restrictive covenants was less a conscious effort to dehumanize than a stony indifference to the insult and injury that they caused" (953). Additionally, restrictive covenants "did not so much divest people of property as discourage them from attempting to acquire or use it in the first place" (953). She therefore terms them only "shadows of dignity takings" (953). Since such covenants are currently unenforceable, I agree with Rose that *today* they are only a shadow. However, I think that the enforcement of restrictive covenants, at least until the ruling in *Shelley v. Kraemer* (1948), which deemed them unenforceable by court, should be included within the concept of dignity takings.

2. Additionally, as an anonymous reviewer correctly observed, Atuahene's focus on individual personhood downplays the constitutive connections between property and community.

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Third, I believe that the analysis could benefit from additional clarifications and distinctions. For instance, Atuahene does not distinguish sufficiently between terms such as displacement, dispossession, and deprivation; nor does she clarify their relation to dignity taking (Atuahene 2014, 2, 3, 7). These terms are not always interchangeable. Persons can be dispossessed without being displaced and vice versa. For example, in the case of some Bedouins in the Negev, which I examine in Section V, Israel denied their land ownership, even though it did not displace them, and they remained on the land as formal trespassers. Other Bedouins were both removed and denied ownership.

Conversely, in some cases, at least initially, the state declared certain lands closed for military reasons, and prevented their owners from possessing the land, while keeping the formal title in the owners' names (see Section IV).[3] Likewise, one can be deprived of some of the sticks within one's bundle of property rights without being fully dispossessed and without being displaced. For instance, one could still own one's land but be precluded from building on it or conducting certain traditional activities on said land, say grazing or religious rituals.

Finally, I believe that the fourth component is too limited. Dignity taking applies not only to cases in which the taking went hand in hand with dehumanization or infantilization, but also to cases of radical othering, such as with enemies.[4]

Admittedly, the line is difficult to draw. As Ofer Shinar-Levanon concluded, scholars studying Israeli society note that it contains "a sharp 'us' and 'them,'" or "Jewish as opposed to Arabs," division. "The Israeli society collective self-identity is defined as a negation of the Palestinians, who are perceived as 'Others'—a threat to Israel's continued existence." Furthermore, "some scholars maintain that the Israeli political leadership has defined the Palestinian 'Other' as an 'ultimate evil'" (Weinberg and Nuttman-Shwartz 2006, 99; Shinar-Levanon 2010, 43). Yet, while a discourse of dehumanization of Arabs certainly exists in Israeli society, research reveals that the legal discourse generated by the Israeli Supreme Court often depicted them as enemies or potential security threats rather than as subhuman (Shinar-Levanon 2015).

Notwithstanding these clarifications, as I demonstrate in the rest of this article, the concept of dignity taking can serve as a good analytical tool, and it helps to distinguish between different categories of takings. It applies to some basic expropriation processes that took and still take place in Israel, particularly vis-à-vis Palestinians.

III. DIGNITY TAKINGS IN ISRAEL

As I show in the following sections, the concept of dignity takings can aptly describe several land dispossession processes that have taken place since the

3. See for instance, HCJ 225/53, in which the Israeli Supreme Court approved the decision of the military governor to forbid the petitioner to cultivate his land due to security reasons.

4. Compare Rose (2000, 37). Some of the examples provided by Atuahene on pages 2–3 do not necessarily imply a process of dehumanization of infantlization, but can better be explained as a move of radical othering, such as dispossessions resulting from war or communism.

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establishment of the Israeli land regime. I focus here on dignity takings of Palestinian land. However, this dispossession should be understood as a component—a crucial one—in a larger process of making the Israeli land regime, which includes dispossession of Jews and a selective allocation of land and housing rights to some privileged/favored groups within the Israeli society (Kedar and Yiftachel 2006).

The Establishment of the Israeli Land Regime

On November 29, 1947, the United Nations voted in favor of the partition of Palestine. An ethnic war ensued, during which Israel/Palestine experienced extensive population movements. This included the flight, expulsion, and barring the return of most Palestinians (whether having sought refuge in other areas within present-day Israel, outside of Israel in the Palestinian territories, or in neighboring countries), and the arrival of similar numbers of Jewish refugees and immigrants from Europe and Islamic countries. Some 160,000 Palestinian Arabs remained in Israel after the war and received Israeli citizenship (Benvenisti and Zamir 1995, 297; DellaPegrola 2001; Kedar 2001; Kedar and Yiftachel 2006; Israel CBS 2007).

As part of creating its new social order, Israel constructed a new, national-collectivist land regime.[5] Consequently, approximately 93 percent of Israeli territory was owned, controlled, and managed by either the state or the Jewish nation (through the Jewish National Fund) (Kedar and Yiftachel 2006). The establishment of the Israeli land regime took place through three interconnected processes: (1) *land nationalization*; (2) *centralized control* of the land through the creation of a specialized public institution, the Israel Land Administration (ILA), and (3) *the selective allocation* of limited rights to land (mostly short- and long-term leasing and licensing rights) in ways that mainly favored the *founders* group.[6] Together, these contributed to the development and maintenance of ethnoclass social and spatial disparities in Israeli society.

