



The Politics of Un-recognition: Bedouin Villages in the Israeli Negev

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ABSTRACT: *In this paper I take a critical look into the policy of withholding official acknowledgement regarding the existence of Bedouin villages (as well as claims to land ownership) in the Israeli Negev. I argue that such policies are not merely discriminatory on an ethno-religious basis; that is to say, the very basis that defines Israel as a State; but that withholding such recognition from existing villages and communities is a particular, and distinctively pernicious, form of such ethnic and cultural discrimination, with its own attendant harms and social costs. In particular, the form of discrimination that is involved, and the harm that it brings about, can be accounted for in terms of the ideals of recognition and identity as universal human needs, and of the de-humanizing effects of a policy whose aim it is to outlaw a whole collective form of existence.*

Public recognition of cultural and collective identities has recently become an important theme in political philosophy, and although our issue here is a specific policy of **un-recognition** – namely, the withholding of official acknowledgement regarding the existence of Bedouin villages (and claims to land ownership) in the Negev¹ - it might serve us well, in trying to understand such a policy, to look into the arguments that have been used to introduce the theme of recognition as a universal political concern.² Without

¹ The problem of unrecognized villages in Israel is presently most acute in the Negev, but it is by no means confined to that region. Unrecognized Bedouin and Palestinian Arab villages exist in other parts of the country, e.g., the Galilee, as well. For a legal analysis of the Bedouin's status as trespassers in their own villages who are devoid of any legally recognizable title to the lands they have inhabited for generations, see Ronen Shamir, (1996) "Suspended in Space: Bedouins Under the Law of Israel," *Law & Society Review*, 30: 2.

² The literature on multiculturalism and on the notion of "recognition" is vast and growing. In what follows, I shall invoke the following: Charles Taylor, (1994) "The Politics of Recognition" in Amy Gutman (ed.) *Multiculturalism*. Princeton: Princeton University Press; Iris Marion Young, (1999) "Social Movements and the Politics of Difference" in Christine Koggel (ed.) *Moral Issues in Global Perspective*. Canada: Broadview Press; Will Kymlicka, (1989) *Liberalism, Community, and Culture*. Oxford: Clarendon Press, and (1995) *Multicultural Citizenship*. Oxford: Clarendon Press; and A. Margalit & M. Halbertal, (1994) "Liberalism and the Right to Culture," in *Social Research*, 61:3.

fully endorsing the so called “politics of recognition” or “difference.” I shall argue that it supplies enough basis to strongly criticize the policy in question as a violation of a universal human right, namely, the (negative) right to cultural self-definition. The point is not merely that such policies are discriminatory on an ethno-religious basis, that is to say, the very basis that defines Israel as a State, nor just that they are rooted in settler-colonial practices of domination, as these have been developed since the pre-State period of Israeli history.³ Rather, it is that withholding such recognition from existing villages and communities is a particular, and a particularly pernicious, form of such ethnic and cultural discrimination, with its own attendant harms and social costs. In particular, the form of discrimination that is involved, and the harm that it brings about, can be accounted for in terms of the ideals of recognition and identity as universal human needs, and of the de-humanizing effects of a policy whose aim is to outlaw a whole collective form of existence. As will become clear, however, I argue for such recognition and identity as universal human needs (and rights) only under a “thin” construal of such rights as “negative,” rather than “positive” rights, the distinction being one between the corresponding (State) duty of non-interference with a collective form of existence, on the one hand, and the corresponding (State) duty of granting minorities special collective powers, services, or immunities, on the other, thereby setting minority groups as legally enforceable intermediaries between citizen and State. The policy of un-recognition is democratically questionable insofar as it stands in violation of the thinner, negative rights in question.

Bedouin Existence in the Israeli Negev

Let me begin by describing the local scene. The Bedouin population in the Negev numbers about 140,000 people, and it is growing fast (by some estimates, it is expected to double in size in just over 15 years).⁴ About half of the population lives in poor and squalid “townships” that were set up for them since the 60s, by the Israeli Government, under a policy that aims at “concentrating” the Bedouin population in small and circumscribed areas, so

³ For the ethnic policies of Israel with respect to its Palestinian-Arab citizens, particularly regarding the confiscation and discriminatory re-allocation of lands, see Oren Yiftachel, (1999) “‘Ethnocracy’: The Politics of Judaizing Israel/Palestine,” *Constellations*, 6: 364-391. For a similar argument with specific applications to the case of the Bedouin-Arabs in the Negev, see Yiftachel, (2003) “Ethnocratic Policies and Indigenous Resistance: Bedouin Arabs and the Israeli Settler State,” *Holy Land Studies* 1: 2: 34-64. See also Tovi Fenster, (1997) “Spaces of Citizenship: The Bedouin and Israeli Frontier Development” in Tovi Fenster and Oren Yiftachel (ed.) *Frontier Development and Indigenous People*, in *Progress in Planning*, Vol. 47, Part 4. (Exeter UK: Pergamon).

⁴ See *Statistical Yearbook of the Negev Bedouin*, Vol. No. 1 (1999). In 1995-6, the growth rate in Rahat, for example, reached 4.47% (as compared to the national growth rate of 1.48%).

as to vacate as much land as possible for future Jewish settlements.⁵ This policy is one facet of Israel's long-term program of "Judaization" of the land for the benefit of Jewish citizens only; a policy rooted in the traditional Zionist ideology of "redeeming" the land on behalf of its historical "owner," namely, the Jewish people ("Geulat Hakarka"). The policy of "Judaization" has also included, beginning with the very inception of the State, large-scale confiscations of most Palestinian-Arab lands (including most ancestral Bedouin lands in the Negev), and the construction of hundreds of Jewish settlements on these lands by means of an institutional framework that sees itself responsible for Jewish settlements only.⁶ The other half of the Bedouin population resides in some 45 villages (and a large number of smaller units) that are not officially recognized as such, and which came into being through a combination of Bedouin resistance to the "townships" policy (which aims at "redeeming" their land) and forced expulsions of Bedouin populations into a concentrated geographical zone (the "Siag") in the nineteen fifties and sixties. These villages range in size between a few hundred and a few thousand inhabitants.⁷ Encampments of a smaller size, ranging between a few tens and a couple of hundred of inhabitants, can also be seen in and around the forty-five villages and the seven existing townships.⁸

