

The Impact of the Basic Law: Israel as the Nation State of the Jewish People on the Status of the Arabic Language in Israel

Meital Pinto¹

Introduction

Around the world we are witnessing the rise of populist and authoritarian leadership, which stresses a common national identity and the exclusion of minorities as a means of enhancing its power.² As part of their efforts, such governments attempt to rewrite the constitutional basis of their states. These constitutional acts have potential long-term implications, which may last even after the current populist wave of leadership declines. One manifestation of these acts is the controversial Basic Law: Israel, the Nation State of the Jewish people [Hereinafter: the INS], which was passed on 19 July 2018 by the Israeli parliament.³ It contains 11 clauses, which concern state symbols like the flag and national anthem, national holidays, the status of Hebrew and Arabic, the capital Jerusalem, relations with the Jewish Diaspora, and the issue of Jewish settlement.⁴ As a Basic Law, the INS is part of Israel's quasi constitution. It therefore aims to guide judicial interpretations of present and future legislation.⁵

Right-wing political parties that sponsored the INS hailed it as a long overdue formalization of the basic Zionist principle that

1. SJD, Associate Professor, Zefat Academic College, School of Law; Ono Academic College, Faculty of Law, Israel

2. Tom Palmer, *The Terrifying Rise of Authoritarian Populism*, REASON (Sept. 2019), <https://reason.com/2019/07/14/the-terrifying-rise-of-authoritarian-populism>.

3. *Basic Law: Israel – The Nation State of The Jewish People (Unofficial translation by Dr. Susan Hattis Rolef)*, THE KNESSET, [hereinafter *Basic Law: Israel – The Nation State of The Jewish People*] <http://knesset.gov.il/laws/special/eng/basiclawnationstate.pdf>; Basic Laws, THE KNESSET, <https://main.knesset.gov.il/en/activity/pages/basiclaws.aspx>.

4. *Basic Law: Israel – The Nation State of The Jewish People*, *supra* note 3.

5. *Nation-State Law Explainer*, ISR. DEMOCRACY INSTITUTION (July 18, 2018), <https://en.idi.org.il/articles/24241>.

Israel was the nation-state of the Jewish people. Opponents of the INS, on the other hand, denounced it as an act of 'constitutional populism',⁶ a hollow legislative gesture whose risks were potentially corrosive to Israel's democracy and untenably discriminatory towards Israel's non-Jewish minorities.⁷ Accordingly, 14 petitions were submitted against it, claiming that it is unconstitutional and should therefore be revoked.⁸

This paper reflects on the possible implications the INS could have on the legal status of Arabic. Before the INS, Hebrew and Arabic were both officially considered Israel's official languages.⁹ The INS changed this by determining that Hebrew was the "state language" of Israel, while Arabic was a language with "special status."¹⁰ The INS also declared that "specific arrangements concerning the use of the Arabic language in governmental institutions" will be set in future legislation, and promised that the INS "does not harm the prior status of the Arabic language before its enactment."¹¹

The legislation of the INS ignited a wide public protest.¹²

6. Tamar Hostovsky Brandes, *Basic Law: Israel as the Nation State of the Jewish People: Implications for Equality, Self-Determination and Social Solidarity*, 29 MINN. J. INT'L L. 65, 68 (2019); Doreen Lustig, "We the Majority . . .": *The Israeli Nationality Basic Law*, 25 ISR. STUD. 256 (2020).

7. See *Nation-State Law Explainer*, *supra* note 5; Emma Green, *Israel's New Law Inflames the Core Tension in Its Identity*, ATLANTIC (July 21, 2018), <https://www.theatlantic.com/international/archive/2018/07/israel-nation-state-law/565712/>; Jonathan Lis & Noa Landau, *Israel Passes Controversial Jewish Nation-State Bill After Stormy Debate*, HAARETZ (July 19, 2018), <https://www.haaretz.com/israel-news/israel-passes-controversial-nation-state-bill-1.6291048>.

8. *Israel: Supreme Court Does Not Have Power to Cancel Nation State Law*, MIDDLE E. MONITOR (Feb. 25, 2019), <https://www.middleeastmonitor.com/20190225-israel-supreme-court-does-not-have-power-to-cancel-nation-state-law>.

9. *Arabic in Israel: An Official Language and a Cultural Bridge*, ISRAELI MINISTRY OF FOREIGN AFF. (Dec. 18, 2016), <https://mfa.gov.il/MFA/IsraelExperience/Culture/Pages/Arabic-in-Israel--an-official-language-and-a-cultural-bridge-18-December-2016.aspx>.