I focus here on two categories of land nationalization from Palestinians, as they serve as good case studies for examining the applicability of dignity takings to Israel. However, as I have argued earlier, confiscations and expropriations do not stand alone. To understand their deep and enduring ramifications, one should comprehend the entire structure of the land regime, which includes the opportunity or lack of opportunity to acquire land. Thus, in the South African example analyzed by Atuahene, it was not only the taking of the land that demoted blacks to the margins, but also the selective and discriminatory land allocation process, which established a sociospatial regime that entrenched white supremacy through overwhelming control of property rights by dominant groups (Atuahene 2014, 39–40).

5. It is possible to characterize the ethnoclass stratification of Israel during its formative period according to the ethnocratic model. Oren Yiftachel has characterized the socioeconomic order that emerged in Israel as an ethnocratic regime that consisted of three major groups: *founders*, *immigrants*, and *local/indigenous* (Kedar and Yiftachel 2006; Yiftachel 2006).

6. See note 3.

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Land Nationalization

At the end of the 1948 war, Israel controlled 78 percent of British Palestine, with other parts of the land being occupied by Jordan and Egypt (Benvenisti and Zamir 1995). The territory under Israeli rule covered approximately 20.6 million dunams (about 5 million acres) of land.[7] However, only about 13.5 percent of Israeli territory was under formal state or Jewish ownership (Kedar 1998). Israel strove to own and control, without delay, as much of its sovereign space as possible. It initiated a process of land nationalization and settled Jews on former Palestinian land (Kedar 2001; Kedar and Yiftachel 2006). As Joseph Weitz—a central figure in the Zionist and Israeli land establishment—wrote in 1950, in language attesting to his radical othering of Arabs:

> Some theorists . . . think that since the State was established, all the land belongs to it . . . and therefore the land question solved itself and the land was redeemed. . . . The land is indeed State land, *but there is one flaw in it . . .: The rights to the land belong to all the State's citizens, including the Arabs.* . . . In this situation, *we must ensure that most of the land will belong to Jews* . . . and therefore we must continue with "land redemption." (Weitz 1950, 143–45, emphasis added)

To remedy this situation and to create a land regime that would support the Zionist postwar sociospatial vision, Israel nationalized most of the land in its control. This policy rested on new, powerful legislation that transferred public and Arab land to Jewish hands. By the 1960s, approximately 93 percent of the Israeli territory was formally owned and effectively controlled by public and Jewish institutions aggregated together into *Israel Lands* [Mekarkei Israel] (Kemp 1997; Kedar 1998, 681–82; 2001; Forman and Kedar 2004; Kedar and Yiftachel 2006).

The departure of Arabs during the war left vast numbers of properties devoid of their former possessors (Hofnung 1991; Golan 2001; Fischbach 2003; Forman and Kedar 2004; Gelber 2004, 401; Metzer 2004, 87–88, 95–96; Morris 2004, 361). The property of the Arab refugees who no longer resided in Israel was fully transferred to state ownership.[8] In addition, Arabs who remained in Israel and became citizens lost approximately 40–60 percent of the land they had possessed prior to 1948 (Shafir and Peled 2002, 113).

Until the mid-1950s, this legal ordering was effected mainly through the Absentees' Property Law (1950). All Arabs who left or were expelled from Israel in 1948 were defined as absentees and their property as absentee property. The property of those Palestinian refugees was fully transferred to public/Jewish ownership. Additionally, many Palestinians who remained lost their land after being defined as absentees. While they were recognized as Israeli citizens, they were referred to as present absentees: sufficiently present to become Israeli citizens, but not enough to

7. For comparison, 0.247 acres equal 1 dunam; 1,000 dunams equal 1 square kilometer.

8. It is estimated that before 1948, Arabs owned or possessed between 4.2 and 5.8 million dunams of land in the territory that became Israel (Shafir and Peled 2002, 112–13).

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be exempted from the status of absentees (Golan 2001; Cohen 2000, 100; Yiftachel and Kedar 2000; Fischbach 2003, 369–71). The state took present absentees' property through its legislative, executive, and judiciary branches.

The Land Acquisition (Validation of Acts and Compensation) Law (1953), addressed in Section IV, and administrative actions carried out in conjunction with these two statutes, as well as court decisions interpreting and implementing them, served as major additional tools for expropriation (Land Acquisition [Validation of Acts and Compensation] Law 1953; Lustick 1980; Kretzmer 1990; Hofnung 1991; Forman and Kedar 2004).

Furthermore, the Israeli state registered previously unregistered land in its name. Part of the registration served merely as a formal certification of existing state land rights. However, in part, during the settlement process, land was transferred to the state as a result of legal transformation that resulted in the effective dispossession of long-term Palestinian landholders, such as the case of the Negev Bedouins, which is addressed in Section V. It is time now to examine the two Israeli case studies (see also Kretzmer 1990, 58–59; Hofnung 1991; Kedar 2001, 2003, 405–20; Forman and Kedar 2004, 809–30).