The Israeli government acknowledges the existence of these villages only as "scattered dwellings" ("pzura"), not as real villages with any legal standing or planning requirements, and does not provide them with basic services. The government's only policy towards this part of the population is a continuing demand that they evacuate their lands and villages and move to

⁵ Prior to the establishment of the townships in the sixties, the policy of concentration took the form of creating a restricted geographic zone (the "siag" zone) in which alone the Bedouins were allowed to reside. The zone was established northeast to southeast of the town of Beer-Sheva. Most of the 11,000 Bedouins remaining in the Negev after the 1948 war were expelled from their ancestral lands into the restricted zone. The Bedouins were permitted to reside in the restricted area, which was under military government until 1966, but were not permitted to build any permanent dwellings (or other structures). This restriction is still in force today, though various forms of "illegal" building have developed. No other population in Israel faces any similar distinction between "residing" and "building." For more on the history of this policy, and its roots in Israel's exploitation of the Ottoman and British "Mawat" rulings regarding desert land in the Negev, see Yiftachel (2003) and Shamir (1996).

⁶ For a detailed account of Israel's "Judaization" programs and the institutional framework involved, see Yiftachel (2003).

⁷ For developments within Bedouin society, particularly with reference to the processes of spontaneous sedentarization through which these villages have been formed, see Avinoam Meir, (1997) *As Nomadism Ends: The Israeli Bedouin of the Negev*, Colorado: Westview Press.

⁸ A Parliamentary Investigation Committee, chaired by MK David Mena, has found 1440 units ("Rikuzim") in which the Bedouin population is scattered (outside the townships). This figure, however, does not distinguish between the large villages (which themselves often contain many smaller units) and the various encampments not so organized. See "Parliamentary Investigation Committee on the Bedouin Sector Chaired by MK David Mena," The 13th Knesset, Jerusalem (28.2. 1996).

the townships. Until they do so they can expect no services, no building or municipal rights, no town planning and no assistance. As individual citizens, the inhabitants of the unrecognized villages are entitled to rights and benefits that stem from that title (parliamentary voting rights, social security benefits and so on). But no recognition is offered of their collective existence as villages, and none of the rights and benefits that normally ensue from the status of a recognized settlement can be enjoyed within them. This policy of withholding rights and benefits as an inducement for land evacuation on the part of the population could be seen as an institutionalization, within an Israeli administration, of the idea of a "voluntary transfer," that is to say, the idea of compelling an ethnic minority to abandon its traditional habitat by means of constraining its life prospects, rather than by means of direct expulsion. The "transfer" policy is mitigated, in this case, by offering the Bedouins a "township" existence within the country, but this offer, too, is based on excluding the option of village life for an indigenous population that is primarily rural in its lifestyle. Thus, the policy of un-recognition assumes the form of a forced process of urbanization that is foisted upon a rural and semi-nomadic population.

The legal construction of the Bedouins as trespassers in their ancestral lands goes back to the Ottoman Period. An Ottoman ruling of 1858 defined most Negev lands as "Mawat" lands, and specified that such lands could, with proper permission, be allocated to individuals for purposes of agriculture and development. In 1921, the Mandatory British Government reaffirmed the Ottoman Mawat ruling, and specified further that anyone could be prosecuted as a trespasser for use of Mawat lands without the State's permission. The Mandatory ruling specified a period of two months during which previous claimants to land could register their claims for the purpose of obtaining a legal holding (Kushan). For the most part, the Bedouins failed to comply with these Ottoman and British rulings and continued to till the land according to their traditional precepts. In 1969, the Israeli Land Law ("Khok Hamekarkein") specified that all "Mawat" lands would be registered as State lands, effectively dispossessing the Bedouins and depriving their villages from any legal status. Israeli courts routinely dismiss counter-claims by the Bedouins, since the claimants cannot produce Ottoman or Mandatory papers affirming that their ancestors' use of Mawat land had been authorized by these historical governments. By another Israeli Law, the Law of Planning and Building ("Khok hatikhnun vehabnia"), individuals who build or reside on State land without appropriate State approval are trespassers and are liable to be prosecuted in criminal courts. Nevertheless, the Israeli Government has allowed the Bedouin to file land claims, and Bedouins have claimed some 800,000 dunams. So far, most of these claims have been left without resolution. The Government offers the claimants a deal that would recognize their ownership of 20% of their land and remunerate them for the rest, but most of the Bedouins have found these terms unacceptable. Occasionally, the

Government offers the Bedouins leases on lands claimed by them and used for agricultural purposes. Typically, the land claimants refuse this offer for fear of thereby “recognizing” State ownership of their land. When the Bedouins use such lands, the Government sometimes aerially sprays them to destroy the crops.⁹

Inside an unrecognized village, public administration is almost totally lacking, and the law is present only in its punitive dimensions and not in any of its protective dimensions. A person residing in such a village cannot, for example, build a home legally, and when he goes and builds anyway, since people must put a shelter over their heads, he is served with a demolition order. Today there are tens of thousands of such “illegal” dwellings whose owners are under threat of legal proceedings and physical demolitions. No avenues for legal building are ever on offer, except at the cost of abandoning the villages and “transferring” to the townships, which most villagers find unacceptable, or impossible to pursue. Outside of the townships, however, no legal building is possible, and even tin shacks, or slightly fortified tents, are classified as illegal structures and their owners are served with demolition orders. Sometimes, squads of local police and land administration officials carry out physical demolitions. Such raids usually take place in the early morning hours. Families are driven out of their homes by a police order, and the houses are torn down (usually, on top of the family’s property) by bulldozers.¹⁰