10. *Basic Law: Israel – The Nation State of The Jewish People*, *supra* note 3.

11. *Id.*

12. See generally Bar Peleg et al., 'We Need Equality': *Tens of Thousands Attend Druze Rally Against Nation-State Law*, HAARETZ (Aug. 4, 2018), <https://www.haaretz.com/israel-news/.premium-activists-spread-fake-news-as-druze-gather-to-protest-nation-state-law-1.6341244>; Bar Peleg & Jack Khoury, *Tens of Thousands Gather in Tel Aviv for Nation-State Law Protest Led by Israeli Arabs*, HAARETZ (Aug. 11, 2018), <https://www.haaretz.com/israel-news/.premium-israeli-arabs-to-lead-tel-aviv-march-in-protest-against-nation->

However, there is a dispute amongst its opponents regarding its effect on the legal status of Arabic. The dispute is divided between two competing views. According to the first view, the INS substantially affects the status of Arabic in Israel and decreases the chance to promote its protection in the future.¹³ Proponents of the second approach play down the INS as a watershed moment narrative and claim only on the symbolic derogation of the language, since the INS clearly stipulates that it does not harm the status given to the Arabic language before the INS came into effect.¹⁴

This article takes the first view. It aims to explain why the INS is likely to marginalize Arabic and why it may become a central instrument in further diminishing its presence in the Israeli public sphere. In addition, the article argues that the special status of Arabic in the INS should be purposively interpreted by courts not only in light of the legislators' intent to create a sharp hierarchy between Hebrew and Arabic, but also in light of the positive potential of a strong legal protection of Arabic to create a basis for civic solidarity between Jews and Arabs in Israel. The article advances these arguments by tracking down the legislative history of the INS, the legal status of the Arabic language in Israel before it was enacted, and by a comparative analysis that juxtaposes between countries that chose a similar path of creating a sharp hierarchy between the majority and the largest minority language, and countries that chose the opposite path by positively recognizing the minority language and according it a semi equal status.

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13. See generally Brandes, *supra* note 6, at 80; Amal Jamal, *Israel's New Constitutional Imagination: The Nation State Law and Beyond*, 18 J. HOLY LAND & PALESTINE STUD. 193, 210–11 (2019); Oren Haber, *The Humiliation Clause and the Status of Arabic*, TIMES OF ISR. (July 17, 2018), <https://blogs.timesofisrael.com/the-humiliation-clause-and-the-status-of-arabic>.

14. See generally Oded Mudrick, 'A Jewish and Democratic State': *Human Rights and National Assets – The Principle of Equality in the Lens of Rights of the Arab Minority*, 3 INTERDISC. J. MIDDLE E. STUD. 5, 51 (2018) (asserting that the INS is a blessing for the Arabic language, since it affords it a special status, which makes it possible for the language to develop and thrive); Alexander Jakobson, *Jewish Nation-State, Not this Law*, 25 ISR. STUD. 167, 172 (2020); Mohammed S Wattad, *The Nation State Law And The Arabic Language In Israel: Downgrading, Replicating Or Upgrading?*, 54 ISRAEL LAW REVIEW 263 (2021); David M. Halbfinger & Isabel Kershner, *Israeli Law Declares the County the 'Nation-State of the Jewish People'*, N.Y. TIMES (July 19, 2018), <https://www.nytimes.com/2018/07/19/world/middleeast/israel-law-jews-arabic.html>.

The article proceeds as follows: Section A begins with a presentation of the legal protection of the Arabic language in Israel before the INS was legislated. It points to the troubling possibility that the INS will “freeze” the achievements that strengthened the Arabic language during the years leading up to the enactment of the INS, and prevent developments in this direction in the future. Section B argues that since Arabic is intrinsically valued as an exclusive marker of identity for the Palestinian-Arab population in Israel, the INS should not be perceived as harming Arabic only at the symbolic or emotional level. Section C clarifies the legislators’ intent to create a sharp hierarchy between the status of Hebrew and the status of Arabic by examining the debate that took place prior to the enactment of the INS, which discusses the future implications of designating Arabic with a “special” status. Section D presents different court decisions that dealt with the Arabic language after the INS was enacted. Their analysis suggests that probably because the INS’ constitutionality is yet to be determined by Israel Supreme Court, most of them largely ignored the INS and the “special” status it designated to the Arabic language. Section E employs a comparative analysis by examining different treatment of minority languages in four countries. It presents Kazakhstan and Estonia as examples of countries that created a hierarchy between the majority language and the Russian minority language, and contrast them with Canada and Finland, which chose the path of positively recognizing the minority language by according it a more equal status to the majority language. Section F argues that the special status of Arabic in the INS should be purposively interpreted not only in light of the legislative intent behind it, but also in light of the potential of strong protection of Arabic to create a basis for civic solidarity between Jews and Arabs in Israel.