IV. THE MILITARY REGIME AND THE LAND ACQUISITION ACT

On October 10, 1948, the Israeli authorities imposed a military regime on most Arab rural areas, one that lasted until 1966. This regime was based on the British Defense (Emergency) Regulations of 1945, which remained in force following the establishment of Israel (Abu Hussein and McKay 2003). The regulations authorized a military commander to proclaim certain areas closed. In such areas, any entry or exit was required to be effectuated with permits (Hofnung 1991, 83, 150–55; Abu Hussein and McKay 2003, 80). Additionally, the Israeli authorities enacted the Emergency Regulations (Security Zones) (Extension of Validity) (No. 2) in 1949, which established protected areas within ten kilometers of the border in northern Israel, and within 25 kilometers of the border in the south (Emergency Regulations 1949, Reg. 1(a); Kedar 2003; Masalha 2003, 25; Morris 2004).

Employing the extensive legal powers granted in these Acts, the Israeli authorities prevented many Palestinians who remained in Israel after the war, but were not classified as present absentees, from accessing their land. In some cases, entire villages of nonabsentee Arabs were forcefully vacated on the basis of security justifications and under the legal umbrella provided by the military regime (Jiryis 1973; Cohen 2000, 68; Bokae'e 2003; Morris 2004, 364).

A major function of the military regime consisted of facilitating the acquisition of Arab land and the Judaization of vast areas under Israeli sovereignty (Hofnung 1991, 81–83, 150–55). Prime Minister Ben Gurion, for instance, declared to the Knesset that the military regime "came into existence to protect the right of Jewish settlements in all parts of the state" (Abu Hussein and McKay 2003, 80). Similarly, Shimon Peres, then Director General of the Ministry of Defense, and later a key figure in Israeli politics, stated that "by making use of Article 125, on which the

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Military Government is to a great extent based, we can directly continue the struggle for Jewish settlement and Jewish immigration" (Lustick 1980, 178).

Much of the initial appropriation of nonabsentees' land under the military regime only consisted of seizure of rights of possession and use. In some cases, land was taken without any legal justification while its former Palestinian owners and possessors were prevented by the military regime from accessing it (Kretzmer 1990, 58–59). Thus, initially, the issue of ownership of such land remained unresolved.

To conclude the taking of such lands, Israel enacted the Land Acquisition (Validation of Acts and Compensation) Law (1953). While presenting the bill, the Finance Minister explained that its purpose was to "instill legality in some acts done during the war and following it" (Knesset Record 1952).

Section 2 provided the essential mechanism. It authorized the Finance Minister to issue a certificate stating that the land was not in the possession of its owners and proclaiming that the land was assigned for purposes of essential development, settlement, or security between May 1948 and April 1952. Such a certificate automatically transferred the ownership of the land to a public entity, the Development Authority. As we have seen, Atuahene (2014) stresses that dignity taking occurs even if just compensation is offered in cases where the landholder has no choice whether to remain on the land and the purpose of the taking is not serving a legitimate public purpose. I believe that the taking that occurred under the Land Acquisition Law fits this definition.

The statute conferred a right to receive limited compensation, normally undervalued monetary indemnification, and in some cases also a grant of a modest plot of alternative land (Knesset Record 1952, 861–62, 893–94). The landholders had no choice, and while the stated aim of the statute was to legalize taking of land for essential development, settlement, or security purposes, in fact much of the taking executed under this statute served to legalize the transfer of land from Arab to Jewish landholders.

According to official Israeli sources, 1,225,174 dunams of land were acquired under this law and the Finance Minister issued 465 separate taking certificates (Israel Land Administration 1965, 165). Included in this count were dozens of entire Arab villages vacated by military action, as well as large segments from inhabited Arab villages. How much of those belonged to private owners is under dispute. The official figure is about 325,000 dunams, but some estimate the amount to be as much as 1 million dunams (Israel Lands Authority, 1965; Kretzmer 1990, 60; Cohen 2000, 84; Forman and Kedar 2004, 820; Holzman-Gazit 2007, 112). There is no doubt that the amount of money offered as compensation did not fit the market value of the land (Jiryis 1973, 76; Bisharat 1993, 519; Masalha 2003, 32–33). In the 1960s, the amount offered was increased, since most landholders refused to receive compensation (Israel Lands Authority 1965; Cohen 2000, 88; Abu Hussein and McKay 2003, 73; Forman and Kedar 2004, 821–22). Still, apparently the amounts offered were far from the actual value of the land.

In assessing whether dignity takings applies to this type of land dispossession, and if so, what we can learn from it, let us closely examine one (in)famous case, that of the Ikrit villagers.

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Implementation: The Story of the Ikrit Villagers

The history of the application of the Land Acquisition Law is outside the scope of this short article (for elaboration, see Kedar 2003; Forman and Kedar 2004). Here, I focus on one example: the protracted and painful story of the displaced villagers of Ikrit. This infamous case was characterized by a prestigious Israeli Official Commission as "an episode that became a symbol" of the problem of the Palestinian internally displaced persons in Israel (Or Commission 2003, § 44).

On October 31, 1948, during the war, the Israeli army entered Ikrit, a Maronite Catholic Arab village in the western Galilee, and was met by the local population with the traditional welcoming symbols of bread and salt. A week later, the IDF evacuated the 616 residents. The authorities promised them that they would be allowed to return within a short period (Ostzky-Lazar 1993; Masalha 2003, 36–37; Morris 2004). However, following two years of failed attempts to return to their village, its residents petitioned the High Court of Justice against their displacement. They argued that they were illegally evacuated from their village and prevented from returning to it, under the guise of the Security Regulations (Security Areas) (1948).