An important consequence of these conditions is that a person in an unrecognized village cannot have an official address in his village, since officially he does not reside there. It follows that such a person cannot vote in municipal elections, even in places where the village lies (geographically) within the local council’s jurisdiction. Official residence within the geographic jurisdiction of a local or regional council is, of course, a necessary condition for having voting rights within it, but no resident of an unrecognized village can satisfy that condition.¹¹ From the point of view of

⁹ The legal construction, however, does not explain the policy preferences that are expressed by it. Rather, it reflects those preferences, which are rooted in the Zionist practices of the State of Israel. In this respect, the view offered here differs from that of Shamir (1996). Shamir takes the Law itself to be essentially “conceptualist” and dichotomous (particularly in its commitment to a dualism of civilized order vs. nomadic chaos), thereby attributing to it an anti-nomadic orientation of its own (as if “nomadic” and “chaotic” were pretty much the same). I find this Foucaultian understanding of the Law to be guilty of the very same “essentialism” it attributes to the modernist consciousness it criticizes. For more on this legal situation and its (alleged) roots in the conceptualist essence of the Law, see Shamir (1996).

¹⁰ In the summer of 2002, this grim process was applied to the shacks of the al-Rubeidi and the al-Touri clans (north and north-east of Beer-Sheva), and to block-built dwellings of the al-Azazmeh clan in Wadi-al-Na’am, Bir-Hadaj and bir-a-Sluj.

¹¹ Most local and regional councils in the Negev are implicated in this form of civil disenfranchisement. The councils of Omer, Bnei-shimon, Har-Hanegev, Arad and Dimona all

the local and regional councils in the area, the Bedouin villages simply do not exist. The local council does not levy taxes on them and does not supply them with any services. More often than not, the local council pays attention to the Bedouin villages in its midst only when it tries to expel them (or redraw its boundaries so as to leave them out).

Furthermore, a resident of these villages cannot contract for any basic services from any government agency, or government-run company: electricity, water, telephone lines, road construction, health and education services, garbage collection, or any other service that is readily obtainable in any recognized settlement. Public companies such as “Mekorot” (the water company) or “Khevrat Khashmal” (the electricity company) require government authorization as a condition for hooking up. Bagatz (The High Court of Justice) had to intervene before clinics could be set up in a few of the villages. With very few exceptions, the Bedouin Education Administration (Rashut Hakhinukh Habedoui) will only establish schools outside the villages themselves, which forces the children to traverse fairly long distances, sometimes on foot. (This lack of schools inside the villages has disastrous effects regarding the education of girls, since many parents are reluctant to send the girls outside of the village beyond a certain age).¹² The villagers have to (and do) supply themselves with what they can. Many have their own generators for a few hours of electricity at night; they bring water in tanks for a weekly supply, use cellular phones and seek health-care outside their villages. However, these are all makeshift arrangements, which are very costly and still leave them without adequate provisions and, more importantly, without any stake in the public world that surrounds them.

From the government’s point of view, the very existence of such human “scatterings” is an illegal invasion into public lands, i.e., lands legally confiscated long ago. It, therefore, sees itself as justified in maintaining “the rule of law.” This, however, is a highly selective plea to legality, which is itself conducive to the breakdown of the rule of law. A law, which makes no provisions for the needs of the population under its jurisdiction, or none that are culturally acceptable to it, is a recipe for anarchy and disaster. The villagers, on the other hand, see themselves as the indigenous population of this region, having resided here, in one way or another, for hundreds of years. Their own claims to land have been filed with the government for over 30 years now, but these claims have not been advanced to resolution by the justice ministry, and a legal stalemate ensues, which is (in the short term) to the government’s interests, but (in the longer term) ruinous not only to the

have unrecognized villages in their midst, whose inhabitants do not enjoy municipal voting rights, do not pay taxes and do not receive any services. .

¹² For this and other issues regarding Bedouin education, see Ismael Abu-Saad, “Minority Higher Education in an Ethnic Periphery: The Bedouin Arabs” in Oren Yiftachel & Avinoam Meir (ed.) *Ethnic Frontiers and Peripheries: Landscapes of Development and Inequality in Israel* (Colorado: Westview Press, 1998).

rule of law, but also to the fabric of living throughout the whole region (and the country).

In the village of Um-Battin, to take one example, there are some 4000-5000 inhabitants. The village is unrecognized (though there are currently plans to establish another “township” in that area), and the lack of infrastructure is visible even on a most cursory inspection. In the middle of the village runs Wadi Hebron, which brings sewage from the towns and villages of the Hebron Mountains. The filthy waters running through the village also contain a high toxic metal content from industries along the way (mercury, in particular). In the summer, clouds of mosquitoes rise from the standing water to attack the inhabitants who have almost given up on any protection against them. Other settlements in the area have also felt the brunt of this yearly mosquito infestation, but the inhabitants of Um-Battin live right on top of them, and are totally defenseless. Like all government agencies, public health bodies simply ignore the fact that the infested area is also heavily populated. (Some work has been done to drain the river under pressures from middle class inhabitants in neighboring (Jewish) settlements, but no long term solution has been offered, and the issue is now pending in Bagatz – the High Court of Justice.) The river of sewage cuts through the village, and every morning children can be seen crossing it, by foot, on their way to school. There are no roads in Um-Battin, so there are also no bridges, and the children simply walk through the mud and the slime, carrying the pollutants along with them. Government officials are blind to this public health hazard, as they turn a blind eye to the very existence of these communities.¹³

As noted, these policies are rooted in the old Zionist ideology of “geulat hakarka” (redemption of the land), and what they try to achieve is a passive transfer of the population to circumscribed centers (townships) for the benefit of Jewish settlements. To enforce this policy, a special administration has been set up (within the National Administration of Lands (“Minhal Mekarke’ey Israel”) under the Orwellian name of “The Administration for the Advancement of the Bedouins” (“Haminhala Le-kidum Habedouim”). It is this administration that is primarily responsible for continuing efforts to remove the Bedouins from their villages, and for making it impossible for the villages to contract for any services. Other agencies simply go along. On this administrative logic, disenfranchisement is advancement, but this is not, of course, how the population perceives this offer of “advancement.” The inevitable failure of the policy does not deter the administration, and the