A. Protection of the Arabic Language Prior to the Enactment of the INS

Before the establishment of the state of Israel, during the British Mandatory period, there were three official languages in Palestine: English, Arabic and Hebrew. Their legal status was set in Article 82 of the Palestinian Order in Council – 1922.¹⁵ Under the sub-title: “Official Languages”, the Order determined

15. Drayton (1934) 3 Laws of Palestine 2569, 2588 [Art. 82].

that:

All articles, official notices and official forms of the government and all official notices of local authorities and municipalities in areas to be prescribed by order of the High Commissioner shall be published in English, Arabic and Hebrew. The three languages may be used in debates and discussions in the Legislative Council and subject to any regulations to be made from time to time, in the Government offices and the Law Courts.¹⁶

Immediately after the establishment of the state, by clause 15(b) of the Law and Administration Ordinance, 1948,¹⁷ all legal orders that mandated the use of English were abolished. Thus, it reaffirmed the status of Hebrew and Arabic as Israel's official languages.¹⁸ The fact that Arabic was defined as an "official language" did not provide it with automatic legal protection of any kind, however. This was because there is neither an agreed-upon legal definition of the term "official language", nor a set prescription to protect such a language.¹⁹

In recent years, protections for the Arabic language have been anchored in legislation, in judicial decisions and in various achievements that highlighted its presence in the public space. Several legal guidelines oblige public authorities in Israel to use Arabic in various announcements to the public, on safety instructions, in official examinations, in qualification requirements for regulated professions and the use of Arabic in the electronic media in Israel.²⁰ Sometimes the legislature

16. *Id.*

17. Law and Administration Ordinance, 5708-1948, § 9, 7 (Isr.).

18. See Yuval Merin, *The Case Against Official Monolingualism: The Idiosyncrasies of Minority Language Rights in Israel and the United States*, 6 J. INT'L & COMP. LAW 1, 15–16 (1999); see also Ilan Saban & Muhammad Amara, *The Status of Arabic in Israel: Reflections on the Power of Law to Produce Social Change*, 36 ISR. L. REV. 5, 7 (2002).

19. Tamás Korhecz, *Official Language and Rule of Law: Official Language Legislation and Policy in Vojvodina Province, Serbia*, 15 INT'L J. MINORITY & GRP. RIGHTS 457, 458–59 (2008); see also Saban & Amara, *supra* note 18, at 35 (finding that the status of an official language is a status that requires full legal protection of the language, and that when two languages are defined as having official status in any country, the state has the obligation to create significant bilingual arrangements for its citizens).

20. See Broadcasting Authority Law, 5725-1965, § 3(3), SH No. 5723 p. 106 (Isr.); Broadcasting Law for the Second Authority of Television and Radio, 5750-1990, § 5(5), SH No. 1990 p. 259 (Isr.); Bezeq and Broadcasts (Licensing for Broadcasts), 5747-1987, § 25, KT 1987 p. 138 (Isr.) (referencing Clause 25 of the Communication Bylaws); Planning and Building Law, 5725-1965, § 1(a)(2), SH No. 79 p. 307 (Isr.); Ordinances of Planning and Building, 5764-

explicitly determines that a given publication must be in Arabic,²¹ at other times, it allows publication to be in Hebrew, with an Arabic translation optional.²²

There is a discrepancy between the normative status of the Arabic language and its actual status, however.²³ Although Arabic was acknowledged as an official language upon the State's foundation, Arabic never attained a strong presence in governmental institutions, and is largely absent from most public spaces. These include: the different Israeli institutions of higher education,²⁴ municipality logos (even when these municipalities have many Palestinian-Arab residents),²⁵ the health system (clinics, hospitals, emergency services and psychological services),²⁶ in the courts,²⁷ in district committees

2004, § 5(4), KT 2004 p. 6299 (Isr.) (explaining that the publication of the announcement of the depositing of the plan on a sign must accord to clause 89(a)); Law of Non-Profit Organizations, 5740-1980, § 46(b), SH 1980 p. 210 (Isr.); Bylaws of Companies, 5747-1987, § 6, KT 1987 p. 5028 (Isr.).