In a bold decision, the three-judge panel ordered the immediate return of the residents to their village (HCJ 64/51 1951, 1122; Morris 2004, 508). Although the Supreme Court used a formalist rhetoric, it did, in fact, protect the link between the villagers and their land. According to the emergency regulations, the evacuation of permanent residents from a security zone is contingent on the receipt of an explicit evacuation order, which was not given in the case of Ikrit. While the state argued that the villagers did not constitute permanent residents, the Court, in a creative move, applied the criteria of domicile in international law to the regulations, and decided that the villagers had maintained their lines of connection to Ikrit. As such, it ordered the return of the petitioners to the village.

Nevertheless, the residents did not return. At first, the IDF simply ignored the Court's decision. "As we have stated," remarked the Court's president in a later decision, "we issued an absolute decree on July 31, 1951 permitting the residents to return to their village. However, notwithstanding this decree … the [authorities] did not execute what was required of them" (HCJ 239/51 1952, 230).

Shortly thereafter, almost two years after they had been ousted from their village, the authorities issued all the villagers a specific evacuation order, correcting the formal flaw in the previous order. The villagers petitioned the Court for an order compelling the authorities to comply with the previous decision. The Court refused:

> If indeed the [military authorities] arbitrarily refused to comply with the first order they received—and we do not rule on that question here—what would induce them to comply with another order which would be issued by the court in the same matter? (HCJ 238/51 1951)

Although the Court expressed some mild criticism for the authorities' disregard for its order, it found no procedural defects in the present evacuation of the

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residents (HCJ 238/51 1951, 230). On Christmas Eve 1951, while the case was still pending, the Israeli Army demolished most of the village (Ryan 1973, 62–63; Ostzky-Lazar 1993, 17; Masalha 2003, 37).

This ended the first phase of the Ikrit affair. While the residents were removed from their village, the question of land ownership remained open. However, soon after the enactment of the Land Acquisition Law (1953), the Israeli authorities issued a certificate stating that the village's land fell under the conditions set in Section 2 of the Law and therefore transferred its ownership to the Development Authority. According to official Israeli sources, a bit less than 25,000 dunams were taken and then allocated mostly to Jewish settlements (HCJ 840/97 2003, § 1). The residents petitioned the High Court of Justice several times, but failed in their attempts to retrieve their land (HCJ 239/51 1952; HCJ 141/81 1981; Ostzky-Lazar 1993, 15).

On December 24, 1995, exactly forty-four years after the destruction of the village, a governmental committee headed by the Justice Minister (the Libai Committee) recommended that 1,200 dunams of land be returned to Ikrit's residents. The Committee concluded that no security reasons prevented the return. It stressed that its proposed solution should come in "continuation of governmental commitments and as fulfilment and settlement of a debt of honor" made by the government to the residents, including in statements before the Supreme Court (HCJ 840/97 2003, § 1). Due to a change in government, however, the recommendation was never carried out.

In 1997, the villagers petitioned the Court requesting implementation of the Libai Committee's recommendations (HCJ 840/97, *Sbeit v. Government of Israel* 2003). They made every possible effort to frame their argument in liberal, human dignity, private property language. They relied on the Libai Committee's findings and argued that the land allocated to them (less than 5 percent of the approximately 25,000 dunams taken) was unoccupied. They stressed that their issue had nothing to do with the sensitive question of the Palestinian refugees' right of return, since the "uprooted of Ikrit are the State's citizens who were ordered to temporarily relocate their place of residence, and they have no connection to the [Palestinian] refugees issue" (§ 2).

However, while the case was pending before the Court, a new, right-wing government was elected in 2001. Prime Minister Sharon submitted a statement to the Court, according to which "the refugees issue, and the Arab demand to return refugees" were a central matter in the recent negotiations between Israeli and Palestinians and the "violent wave" that followed their failure. "The precedent of returning the uprooted to their village would be employed by the Palestinian Authority for propaganda and political goals" (§ 2).

Following the Court's recommendation, the state presented a compensation scheme, deemed "quite generous" by the Court. The petitioners refused, stating that only "the return to their village, limited as it be, could compensate them for the wrong done to them, and that compensation is not a worthy substitute for their lands" (§ 2).

The Court dismissed the petition on several grounds, which I cannot address here. Suffice it to stress that it accepted Sharon's statement and ruled that the

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changed circumstances justified the view that petitioners had no ground for enforcing what the Court did recognize as a binding governmental promise to return the villagers. The petitioners had, nevertheless, a substitute right in the form of alternative land or compensation (§ 6). The Court concluded that the "debt of honor" established by "repeated official promises made to generations of dispossessed, loyal citizens of Israel, remained." If circumstances changed, the Court recommended that a solution that would allow the petitioners to settle in these areas should be sought (§ 8). As the Or Committee later recognized, "the developments of events in this episode led many in the Arab sector to despair of the Israeli state system" (Or Committee 2003, § 44).