¹³ Recently, a temporary injunction has been issued by the court mandating the construction of temporary bridges in the village, despite the absence of statutory planning in the area. In reply to the appeal, the Government has committed itself to diverting the sewage to a water purification plant in the city of Beer-Sheva. So far, however, very little action has taken place in fulfilling these commitments.

situation is deteriorating as the villages grow in size, population and hardship, and continue to sprawl over the hills of the Negev. (Recently, plans have been circulated to establish a few more townships and to set up a ghostly, supra-territorial "regional council" for the prospective inhabitants of those new townships. These new plans, however, are a continuation of the same old policy of townships, and are unlikely to succeed any better. They, too, imply a refusal to recognize the existing villages).

Quite obviously, the politics of Un-recognition has distributive effects that are highly discriminatory and strictly in violation of any democratic standards of equal citizenship and equal opportunity. The unrecognized in the Negev share the ambiguous status of the non-Jewish citizen in an exclusively Jewish State, insofar as they cannot aspire for more than "second class" citizenship – citizenship not based on the principle of Jewish return - in a State that is less than a well-ordered democracy.¹⁴ The lack of full separation in the body politic of this country between citizenship and ethnicity, like the lack of full separation between State and Religion, stands in the way of an unhindered policy of equal dignity and equal standing before the law.¹⁵ But the policy of un-recognition carries an additional harm that

¹⁴ The Israeli Law of Citizenship (1952; amended 1980) distinguishes various categories of citizenship according to the basis upon which it can be claimed and granted. Jewish citizens, in particular, enjoy their citizenship on grounds of the principle of Jewish return (unless born to Israeli citizens). Palestinian citizens obtain their citizenship on a very different basis. They are (the descendents of) mandatory residents who remained within Israeli borders after 1948 (and satisfied various other conditions, designed primarily to exclude the refugees). For more on the Israeli law regarding citizenship, see Amnon Rubenstein, (1991), *Hamishpat Haconstitutziy shel Mednat Israel*. Tel Aviv: Schocken Publishing House. (In Hebrew).

¹⁵ Two basic laws, one regarding human dignity and freedom and one regarding liberty in the choice of an occupation (1992; amended 1994) codify the legal status of Israel as "Jewish and Democratic." In particular, both "Basic Law: Human Dignity and Freedom" and "Basic Law: Freedom of Occupation" specify that their purpose in protecting freedom and dignity is to anchor in basic laws the values of the State of Israel as a Jewish and Democratic State. This anchoring of "Jewishness" in Israeli law codifies what has previously been accepted as a matter of course and anchored only in Israel's declaration of Independence (which is not a legally binding document). What business is it of a democratic State to anchor "its" values in its legal system, particularly as these are particularistic and exclusionary values not clarified in the law, and thus, it is not clarified whether these two values (being Jewish and being democratic) are mutually compatible. There are, of course, good liberal grounds to think that they are not, or not always, compatible. A State that anchors a particularistic set of values in its basic laws, where these values are alien to some 20% of its population, is a State, which codifies a difference between its citizens, namely, a difference between citizens who do and citizens who do not share the codified "values." Thus, it is a State, which does not remain neutral among its groups of citizens and codifies a first class and a second-class status amongst them. It is questionable how such a State can remain democratic in any but the brute majoritarian sense of the term. Another problem is whether such a State can refrain from drawing further distinctions and divisions among its citizens. Can there be a State that is legally "Jewish" that is not inclined to one or another conception of Judaism, e.g., the orthodox conception, and does not, thereby, discriminate both against practitioners of other forms of

needs to be addressed. It is the following. A second-class citizen suffers discrimination as he or she ventures into the public realm (e.g., as he or she tries to purchase housing in a settlement that bars non-Jewish citizens from living on national land – a discriminatory practice recently disqualified by the “Katzir” ruling of the High Court of Justice (Bagatz). By contrast, the unrecognized have to contend with a more intrusive public sphere that rejects the collective dimensions of their own existence, and infringes upon their right to define themselves in accordance with their own understanding of their history and identity. Un-recognition is the outlawing of a human form of existence; it leaves no [physical] space for that form of existence to express itself even privately (or in such minimally public areas as housing rights). Thus, on top of all its distributive ill effects, refusing to recognize is an intrusion upon an identity and a form of life.

In what follows, I would like to articulate the nature of this offense (and the harms associated with it) as these have been diagnosed in the debate over multi-culturalism and liberal democracy. Again, without fully endorsing the multi-cultural politics of recognition (or identity/difference) or the (positive) right to culture that such political philosophies are associated with, I wish to use the insights of that line of thought to better understand the specific offense of un-recognition, and the grounds of what may be seen as a negative right to culture – the right of each community to define its own identity without State interference - that is violated by it.¹⁶ The distinction between positive and negative rights is borrowed from discussions of welfare rights and is given a new application here to the question of collective cultural rights. As noted, the distinction is one between a corresponding (State) duty of non-interference (to some minimal degree) with a collective form of existence, on the one hand, and a corresponding (State) duty of granting minority cultures special powers and immunities on the other. I argue that this way of extending the positive/negative distinctions to cultural rights allows

Judaism (followers of conservative or reform forms of Judaism), and, more seriously still, against Jews who are disqualified as Jews by orthodox doctrine, e.g., Jews not satisfying the matrilineal conception of Jewishness favored by orthodoxy? Present conditions in the Jewish and Democratic State should raise serious doubts with regard to the level of its commitment to the second of these conditions. Where Jewishness is concerned, an ethnically selective “democracy” is always at a risk of turning into a full-scale theocracy.