21. See Planning and Building Law, 5725-1965, § 1(a)(2), SH No. 79 p. 12 (Isr.) (determining that it is obligatory to publish in an Arabic-Language newspaper in local planning regions, in which 10% of the population speaks Arabic); see also Mandatory Tenders Regulation, 5753-1993, § 15(a), SH No. 1993 p. 27 (Isr.) (explaining it requires the publication of a public bid by a ministry in an Arabic-language newspaper, as well as an announcement in Arabic on the ministry website); Knesset and Prime Minister Elections Law, 5729-1969, SH 1969 p. 106 (Isr.) (asserting the law requires ballots must be in Hebrew and Arabic).

22. See, e.g., Local Councils Ordinance, § 9(b), KT 1950p. 127 (Isr.).

23. Saban & Amara, *supra* note 18, at 893–97.

24. See MUHAMMAD AMARA ET ET., ARABIC IN THE ISRAELI ACADEMY: HISTORICAL ABSENCE, CURRENT CHALLENGES, AND FUTURE POSSIBILITIES (2016); David Owen et al., *Us' and 'Them': The Role of Higher Education Within Conflict Societies*, in DEVELOPING TRANSFORMATIVE SPACES IN HIGHER EDUCATION 58, 69 (Sue Jackson ed., 2018).

25. Compare Ben Hartman, *TA City Council Says No to Arabic Logo*, THE JERUSALEM POST (Aug. 7, 2012), <https://www.jpost.com/national-news/ta-city-council-says-no-to-arabic-logo>, with Meital Pinto, *Arabic – Essential For Municipal Signs in Tel-Aviv*, WALLA (Aug. 8, 2012), <http://news.walla.co.il/item/2556894>.

26. NURIT YACHIMOVICH-COHEN, LINGUISTIC ACCESSIBILITY AND CULTURAL ACCESSIBILITY OF HEALTHCARE SERVICES: IMPLEMENTATION OF MINISTRY OF HEALTH DIRECTOR DIRECTIVE 7/11 11–13 (The Center for Research and Information, 2018), <https://main.knesset.gov.il/EN/activity/mmm/LinguisticCulturalAccessibility.pdf>; Michael Schuster et al., *We Are Lost: Measuring The Accessibility of Signage in Public General Hospitals*, 16 LANGUAGE POLY 23, 29–30 (2017).

27. See DAVID KRETZMER, THE LEGAL STATUS OF THE ARABS IN ISRAEL 165 (2019) (noting that decisions of the courts in Israel are written in Hebrew).

for planning and building,²⁸ in the Ministry of Interior and National Insurance Institute centers,²⁹ on the websites of governmental offices,³⁰ in the publications of the Israel's Governmental Advertising Agency,³¹ in the prison services,³² and in Israel Railways stations and information notices.³³ The Arabic language is almost completely absent from these spaces in spite of the fact that they are public spaces catering to Israel's entire population.

This de-facto erasure of Arabic from the public space in Israel is not only not being remedied, it is being aggravated. A recent initiative by the Ministry of Education, for instance, encourages adolescents to read books by having them listen to recorded books on their smartphones. The recorded books roster made available by the Ministry, however, does not include even a single Arabic book.³⁴

The courts have played an important role in the interpretation and the provision of broad protections afforded to Arabic as an official state language. As you will see in the

28. See, e.g., AdminA (Jer) 34577-01-12 Jerusalem Ctr. for Human Rights v. Dist. Comm. for Planning and Bldg. in Jerusalem (Dec. 23, 2012) (Isr.) (rejecting the petition of the Jerusalem Center for Human Rights that petitioned the court to order the translation of the planning documents for a national park in Jerusalem to Arabic).

29. Yaacov Ibrahim, *How Do You Say Bureaucracy in Arabic?*, YNET (July 2, 2016), <http://www.ynet.co.il/articles/0,7340,L-4823005,00.html>.

30. MATAN SHACHAK, PRESENTATION OF INFORMATION IN THE ARABIC LANGUAGE ON THE GOVERNMENTAL OFFICES' WEBSITES (The Center for Research and Information, 2016).