Sbeit is by no means an exception. For instance, a recent Supreme Court decision denied an appeal filed by approximately 500 appellants requesting the return of land expropriated under the Land Acquisition Law in 1953 (HCJ 4067/07 *Jabareen* 2010, Danziger's opinion, § 1). The appellants argued that the land never served the stated purpose of the expropriation, and therefore should be returned to them (§ 1).

Judge Danziger ruled on the basis of previous precedents that the evidentiary power of a certificate issued according to Section 2 of the Law is absolute. Therefore, if the certificate states that the land is needed for essential public purposes, one cannot challenge it (§ 25). Additionally, Danziger ruled that the employment of land for the "green purpose" of a manmade forest fits the public purpose (§§ 33–36). Judge Rubinstein concurred, elaborating on the importance of "afforestation in previously desolated or deserted places" in the "ethos that led to the establishment of Israel, such as the development of the land and making the wilderness bloom," as well as in Jewish tradition (HCJ 4067/07 2010, Rubinstein's opinion, § 2).

Thus, the land acquisition cases in general, and the case of the villagers of Ikrit in particular, include most or all of the elements of dignity takings. Typically, Israel took the land in two phases: first displacing the Arab/Palestinian citizens of Israel from their land, and then, after the enactment of the Land Acquisition Law in 1953, taking formal ownership of this land as well. I doubt, however, if the dispossession—and certainly its reluctant authorization by the Israeli Supreme Court—included, as a major ingredient, what Atuahene (2014) characterizes as a dehumanization or infantilization of the displaced. It seems to me that in the land acquisition cases, the dispossession can be better attributed to the branding of the Arab residents as potential enemies or radical others. Finally, while the 1953 Law granted a right to be compensated for the taking, as a rule the displaced could not return to their land even if part of it was unoccupied, as we have seen in the Ikrit case.

Having concluded that this type of dispossession falls within the purview of dignity takings, the question remains whether this categorization is helpful, and if so, in what sense. I became persuaded that this concept is effective. It helps us to identify a particular type of takings, one that pierces intensely the core of one's dignity.[9] Such identification should guide us in devising restitution processes that would restore not only the pecuniary value of the land, but also the taken dignity.

9. The distinction is one of degree, as most takings also hurt one's dignity.

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In the case of Ikrit, the recommendation of the Libai Committee constituted a step in the right direction, a step regrettably not taken.

We now move to examine the next case: that of the land dispute between the State of Israel and its Bedouin citizens.

V. BEDOUINS

An enduring dispute exists between Israel and its Arab Bedouin citizens, who inhabit the Negev, a sparsely populated arid region in southern Israel covering more than half the country. The following excerpt from a newspaper report can serve as a good introduction.

> Salameh al-Kasasi came home from kindergarten on Sunday to discover that his home had been demolished. He left home in the morning and returned at midday—to nothing .... Salameh is a 4-year-old Israeli boy from the "unrecognized" Bedouin village of Saawa in the Negev. In 1952, the Israeli government moved his relatives from the area of Beit Kama—in order to make room for kibbutzim—to the place where he was born. Now the authorities seek to expel his family from there, too. Four times Israel has already demolished this tiny village of Saawa ... and four times it's been rebuilt.
>
> [T]he locals are now rebuilding their homes with cheap components ... sealing them with insulation materials. The fate of their little enclave is sealed, too, they know. At the conclusion of their struggle—a lost cause—the village will likely become a Jewish National Fund grove or a site earmarked for Jewish habitation....
>
> From the 2013 report of the Southern Directorate for Enforcing the Land Laws: ... "Total: 46 demolition days.... Results of activity: 697 demolitions." Between July 2013 and June 2014, there were even more: 859 "results of activity." (Levy and Levac 2015, 4)

Saawa is one of some thirty-five unrecognized Bedouin villages and localities and eleven other communities that are only partially recognized that suffer constant demolitions and threats of evictions.

For centuries, the Bedouins of the Negev (Hebrew)/al-Naqab (Arabic) were seminomadic people subsisting on farming and raising herds. As early as the sixteenth century, they began a gradual process of sedentarization. Starting during the 1948 War, and continuing for more than a decade, Israel expelled or barred the return of most of the 70,000–90,000 Bedouins who resided in the area before the war.

Simultaneously, it crystallized a policy aimed at concentrating the remaining 11,000–14,000 Bedouins, first in an enclosed zone (the *Siyag*) under military rule, and later into a small number of impoverished, state-planned townships. This attempt was partially successful. Of the approximately 220,000 Bedouins currently inhabiting the Negev, only about half reside in these townships in which mostly landless Bedouins were housed. Israel defines the rest of the Negev Bedouins who

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inhabit the unrecognized settlements as trespassers on *mewat* (dead, empty, distant, unassigned, and uncultivated) state land (Goldberg Committee 2008, 65–67; Draft Bill for the Arrangement of Bedouin Settlement in the Negev 2013, First Appendix).

Since the early 1950s, the state's spatial planning strategy for the Negev was based on two key principles: (1) to concentrate the Bedouins into limited, defined, and well-controlled areas, most preferably planned towns; and (2) to Judaize and rapidly develop the rest of the areas for the Jewish population, which was settled in over 100 new rural settlements and several cities and towns (Yiftachel, Kedar, and Amara, 2012).