¹⁶ It goes without saying that the unrecognized in the Negev also share the fate of indigenous people the world over who have their own cultural conception of land distribution, housing needs, and a host of other conceptions and practices disqualified by “modern” legal conceptions of colonial powers and settlers. In this paper, however, I shall not deal with the comparative dimension of un-recognition, but only with the Israeli phenomenon. The demand articulated here of recognizing a negative right to culture (in the form of recognizing villages and land-ownership claims that are based on a local, pre-State tradition) may not fit other contexts. The distinction between negative and positive cultural rights, which is available in this case (where the Bedouins require non-interference and equality, but not any kind of exclusivity) may not be similarly available in other cases. For a comparative view, see Yiftachel & Fenster (1997).

for a democratically viable form of multiculturalism, limited though it may be, and also that such a distinction highlights the specific offense of un-recognition as a violation of a democratically indispensable right.

The Public Limits of Cultural Recognition

The politics of recognition (or difference) is ranged against the liberal-democratic conception of the State and of the public sphere. The liberal paradigm of the State, so it complains, consigns collective identities to the private, or voluntary, sphere, while demanding (from all) full assimilation in the public realm on an alleged “individual-universal” basis. Liberal democracy has its moral foundation in a social contract theory, i.e., in a view of state and society as constituted by a hypothetical agreement that rational and self-interested individuals would freely enter. Such a contract is supposed to provide universal terms upon which the public sphere is to be regulated. The problem is that no real social arrangement can, in fact, offer a purely neutral, universal set of terms on which to conduct public transactions, and any arrangement that is less than neutral and universal is, in reality, a biased and prejudicial basis of assimilation where minority groups are concerned. In such cases, the burden of assimilation is not equally distributed. Minorities are on call to adapt to dominating majorities, even at the expense of their own identities, while majorities get to pose as “universals,” i.e., as the holders of an exclusive purchase on humanity and rationality. The typical outcome of such jockeying for collective positions is fractured identities for some, who cannot succeed in assimilating on what is really an unfair basis, and feel rejected or unworthy as a result, and superiority trips for others, who get to blame the results of such assimilation failures on their victims; a “generous offer” of assimilation has been extended, so the conservative argument goes, but the “partner” was not there to accept it, or was not capable of meeting its terms. In reality, however, the “offer” of assimilation is typically less generous than it is made to appear, and it usually includes tacit (and unacceptable) demands, namely, that the dominant majority is to be accepted as defining the norms for all humanity.¹⁷

¹⁷ An argument such as this lies at the heart of the contemporary turn against Enlightenment values and humanism in general, not merely against liberalism or the contractarian tradition in political philosophy. The Enlightenment’s appeal to absolute moral standards, universally accessible to human reason, has been criticized as a mask behind which particular biases can strive to dominance. All too often, claims to universality (or rationality) turn out to be mere projections of hidden claims to superiority (on racial or patriarchal grounds), and serve to legitimize oppression and exploitation. It is a matter of debate, whether this phenomenon is essential or contingent to the humanist, enlightenment-inspired stance, that is to say, whether any appeal to universality, being made on one or another particular basis, is (of necessity) merely a reflection of a partial perspective, it being a mistake to suppose that there is a universal human essence just waiting to be discovered. Clearly, there could be

More often than not, the liberal notion of the state as “blind” to particular differences is, so it is argued, merely an expression of one culture’s particularistic identity. Conceptually, a genuine liberalism is possible, which takes care to allocate the burden of assimilation in equal measures to all. Such liberalism would bring with it no assumptions about who has, and who has not, already reached the requisite degree of universality, and will assume that all are equally in need of overcoming their particularism. Radical multi-culturalists tend to reject such liberalism even as an ideal. It, too, they would claim, places the aspiration to universal rationality above particular identities, with ill consequences to communal cultures and to the functioning of individuals within them. Such radicals also tend to favor group rights as a public concern, even where these rights conflict with other, more “universal” or contractarian-based rights. More moderate critics do not reject the liberal ideal, rather they point out that it is highly utopian, since no society can actually reach pure contractarian terms of social and political engagement. Such moderates would also advocate group rights, but only to the extent that they would not conflict with universal, contractarian rights. Either way, liberal democracy is brought to task for failing to respect the public status of collective identities, or failing to do so on an equal basis. In both these versions of multi-culturalism, collective cultural rights are recognized, though a difference remains as to whether (or to what extent) such rights are to take precedence over universal human (or civil) rights.

These points have been developed, with varying degrees of radicalism, by contemporary multi-cultural thinkers. Iris Marion Young, for example, argues that “Blindness to difference disadvantages groups whose experience, culture, and socialized capacities differ from those of privileged groups.” This is so because “assimilation always implies coming into the game after it is already begun . . .” and because it is always the privileged groups that “implicitly define the standards according to which all will be measured . . .”¹⁸ Young is skeptical of “transformational” programs of assimilation that recognize this danger of bias, and that attempt to rectify it by greater self-criticism, awareness of past injustices and affirmative programs of correction. She is suspicious of any claim to universality in the political realm (such as those implied by the contractarian tradition). A similar skepticism appears in Charles Taylor’s argument in “The politics of Recognition,” though Taylor attempts to confine multi-cultural criticism to just certain forms of liberalism (“Judicial review” liberalism). Still, Taylor gives voice to the more radical perspective as follows:

The charge leveled by the most radical forms of the politics of difference is that “blind” liberalisms are themselves the reflection of

different positions on this matter, and to acknowledge the possible interference of biases (racial, sexual, ethnic, etc.) is not yet to accept that such interferences are unavoidable.