31. See, e.g., AHMED CHATIB, EXPENSES OF ISRAEL'S GOVERNMENT ADVERTISING AGENCY FOR MEDIA IN ARAB SOCIETY BETWEEN THE YEARS 2013–2016 (The Center for Research and Information, 2018) (noting that Israel's Government Advertising Agency devotes 4.9% of its entire budget for publications in the Arabic media and signs, despite the fact that Arab citizens comprise 18% of the entire population).

32. See, e.g., Josh Breiner, *Israel Prison Service Refuses to Translate Regulations into Arabic, Citing Nation-State Law*, HAARETZ (Sept. 3, 2019), <https://www.haaretz.com/israel-news/.premium-israel-prison-service-refuses-to-translate-rules-into-arabic-1.7794567> (Isr.) (“The Israel Prison Service is refusing to translate its regulations into Arabic, citing the controversial nation-state law to say it is not a legal requirement, as it includes a provision making Hebrew the country's sole official language.”).

33. Idan Yosef, *An Announcement in the Arabic Language Will Turn the Train Ride “Boisterous and Noisy”*, NEWS1 FIRST CLASS (Sept. 7, 2016), <http://www.news1.co.il/Archive/001-D-380980-00.html>.

34. See generally THE ASSOCIATION OF CIVIL RIGHTS IN ISRAEL, ENCOURAGING READING: FOR JEWISH STUDENTS ONLY? (May 16, 2019), https://www.english.acri.org.il/post/___92 (discussing the lack of books available for Arabic students).

following paragraphs, the majority of the existing rulings, both in the Supreme Court and in lower-level courts, have interpreted Article 82 as empowering the justice system to oblige state and public authorities to provide services in the Arabic language and to support the language's visibility in the Israeli public space.³⁵

More than once, courts' interpretations of the scope of judicial interpretation of Article 82 have been challenged. The question was whether to interpret Article 82 in a narrow way that minimizes the protection of Arabic to its direct literal meaning, or whether to provide it with a wider judicial interpretation that imposes obligations on public authorities to ensure the protection of Arabic.

A decision on a case of bilingual signs in mixed cities demonstrated the expression of the different approaches towards protecting the Arabic language. Reviewing whether municipalities with a mixed population of Jews and Arabs should be required to add Arabic script on all of the municipal signs,³⁶ with a majority opinion of Barak C.J and Justice Dorner, versus the minority opinion of Justice Cheshin, the court ruled that municipalities are obligated to add Arabic script on street signs. Justice Dorner ruled that Article 82 of the Palestinian Order in Council grants Arabic the status of an official language. Local authorities, therefore, were obligated to add Arabic script to the Hebrew script on municipal signs in municipalities where both Jews and Arabs live. According to Justice Dorner, Article 82 served as a sufficient normative source for the requirement of accepting the petition.³⁷

Barak's ruling focused on the broader issues of freedom of language and equality, instead of on the narrow question of the official status of the Arabic language in Israel. Barak saw the right to freedom of language and the right to equality positively, as municipalities' responsibility to ensure that all their residents have access to information that they publish so as to ensure these rights are respected. The balance between the principle of equality and the different aims for the protection of the Arabic language - the importance of being able to receive essential in Arabic and the cultural connection of Palestinian-Arab citizens to the Arabic language³⁸ - led Barak to conclude that signs in

35. See generally H CJ 4112/99 *Adalah v. Municipality of Tel-Aviv-Jaffa* 56(5) PD 393 (2002) (Isr.).

36. *Id.*

37. *Id.* at 473–76.

38. *Id.* at 412–13; Meital Pinto, *Taking Language Rights Seriously*, 25

Arabic in the mixed cities did not diminish the status of the Hebrew language.³⁹

Justice Cheshin, in a minority opinion, argued that the petition should be rejected, and that Article 82 should be narrowly interpreted so that it does not obligate the mixed municipalities to add Arabic script to municipal signs. Justice Cheshin took the position that this was a question of great political sensitivity, which has an intimate connection to the Jewish national character of the state of Israel, and therefore that it should be decided by the legislator, not the court.⁴⁰

The Nashef Supreme Court case⁴¹ is another case that marks an important development towards strengthening the legal status of Arabic. The case dealt with the interpretation of the Water Law,⁴² which stipulates that, before engaging in an infrastructure project, the Minister of National Infrastructure and the Water Council must give residents who may be adversely affected due notice, hold a public hearing and allow them to submit their reservations. The appellants in Nashef, Palestinian-Arab water extractors, argued that, since the public notices were only published in Hebrew newspapers, their right to voice dissent was infringed.⁴³ Since the Water Law does not detail a specific way to publish a public notice, the justices had to determine whether the law should obligate the minister and the council to publish the public hearing notice in Arabic as well as in Hebrew.⁴⁴

The Supreme Court accepted the appellants' argument, determining that the residents' right to a public hearing requires that the governmental authority publish the invitation and inform the relevant public in Arabic as well as in Hebrew. Justice Joubran explained that the result would have been the same had he chosen either to adhere to Barak's approach in *Adalah* or if he had adopted Justice Dorner's view.⁴⁵ Under Barak's view, he would have implemented a purposive interpretation concerning the obligation to publish the invitation

KING'S L. J. 231, 234 (2014).