The perception and treatment of Bedouin Arab villages accommodating several hundred and even thousand residents as unrecognized villages stems from an Israeli version of the *terra nullius* doctrine, which in an earlier publication with Yiftachel and Amara we have termed the Dead Negev Doctrine (DND) (for a detailed analysis, see Yiftachel, Kedar, and Amara 2012). Significantly, the Bedouin Arabs who remained in Israel after the 1948 War did receive citizenship. However, this citizenship status did not prevent their long-term dispossession, discrimination, and exposure to major government efforts *to Judaize the Negev*.

The lack of recognition of dozens of villages, commonly living on their ancestors' land, stems from state denial of the indigenous land regime existing in the Negev prior to the establishment of Israel, as well as the Bedouins' indigeneity. Israel maintains that the Bedouins were nomadic pastoral tribes, denies that agriculture existed in the Negev prior to British rule in Palestine (1917), and insists that the Bedouins lack property rights. As a key state attorney remarked, "[t]he Bedouins do not have ownership rights over their past pasture territories." (Yahel 2006, 11). Likewise, an official Israeli position maintains: "the land laws … do not recognize Bedouin custom as a source of private land rights" (Yaar 2011). Court decisions reinforce the legitimacy of this position (*al-Hawashleh* 1984; *al-Uqbi et al. v. the State of Israel* 2015; for a refutation of this approach, see Yiftachel, Kedar, and Amara 2012).

I have argued earlier that Atuahene too quickly adopts the term *extraordinary takings* while often the normal working of property regimes involves ongoing processes of dignity takings (2014, 3). Indeed:

> White people have used legal instruments to produce the spaces of racial subordination (segregated spaces, native reserves, colonies … racialization is commonly effected through processes of spatialization: separation, confinement, exclusion, expulsion, and forced removal. (Delaney 2009, 167–68)

Likewise, I argued that Atuahene does not sufficiently clarify the nature of the property taken. In many settler-colonial situations, much of the dispossession of indigenous peoples took place by a violent establishment of a new property regime that outright denied the rights of indigenous landholders (Blomley 2003, 129).

Quite often, dignity takings have to do with the denial that property was taken at all. In that sense, the situation of the Bedouins is comparable to processes of

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European displacement of indigenous peoples, which were accompanied by a denial of their capacity to conceptualize a full-fledged property system (Daes 1999; Blomley 2003; Yiftachel, Kedar, and Amara 2012). Consequently, many natives have become trespassers on their own land (Kedar 2003). This often took place in conjunction with the *terra nullius* (empty land) doctrine. Under its standard articulation, *terra nullius* applied to lands unpossessed by any person or nation or, alternatively, occupied by non-Europeans and used in ways unrecognized by European legal systems. In territories occupied by indigenous peoples considered by their colonizers to stand too low on the development scale to have the capacity to own the land, the land was considered empty, waste, "legally unoccupied until the arrival of a colonial presence," and thereby open for the taking (United Nations 2005, para. 31; Miller et al. 2010; Sheehan 2012, 239). Scholars such as Andrew Fitzmaurice, Stuart Banner, Lauren Benton, and Benjamin Straumann demonstrate convincingly that the regular employment of the term *terra nullius* began only in the twentieth century. Simultaneously, scholars persuasively demonstrate that this modern term denotes a conception or a wide understanding that played a key role in colonial dispossession of indigenous peoples under the justification that the land was empty.

Lorenzo Veracini, for instance, explains that *terra nullius* is not found in eighteenth- and ninteenth-century legal sources not because of its absence but, on the contrary, because of its hegemonic presence: "terra nullius covers its tracks. . . . [It] has the remarkable characteristic of denying itself ex post facto by its very being operative" (Veracini 2006, 1).

The Israeli version of *terra nullius* is the DND, according to which Israel defines Bedouin land in the Negev land as empty *mewat* (dead) land under state ownership (*al-Hawashleh* 1984; Yiftachel, Kedar, and Amara 2012; *al-Uqbi et al.* 2015).[10] Like *terra nullius*, the DND pretends that the Bedouins never acquired land ownership, since during the relevant period they were nomadic and did not engage in agriculture. Hence, the DND claims, the land was empty, deserted, or dead. Like *terra nullius*, the DND denies indigenous Bedouin land rights, while simultaneously denying this very denial.

In many settler societies, "[t]he survey served as a form of organized forgetting . . . a conceptual emptying of space . . . a native space" (Blomley 2003, 128–29). Similarly, the processes of dispossession, removal, relocation, and concentration of the Bedouins were accompanied by the introduction of survey and settlement of title in the area inhabited by the Bedouins, which gave rise to more than 3,000 Bedouin land claims. The Bedouins have lost all the 200 settlement proceedings adjudicated to date by the courts (Yiftachel, Kedar, and Amara 2012). This process relied on an Israeli application of a comprehensive land survey and settlement of title based on the Torrens settlement system, which was introduced to Mandate Palestine in the late 1920s by the British.

After the settlement of a title, registration constitutes a new beginning, a so-called magical moment nullifying every claim or right that precedes and contradicts

10. In Yiftachel, Kedar, and Amara (2012), we analyze the various elements of the DND and provide evidence of its shaky and inaccurate legal, geographical, and historical assumptions.