¹⁸ I. Marion Young (1999[1990]): Pp. 173-174.

particular cultures. And the worrying thought is that this bias might not just be a contingent weakness of all hitherto proposed theories, that the very idea of such a liberalism may be a kind of pragmatic contradiction, a particularism masquerading as a universal.¹⁹

Hence, a politics of recognition is at large which calls for identities to be recognized in the public sphere as exercising legitimate demands upon the state and its resources, and legitimate constraints upon legislation and public administration. Examples of such demands include the rights of communities to restrictive linguistic regulations, to autonomy in education, to ancestral land rights, and so on. Similar demands, however, have also been made on behalf of various forms of nationalism, tribalism and political particularism. Indeed, Zionism, itself, with its anchoring of “Jewishness” as a state value, can also be presented in these terms. What such policies have in common is the acknowledgement of a collective right to culture, namely, a right borne by individuals insofar as they are members of particular groups, to enjoy special protection, regulations or benefits that are designed to promote the culture in question.²⁰ The politics of recognition rejects liberal demands for separation between the public and the cultural spheres. In both radical and moderate forms, it cautions against the damage that could be wrought on both communities and individuals by the destruction of their collective identities through (excessive) separation and assimilation: the alienation that is suffered by victims of such destruction, the feelings of emptiness and despair that such alienation can engender, and the host of asocial forms of behavior – from drug-use, to crime, to random violence – that are the typical result of such despair.

Liberals demur these collectivist demands, as the abandonment of the principle of universal equality under the law, but they often fail to take note of the fact that possession of a collective identity is, indeed, a vital human need, and that the separations they advocate in the public sphere, being expressions of their own particular culture more than they are universal decrees of purely hypothetical contracts, leave too many individuals bereft of their sense of community, destiny and self-worth. Indeed, one of the deepest problems with too narrowly individualist forms of liberalism is that they [usually] fail to recognize that citizens have not merely individual interests and liberties, but also inter-personal attachments, both private and cultural. These attachments are constitutive of the identities of individual citizens, and they condition, in complex ways, their ability to make use of the liberties provided by the contractarian State. It follows that a State committed to liberty (and well-being) cannot ignore the cultural attachments of its citizens, the dimensions that tie them together as collectives and that go beyond their interests as individuals. The State has a duty of recognition towards its

¹⁹ C. Taylor (1994): Pp. 44.

²⁰ For the right to culture as a collective right, see A. Margalit & M. Halbertal (1994).

citizens, and it cannot legitimately ignore their identities or make its protection and services contingent upon the ability (or willingness) of the citizens to abandon their cultural attachments. The citizens, of course, have a corresponding right to be recognized for what they are, and not to be treated as mere “abstract” individuals. The consequences of this type of cultural alienation that liberalism requires (when too narrowly construed) may well be very costly. They may deprive individuals and whole communities of the protection they need in order to survive.²¹

The upshot of this description is that multi-cultural reasoning does indeed succeed in articulating a dimension of social existence to which state and society are accountable, but for which liberalism and the contractarian tradition have not been able to supply a proper account. Worse still, liberalism and the contractarian tradition are partially constituted by denying this dimension and by refusing to accommodate its demands. Multiculturalists point out that this refusal could be prejudicial in application and injurious to minority citizens, and their point is well taken.

Unfortunately, however, the politics of recognition is more successful in articulating the plight of the un-recognized, than it is in developing a systematic political philosophy. The problem is that collective and particularist identities are often themselves highly oppressive in their own right, so a positive right to culture cannot be universally granted. More often than not, collective identities involve internal practices of domination, discrimination and humiliation that any conception of humanity would be hard-pressed to ignore. Examples are not hard to come by. Practices of culturally inspired bodily mutilation (circumcisions, male and female), blood vengeance, rigid caste differentiation, and so on, are well documented phenomena to which no moral perspective can remain indifferent. In the political sphere as well, oppression can result from excessive claims to identity and recognition. (As noted, Zionism, itself, has been claimed to be legitimate on grounds of a persecuted cultural minority’s right to assert its identity as a sovereign nation; the failure of nationalist forms of Zionism to acknowledge the identity claims of its victims (Bedouins and others) is a typical example of the issue at hand.) A plausible political philosophy would

²¹ Obviously, this argument for a right to culture is a version of the arguments used to introduce various welfare rights. In all such cases, the right of the individuals is inferred from a corresponding duty of the State, and the State’s duty is derived from other state duties that are already recognized, namely, the duties it incurs on a contractarian basis regarding the basic liberties of its citizens. The point of these additional State duties is that without incurring them it cannot meaningfully fulfill its more basic duties. As will become clear, I think this argument applies to negative cultural rights such as the right to a rural (or semi-nomadic) form of life, as much as it applies to positive welfare rights such as the right to health services or education. However, the argument does not apply to positive cultural rights, e.g., the alleged right to restrictive linguistic regulations, since these are not only unnecessary for the protection of basic liberties, but also inimical to them.

still need something like a universal contractarian perspective to serve as an independent court of appeal from which to render normative and critical judgments on such practices. It is not a serious option to forsake the universal perspective altogether, since without it there is no morally adequate criticism of social and political practices.

It follows that the more radical forms of multi-culturalism, or the politics of recognition, are logically self-defeating. If, as Taylor argues, liberalism involves the “pragmatic contradiction” of a particularism masquerading as a universal, radical multiculturalism, it has these masking relations reversed. It appeals to a universal right of culture by denying the viability of any universal (culture-transcendent) perspective. It is, one might say, a universalism masquerading as a particularism. Unfortunately, a genuinely radical particularism cannot be established on the basis of a universal right, and the appeal to rights on behalf of such radical particularism is no less of a “pragmatic contradiction.” Thus, radical multiculturalism undermines the critical perspective, which it needs to employ in its own criticism of liberal democracy, and it is left without a sufficient moral basis. The more moderate view of the multi-cultural argument remains plausible in its criticism (and, indeed, very convincing in raising the concerns of identity and recognition), but finds there is an answer within the liberal-democratic view. It is that a universalist perspective in political criticism need not be abandoned, but that no-one should get away with assuming that it has already been reached, least of all by existing political hegemonies. The burden of “assimilation,” or better still, the burden of cultural self-transcendence, should be equally placed on everyone’s shoulders, and should not serve for collective ego-trips of superiority. Alternatively, opportunities for public expressions of cultural perspectives should be extended equally to all communities in less liberal, but still democratic, consociational arrangements. As Will Kymlicka points out in an influential study:

[T]he weak versions [of multi-cultural arguments – author’s comment] advance some true and important claims, but these claims are not in conflict with liberal premises and principles. The strong versions, which are inconsistent with liberalism are ... mistaken, and contain the potential to justify repressive politics.²²

One way of improving upon the distinction between the weak and the strong views of the multi-cultural argument is to distinguish, as I have been suggesting, between a positive and a negative right to culture. As described above, both radical and moderate multi-culturalists advocate group rights, while remaining at odds on the question of whether such rights can take precedence over universal contractarian-based rights. A clearer multicultural

²² W. Kymlicka, *op.cit.*, Pp. 2.

position can be formulated in terms of a commitment merely to negative group (or cultural) rights. A negative right to culture squares more easily with the liberal tradition, since all it does is circumscribe and protect another realm of freedom from state interference. It does not have to introduce “groups” as publicly enforceable intermediaries between the individual and the state. In this way, multi-culturalism could be seen as a form of liberalism that draws attention to a specific dimension of liberty, that of culture and identity. Without denying that in some (narrowly circumscribed) cases positive group rights should also be recognized (at least on a temporary basis, rectifying past injustices), the establishment of the negative right goes a long way towards protecting the culturally (or ethnically) disenfranchised (or un-recognized). Indeed, it is the negative right in question that is violated by specific policies of un-recognition, hence, rectifying this form of injustice does not require the endorsement of any illiberal group-right.

As noted above, a negative right is one the possession of which imposes a corresponding duty of non-interference on everyone else (including governments and public agencies). A positive right, by contrast, is one, which imposes a corresponding duty of providing special benefits (or powers) on some (not all) people or agencies.²³ The distinction has been introduced to account for the difference between liberty-rights and welfare-rights, but it is suitable for our purposes as well. A positive right to culture would involve designating a State duty to provide special protection and provisions to the members of the culture in question, e.g., land rights that are not enjoyed by all citizenry, educational exclusions and restrictions, and so on. Positive cultural rights might also be recognized as imposing special restrictions on recognized rights of others, e.g., language or educational rights. Multiculturalists tend to favor such positive rights, but given the particularities involved, such rights could hardly be given to all on an equitable basis. Furthermore, they may involve conflicts with other human rights as well. By contrast, a negative right to culture is the right not to be interfered with in the pursuit of one’s own identity, or at least not to be so interfered with on an unequal basis (or without a good moral reason). It is the right to pursue one’s communal life without being outlawed, banned or transferred; the right to be left with some [physical] space in which to exist as a culture and a way of life. This is also a right that may run into problems when generalized. Some cultures may be too violent (to their own members or to outsiders) to be left alone without interference, and certainly some practices within such cultures may violate human rights and raise serious moral concerns. Nevertheless, the negative

²³ For the purpose of my argument, I shall define positive rights more broadly, as rights that require either special benefits or special delimitations of other rights and protections. The term “special” is designed to indicate that the burden of supplying the benefits, or delimiting the rights or protection, is not imposed on everyone on an impartial basis. In some cases, however, the existence of a positive right does not involve the provision of special benefits, but only a corresponding limitation of other people’s rights.

right to culture is much easier to generalize than the positive right, since there would be much less conflict with other (cultural or human) rights, and the burden of justification could be placed on those advocating special interventions in extreme and exceptional cases. Furthermore, the negative right to culture is precisely what the more plausible arguments in the multi-cultural literature justify, namely, the right to collective self-definition as a vital human need. Indeed, it is the violation of the negative right that raises the greatest concerns, and it is this that policies of un-recognition do not respect.²⁴

This is not to say that positive cultural rights are never to be acknowledged or pursued. In many cases such rights can be granted without undue violation of other rights, individual or collective, and in such cases the general case for cultural recognition could (and should) be taken to encompass these rights. Thus, for example, the right to have one's collective language recognized as an official language (even though it might be a minority language), though it is a positive cultural right, cannot be seen as an infringement on the rights of others. The argument for recognition should certainly cover such cases. Sometimes positive cultural rights could be accepted, even when they do infringe, to some extent. Regulations imposing French signage in Quebec, if they are not exclusive, could be seen in this light. The point is only that such rights cannot be granted on a universal basis, and they tend to be overridden by the interests (and rights) that they infringe upon. By contrast, negative cultural rights are more easily universalized. Collectives, as well as individuals, have a right not to be interfered with, at least to some extent, and while this extent, too, may be debatable in terms of possible infringements of individual rights and liberties, (as in the case of blood vengeance, or issues of "family honor") it is possible to see that there is a minimal level of collective recognition that all cultural minorities deserve, and that might still be substantially violated by policies of "voluntary

²⁴ A communal right to restrictive linguistic regulations, or restrictive educational opportunities, might serve as an example of a positive right to culture. The possession of the right imposes a duty on some to restrict their freedom of choice in areas (linguistic expression, education decisions) that are normally governed by the free choice of each individual. A negative right in these areas would be the right not to be interfered with in matters of communal language and education. In Israeli society this latter right is respected (not without its own problems) to the extent of allowing ultra-orthodox education to proceed without State interference (in terms of its content), and still be publicly funded and supported. In the area of land rights, a positive group right would amount to conceding group exclusivity in allocating land, or at least restricting access to land in (say) a particular geographical area in accordance with cultural or ethnic criteria. A negative right in this area would amount to recognizing ancestral claims as legitimate among others (without exclusivity), and of not interfering with traditional patterns of land allocation and ownership to the extent of disqualifying them completely (other interferences may be necessary, but they have to be justified on general principles such as public need, etc.). Sometimes the distinction is murky, but in places where it can be drawn it could serve to establish a baseline of equal recognition.

transfer” or land appropriation. Though it is minimal, such collective recognition is not reduced merely to individual rights of the people in question. The whole problem is that sometimes, individual rights are secured only on terms that are culturally unacceptable.