39. *Adalah supra* note 35.

40. *Id.* at 462; *see* Pinto, *supra* note 38, at 238, 243 (analyzing the difficulties that arise from Justice Cheshin's opinion).

41. CA 4926/08 *Nashef Wael & Co. v. Governmental Auth. for Water and Sewage* (2013) (Isr.).

42. Water Law, 5719–1959, SH No. 1959 p. 169 (Isr.).

43. *Nashef Wael & Co. supra* note 41.

44. *Id.* at 6.

45. *Id.* at 11–12.

to voice argument enumerated in the Water Law. Under Dorner's view, he would have chosen to anchor the requirement of using Arabic in Article 82, the result would be the same: to direct the administrative authority to ensure equality of access and publish the public notice in Arabic.⁴⁶ In his ruling, Joubran stressed the need to strengthen the status of the Arabic language in Israel, especially because it is related to strong communication between the nation's authorities and its citizens. Moreover, Justice Joubran expressed his disagreements with the minority opinion, argued by Justice Cheshin in Adalah, according to which the status of the Arabic language is a matter that needs to be decided by the legislator.⁴⁷

Justice Rubenstein concurred with Joubran's judgment and with the principles of his reasoning. Rubenstein, however, went beyond the specific legal matter of the case. Adopting a broader political-sociological outlook, he stressed the role of Arabic in the establishment of peaceful relations between Arabs and Jews both in the State of Israel and beyond.⁴⁸ Rubenstein sought to distance the matter of the Arabic language from "the political debate" and to focus instead on the "world of actions."⁴⁹ In his opinion, the study of Arabic among Jews and the use of the language in the public space should not derive solely from a legal determination that it is an official language of the state, but rather from a sense of respect for the Arab minority, the largest minority in Israel. Arabic, Rubenstein believed, had the potential to promote equality in Israeli society.⁵⁰

Like the Supreme Court, the lower court also extended protections of the Arabic language in the public space in the years leading up to the INS. In 2010, the Jerusalem district court justice, Moshe Yoad Hacoheh, suspended a charge against an accused person since he was informed about his right to a hearing in Hebrew, but not Arabic. Judge Hacoheh emphasized that the pair of words "official forms", stipulated in Article 82, obligates the accuser to send the announcement of the hearing in Arabic, as well as in Hebrew.⁵¹ In 2012, Justice Tamar Bar-

46. *Id.*

47. *Id.* at 11.

48. *Id.* at 22–23 (Rubenstein, J., concurring).

49. *Id.* at 23–24 (Rubenstein, J., concurring).

50. *Id.* at 28 (Rubenstein, J., concurring); see also Meital Pinto, 'Say Little and Do a Lot': *The Role of the Arabic Language in the Creation of Civil Solidarity Between Jews and Arabs in Israel*, in JUSTICE ELYAKIM RUBENSTEIN'S BOOK 1276-1296 (Miriam Markovitz-Biton ed., 2020)..

51. See CrimC (Jer) 333/09 State of Israel v. Chasin, 8 (2010) (Hacoheh,

Asher-Zaban, of the magistrate court in Jerusalem, ruled that although civil law did not include specific legislation regarding translations of legal proceedings, two Arab litigants should be allowed to hold their trial in Arabic, based on Article 82. Justice Bar-Asher-Zaban determined that, in such cases, the wages of the translator would be paid by the court.⁵² In a different civil case between Arab litigants, it was ruled that the litigants can submit documents in Arabic to the court without having them first translated into Hebrew.⁵³