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the recorded information, denying redress from Aborigines attempting to prove legal possession and rights (Shamir 1996, 243).

In the precedent-setting *al Hawashleh v. State of Israel* (1984), which cemented the DND, Judge Halima applied and developed earlier precedents, sanctioning the state's position that since the Negev was wasteland and the Bedouins were nomads who did not engage in agriculture and did not live in settlements, their land was dead land; therefore, under the *mewat* doctrine, it constituted state land to be registered in its name in settlement proceedings.

While it rests on shaky and inaccurate legal, geographical, and historical assumptions, the DND remained unchallenged until recently (see Yiftachel, Kedar, and Amara 2012, and a petition to the Supreme Court in which the above authors were involved, which was recently dismissed: *al-Uqbi et al. v. State of Israel* 2015).

It seems, then, that dignity takings applies to the dispossession of Negev Bedouins as well. (1) The dispossession takes place directly by the Israeli state. (2) It removes Bedouins and destroys their houses, generating long-term emotional and economic harm. (3) Furthermore, this type of case illuminates my third qualification of the concept, namely, that dignity taking often takes place by means of an outright denial of this very taking and a simultaneous claim that the possessors have no rights in the property taken. Thus, as the cases of the *terra nullius* doctrine and its Israeli DND version demonstrate, such takings stigmatize landholders and transform them into blameworthy trespassers. (4) As Israel claims that the Bedouin possessors are trespassers, it does not provide full compensation for the land. At best, it provides alternative housing, conceived as government largess, rather than stemming from a duty to compensate for the taking.

As to (4), it seems to me that in the case of the Negev Bedouins, it is easier than the land acquisition cases to characterize the Israeli approach as fitting the subpersons component, mainly through its infantilization aspect, but also in some instances due to dehumanization. For instance, Minister Moshe Dayan, a central figure in Israeli politics, openly displayed an infantilization approach:

> We should *transform the Bedouins into an urban proletariat*—in industry, services, construction and agriculture. Eighty-eight percent of the Israeli populations are not farmers; let the Bedouins be like them. Indeed, this will be a radical move which means that the Bedouin would not live on his land with his herds, but would become an urban person who comes home in the afternoon and puts his slippers on. *His children would be accustomed to a father who wears trousers, does not carry a Shabaria* [the traditional Bedouin knife] *and does not search for vermin in public*. The children would go to school with their hair properly combed. *This would be a revolution*, but it may be fixed within two generations. *Without coercion but with governmental direction . . . this phenomenon of the Bedouins will disappear*. (Dayan 1963, Moshe Dayan, *Ha'Aretz* interview, July 31, 1963, quoted in Shamir 1996, 231, emphasis added)

Dayan's statement evinces his notion of Bedouins as childlike at best, and that he conceived his and the state's role as one geared toward their modernization and

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urbanization. Such attitude remains part of the current governmental approach toward the Bedouins. Israeli authorities often utilize a paternalistic language to justify their policy toward the Bedouins, presenting dispossession and removal policies as beneficial to the Bedouins, who seem too infantile to understand what is really good for them. In a brochure it published several years ago on the Bedouins, the Israel Land Administration claims that:

> Israel has its citizens' welfare at heart, particularly the welfare of the Bedouin. Instead of prosecution, Israel proposes to settle the conflict by offering extremely generous settlements in return for the withdrawal of the Bedouin's ownership claims. The Bedouin's claims are detrimental to the entire Bedouin population of the Negev. . . .
>
> *In many cases, Bedouin lawsuits hinder* the construction of new neighborhoods, the upgrading of existing village infrastructures, and *the advantageous use of the land for the entire Bedouin population*. . . . many Bedouin land claimants have realized the advantage of accepting a settlement. *Bedouin squatters only harm their Bedouin kinsmen*. . . .
>
> *ILA protects the interests of all Bedouin*. The ILA works very hard to improve the welfare of the Negev Bedouin and to safeguard the rights of this population. (ILA n.d., 2, 9–12, emphasis added)

Simultaneously, one can also encounter a dehumanization rhetoric, or at least one presenting the Bedouins as uncivilized, a rhetoric not unlike the one used by US officials who described Native Americans as savages, as described by Chief Justice Marshall in his leading opinion in *Johnson v. McIntosh* (1823), where he referred to the popular notion that the conquest of land from native Americans was in part justified in their being "fierce and savages."

In the appeal arguments they submitted to the Israeli Supreme Court in the *al-Uqbi et al. v. State of Israel* case (2015), lawyers for the Bedouin appellants attempted to unravel the state's underlying presuppositions. They referred to Professor Ruth Kark's (a leading expert witness for the state) description of the Negev Bedouins as making their living from "robberies and raids over the plain's settlements" and argued that this amounted to characterizing the Bedouins as constituting a "civilization of crime" (C.A. 4220/12 para.,11; C.A. 4220/12, Plaintiffs' Memorandum, paras. 8, 12, 106).