In the context of welfare, negative rights have been criticized as insufficient. Liberties are vacuous, if minimal means are not provided to make their enjoyment possible, and this may require positive welfare rights as well. An argument such as this may well apply in the cultural sphere as well. A group-right for self-definition may be rendered meaningless without positive rights that would make the pursuit of the negative right sustainable. A people may be too poor to pursue its identity in any meaningful way, and social arrangement may be too exploitative in the economic sense to make the liberty in question meaningful. However, the positive rights that are required in cases such as this are (for the most part) general welfare rights, not positive group rights.²⁵ A group that cannot pursue its negative cultural right for self-definition, unless a positive group right is also introduced that delimits more general human rights (and clearly there are such cultures), puts its negative rights at risk of being overridden (depending on what specific duties are imposed). It brings about moral considerations against the pursuit of its own negative rights that may be overriding in certain cases. (Again, Zionism is a case in point. If its negative claim to identity can only be pursued by instituting positive rights that infringe on the State’s capacity to recognize others, then maybe the negative rights in question need to be balanced against the negative rights of others.)

The Evil of Un-recognition

This argument could be developed further, but let us now return to what multi-cultural reasoning does indeed succeed in articulating, namely, the evil of [selective] un-recognition as a violation of a negative right to group identity. As we have just seen, even political systems that do aspire for neutrality and equality fall a long way short of reaching that ideal, and leave their unassimilated minorities with an extremely unfair bargain: assimilate on the majority’s conditions, (thereby conceding its cultural superiority, its greater claim to humanity, and so on) or be left out, and carry the burden of failure on your own shoulders, often in the form of rejection, disenfranchisement and ridicule on the part of the hegemonic majority. This is the way that the negative right to culture is often violated. Obviously, these terms are even harsher in political systems (like ours, the “Jewish and

²⁵ Though sometimes such welfare rights may involve not merely the allocation of benefits to members of the group (or culture) in question, but also restrictions of commercial and developmental ventures in particular regions, protection of the environment to the extent of keeping it viable for a culture to continue its existence, and so on.

Democratic” State) that make no pretense of neutrality and equality (as between different ethnicities), but make rigorous demands of assimilation anyway. This is precisely the situation of the unrecognized villages described above. The demand for assimilation comes to them as a demand for forced urbanization (and modernization), i.e., a demand for integration into townships that were set up for them, with Hebrew names such as “Rahat” or “Segev Shalom,” by successive Israeli administrations. Such an assimilation is not offered on the basis of equality, but rather on a highly discriminatory, ethnic policy of “redeeming the land” for Jewish settlement. This policy is unjust in its violation of the negative right to culture, and it is doomed to failure insofar as it demands of the Bedouins a form of urbanization and modernization that requires acceptance of Jewish superiority in terms of the connection to the land. It requires that they give up on their own claims to ancestral lands as a condition for integrating into the larger society. This the Bedouins cannot accept without, in effect, committing cultural suicide. However, despite the inherent unfairness of this (not so tacit) demand, the consequences of the inevitable failure are visited upon the victims in the form of the official withholding of recognition (and state services) from their villages. In this way, the villagers are left with no choice but to remain outside the protection of the law, and incapable of getting any official acceptance of their existence, as anything but “scatterings” that are permanently in violation of the law (even as they put a tin-roof over the heads of their children in the heat of the Desert’s sun). Apart from all other injustices that are inherent in these discriminatory practices with regard to the Bedouins, in particular, and the Israeli-Palestinians, more generally, the projection of a false and humiliating identity on the un-recognized as a mere “scattering” and as permanently illegal “invaders” to lands not their own, is a violation of a right all people should enjoy, namely, the right to define themselves culturally, and see that definition mirrored back to them, undistorted, in the laws and practices of their State. If the politics of recognition can teach us anything, it is the importance of that right, and the dire social consequences of violating it.

Recently, a court order summoned the Bedouin civil-rights activist Nuri al-Ukbi.²⁶ He was ordered to demolish a wooden structure that he (and others) built in their unrecognized village to serve as a kindergarten for the children of their family, and also as a social club, or gathering place, for women. Al-Ukbi has refused to pull the structure down, and was summoned to court for violating this court order. He told the judge, in no uncertain terms,

²⁶ For the past 51 years, the al-Ukbi clan has been residing in an unrecognized village within the *Siag* region, to which they have been expelled from another region of the Negev (al-Aragib) in 1951. At the time of their expulsion they were told that they were being temporarily relocated for purposes of military exercises. They were never allowed to return and their ancestral village has been destroyed. Equally, however, they were not allowed to build any permanent structures in their place of exile.

that he will continue to refuse any such demolition order and that he will not pay any fine either. He would rather go to jail than sanction, by his own actions (and with his own money), the evil of demolishing a kindergarten, where no possibilities of legally constructing such institutions are being offered. In this case, Al-Ukbi's courage and clarity have managed to sway the proceedings in his favor. The prosecution dropped the charges when they realized that they might stir up a scandal. Most cases, however, do not have such a happy ending, and hundreds of individuals find themselves having to demolish their own homes, pay stiff fines, and leave their children unprotected and not provided with basic necessities. In these harsh conditions, not many people can transform their anger into constructive civil-rights activism. The more typical reaction is one of despair, alienation and helplessness. The children that grow up in these conditions grow into fear and hatred. Their fractured identities are subsequently to be seen in the spread of anti-social behaviors, in the rise of criminal activity among the youth, in the consumption of drugs and in similar forms of hopelessness.

The Israeli government is doing its Bedouin citizens a grave injustice by trapping them in enclaves of unrecognized existence and by constructing lifestyles driven by helplessness and alienation that might prove impossible to rehabilitate. To conclude it is my hope that this form of visible discrimination will one day be eliminated, and that the State will one day give equal recognition to all its citizens, and afford them all the same measures of assimilation and modernization regardless of their ethnicity.

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