I will now address the view that the INS harms the status of Arabic only at the symbolic level, mentioned in the introduction. This is because the INS expressly states that it does not harm the status given to the Arabic language before the INS came into effect. If the status given to the Arabic language before the INS came into effect is unaffected, it follows that the legal precedents that generally supported strengthening the Arabic language are still valid. And if the precedents that supported the strengthening of the Arabic language in the public sphere continue to be legally binding, theoretically, it would be possible to continue to use them to further strengthen the status and visibility of the Arabic language. Following this view, one possible interpretation of the expression, “no harm should be caused to its actual status,” is that the INS has no intention of superseding Article 82. This means that the two languages, Hebrew and Arabic, will remain official languages and that Article 82 will continue to serve as an anchor for strengthening the Arabic language in Israeli public space.⁵⁴

This is not the only possible interpretation of the INS, however. An alternative interpretation is that the INS invalidates Article 82 and that underpinning the expression “a status that was actually given before this Basic Law came into effect” is the idea “to freeze” and “to safeguard” the achievements that strengthened the Arabic language up until the enactment of the INS. This means that, while not nullifying its status altogether, the INS effectively blocks additional legal achievements in the future. So, for example, the removal of street signs in the mixed cities that had Arabic script added to them because of the Supreme Court ruling in *Adalah*, should be avoided. Similarly, due to the *Nashef* ruling, the right of the

J.) (Isr.).

52. DC (TA) 2636/09 Mustafa v. Ali, 4 (2012) (Isr.).

53. CivC (Nz) 5685/95 Salim v. Aljani Estate, PM 1, 7 (2004) (Isr.).

⁵⁴ Wattad, *supra* note 14 at 278.

public to voice argument will always include the obligation to inform the public about it in two languages – Hebrew and Arabic.⁵⁵

This second interpretation is troublesome. It does not provide an answer to urgent issues in linguistic policy in Israel. For example, what would happen with street signs in the big cities in Israel that provide important services to the population living in the surrounding areas, but are not defined as “mixed cities”? Should a motion to require street signs in Arabic be denied? How should administrative bodies, such as the National Insurance Institution, respond to requests submitted in Arabic? In the matter of the International Association of Children’s Rights, the Israeli Supreme Court ruled that the National Insurance Institute must accept forms in Arabic and make all its forms available in Arabic. However, the court did not acquiesce to the request of the petitioners that the answers from the National Insurance Institution be translated into Arabic as well.⁵⁶ At the moment, it is impossible to anticipate how these communications will be affected by the legislation of the INS. What will happen with the websites of governmental institutions, institutions of higher education and municipalities? Should the law require that Arabic versions of them be added? What will happen with billboards in Arabic that cross the borders of communities that are identified as “Arab communities”? What will happen with broadcasts of commercial companies on Israeli television?

In all of these cases, like in most of the issues connected to linguistic policy in the Israeli public space, administrative authorities usually raise the economic difficulty – the additional expenses of translation and of hiring Arabic-speaking spokespersons – associated with offering services in Arabic. This argument is raised when the issue is translation or employment of people, who can communicate in Arabic with the public.⁵⁷

55. See Nashef Wael & Co. *supra* note 41.

56. See HCJ 2203/01 *ABA – Int’l Ass’n for the Rights of the Child D.C.E. – Isr. v. the Nat’l Ins. Inst.* 3 (2009) (Isr.).

57. See *id.* at 2 (“We took the logistic difficulties of the National Insurance Institution into consideration, which never objected to preparing forms; however, it did not do what it had committed itself to doing.”); see also the Jerusalem District Committee for Planning and Building’s argument that meeting the requirement to provide Arabic translations of the building plans for the establishment of a national park in Jerusalem would place ‘a heavy burden’ on the planning authorities: (“The respondents also argued that acceptance of the petitioner’s stance would create a heavy burden on the

Another argument commonly raised is that, since public services are not provided in other widely spoken minority languages in Israel, there should be no particular requirement to provide services in Arabic.⁵⁸

Solid counter arguments are required to effectively force public authorities to provide services in the Arabic language. Up until the enactment of the INS, it was possible to argue that the legal obligations to do so existed due to Article 82, and due to accumulated precedents since. Today, however, the INS clearly states that Arabic is no longer an official State language, and determines that its normative status is lower than that of Hebrew. It is therefore significantly more difficult to make a solid legal case that authorities must provide their services in Arabic. Take, for instance, the recent refusal of Israel Prison Service to translate its regulations into Arabic. Israel Prison Service justified its refusal by referring to Hebrew as Israel's sole state language under the INS.⁵⁹