In similar fashion, a recent article published by Kark and two of her doctoral students (one of them having served until recently as the state attorney in charge of the land litigation with the Negev Bedouins), represented the Bedouins in the following way:

> Bedouin consolidation of their Negev foothold was achieved through armed intertribal struggles as well as raids on established Arab settlements that caused the latter's demise. . . . [S]ettled Arabs viewed the Bedouin as *opportunists or worse, as cruel robbers*. (Yahel, Kark, and Frantzman 2012, 9–10, emphasis added)

Thus, the dispossession of Negev's Bedouins demonstrates the effectiveness of dignity takings as a concept that helps identify specific types of takings in which what is taken is not only (or mainly) land, but also core elements of the human

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dignity of the dispossessed. However, unlike Atuahene (2014), I regrettably do not see these cases as extraordinary, but as being quite typical.

VI. CONCLUSION

As we have seen, Israel conducted a wide-ranging process of land expropriation from Palestinians. We have reviewed two major tools here: the Land Acquisition Law (1953) and the application of the DND—which resembles the *terra nullius* doctrine—to the Bedouins of the Negev.

As argued in Section II, the concept of dignity takings can be applied to the taking of land from Arabs/Palestinians in Israel, but this should be done with some qualifications. The central one has to do with the fourth characteristic offered by Atuahene: subpersons. While this element fits the hierarchical racism of South Africa, and might also correspond to other similar situations, I doubt if it correctly describes the Israeli judicial approach to takings from Israeli-Palestinians. While the Israeli judicial system delegitimized Arabs and conceived them as radical others, enemies, or potential enemies, I doubt if this amounted to an overall dehumanization of Palestinians (see Shinar-Levanon 2015).

I also doubt whether infantilization served as a major component in the expropriation of Arab land, except in the case of the Bedouins. According to my understanding—which somehow diverges from Atuahene's—often, the flipside of infantilization is paternalism, which implies the inclusion of the infantilized person or group within the larger society, though in a marginal place. Israeli policy toward the Palestinians, both its citizens and noncitizens, is that of exclusion. The Arabs are perceived as a security threat and an impediment to the Judaization of the Land of Israel, but this does not necessarily require that they be perceived as childlike or inferiors, or be referred to as animals. Suffice it to see them as enemies or potential enemies of the Zionist project.

Additionally, while I find the concept of dignity taking—as a particular type of taking in which the taking strikes at the core of the human dignity of the dispossessed—illuminating, unlike Atuahene (2014), I regrettably do not see these types of cases as extraordinary, but as part of the ordinary workings of many land regimes, certainly in settler societies.

Finally, I have argued that often dignity taking takes place hand in hand with the very denial that anything was taken at all. Often, settlers' land regimes construct property in ways that deny land rights to their indigenous landholders. This has been a standard procedure in the application of the *terra nullius* doctrine and its related Israeli DND, which legitimizes the dispossession of Bedouins branded as trespassers on state land.

Under these qualifications, I believe that in the cases examined here, dignity taking plays a role. Although the scope of this article did not allow me to expand on the case of present absentees, they fit the characterization. Although the legislative and judiciary records show that state and judicial actors were aware of the humanness of present absentees and sometimes were even sympathetic to them, they nevertheless allowed the taking of their land, often to serve what was

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presented as public interest, but in fact was the interest of the Jewish majority. While some compensation was offered, present absentees could not choose to remain on their land, and many of them refused to receive compensation (Kedar 2003, 2014; Forman and Kedar 2004).

The case of the imposition of military regime and the Land Acquisition Law also fits the dignity takings characterization. (1) The state (2) took the land (first only possession and then the full-fledged ownership) (3) from its Arab owners or occupiers (4, with my qualifications) whom it deemed as potential enemies or radical others. As we have seen, the Ikrit villagers are Israeli citizens and, according to the Supreme Court, were owed a debt of honor from the state. Nevertheless, they were prevented from returning to their land, or segments thereof, because Israel perceived them as part of the Palestinian enemy threatening to return to the land. (5) While they were offered compensation, they could not return to the land, even though some of it was apparently unoccupied, and thus the public purpose of the taking and continuing dispossession is highly questionable.

Finally, the case of the Negev Bedouins presents a complex picture, but nevertheless fits the dignity taking characterization. The demolition and dispossession takes place directly by the Israeli state. It destroys homes, generating long-term emotional and economic harm. It does it to those occupying the land, but deemed trespassers by the state and on the basis of a doctrine (DND) that, just like *terra nullius*, denies indigenous Bedouin land rights, while simultaneously denying this very denial. The Israeli approach toward the Negev Bedouins resonates with the fourth element suggested by Atuahene (2014), as it infantilizes them and sometimes even dehumanizes them. Finally, as Israel claims that the Bedouin possessors are trespassers, it does not provide full compensation for the land. At best, it provides alternative housing, seen as government largess and not a duty to compensate for the taking.

To conclude, the concept of dignity takings, with some qualifications, adaptations, and transformations, can serve as an effective tool in analyzing the dispossession of Palestinians land in and by Israel. The concept highlights not only the material loss and harm done by these takings, but simultaneously the ways in which they inflicted devastating blows to the dignity and humanity of the dispossessed.

Finally, the recognition that a certain taking or type of taking such as the Land Acquisition Law and Negev Bedouin cases constitute dignity taking should guide us in devising restitution processes that would restore not only the pecuniary value of the land, but also the taken dignity. Such restoration should recognize both past wrongs and present interests and impediments, while striving to design a healing future.

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