The clause on preserving the existing situation is also proven ineffective here. Even if we presume that the precedents achieved in the rulings concerning the legal status of the Arabic language will be maintained, it is clear that the precedents are specific and liable to interpretation. That is, they are not general laws that stipulate the full support of the Arabic language in all public authorities and in all circumstances. The ruling on the matter of Adalah and bilingual signs – the most definitive ruling that on the status of the Arabic language in Israel to date – determined that such requirements would be valid only in mixed cities. Moreover, in the decision concerning a request for further deliberation of the Supreme Court ruling in the matter of Adalah submitted by the respondents, the justices explicitly stated that no general precedent was made regarding the use of Arabic by

planning authorities and on the program submitters and would lead to a significant delay in the planning stages. Since there is no legal requirement to translate all of the written planning documents from Hebrew into Arabic, these ramifications need to be taken into account when considering all of the arguments being examined.” Jerusalem Ctr. for Human Rights, *supra* note 28.

58. This kind of argument was accepted in Haifa's District Court's decision when it considered the water issue in the *Nashef* case, CivA (Hi) 111/01 Haj Ali Bros. v. Governmental Auth. for Water & Sewage, PM 1, 15 (2008) (Isr.) (“To the same degree that we will find Arab-speaking water extractors who do not read daily newspapers in Hebrew, we will also find Hebrew-speaking water extractors who do not read daily newspapers in Hebrew. It is also possible to find Arab-speaking water extractors who do read country-wide daily newspapers in Hebrew.”).

59. Josh Breiner, *supra* note 32.

public authorities in the original ruling. Later, the decision in the further hearing stated that the precedent of the Adalah case would not necessarily be applicable to other cases relating to the status of the Arabic language.⁶⁰

As the discussions of legislators' proposals for the INS demonstrate, the goal of the clause that deals with the Arabic language was to "force" the court not to deliberate the issues of the Arabic language in the future,⁶¹ or, alternately, discourage it from building on previous judicial decisions to expand the legal requirements to use Arabic in public spaces.

In the next section, I will discuss the intrinsic interest of protecting the Arabic language in Israel. This discussion will shed light on the argument concerning the allegedly limited emotional or symbolic harm that the INS causes to the Arabic language. Since the intrinsic value of a language also lies in its role as a marker of cultural identity, it argues, the INS should not be perceived as harming Arabic only at the symbolic or emotional level.

B. The Intrinsic Interest of the Arabic Language as an Exclusive Marker of Identity

In a heterogeneous society where the majority and the minority populations do not speak the same language, state and public regulations often privilege the majority language over the minority language. The gap between the majority and minority language usually occurs as part of a latent or a manifest social pressure on members of the minority group to abandon their mother tongue and prioritize proficiency in the higher-status majority language as part of a broader process of assimilation.⁶² Due to these homogenizing pressures that threaten the continued existence of linguistic minorities, the law often extends legal protections designed to prevent or moderate the erosion of their languages. The majority language, by virtue of its salience in the public sphere, does not often engender similar

60. See supra note 41

61. NAOMI SUSSMAN, BASIC LAW: ISRAEL – THE NATION STATE OF THE JEWISH PEOPLE 13 (Molad – The Center for the Renewal of Democracy eds., 2013) (Hebrew).

62. See Denise G. Réaume, *The Constitutional Protection of Language: Survival or Security?*, in LANGUAGE AND THE STATE: THE LAW AND POLITICS OF IDENTITY 37, 46–47 (David Shneiderman ed., Inst. for Balkan Studies, 1991).

legal protections.⁶³

‘Language rights’ is the accepted umbrella term to describe the myriad legal means used to protect minority languages.⁶⁴ Language rights mainly stress the state’s obligation to safeguard the minority’s language and their right to use it in their communications with state institutions.⁶⁵

But languages are not valuable only as instruments of communication. Languages also constitute an essential part of one’s cultural identity and belonging. Language underpins the cultural universes which people inhabit, mediates cultures with which individuals identify and within which they are identified. Communities are bound together by a shared way of life of its members. To a large degree, one might argue, common language is a central ingredient in facilitating a collective and distinct way of life.⁶⁶

Language serves as the marker of cultural identity of the individual in three different ways. Firstly, language intimately expresses the worldview of the culture in which it is rooted. The

63. Pinto, *supra* note 38, at 233.

64. For a definition of language rights, see: MICHAEL C. MACMILLAN, THE PRACTICE OF LANGUAGE RIGHTS IN CANADA 11 (1999); FINAL REPORT OF THE ROYAL COMMISSION ON BILINGUALISM AND BICULTURALISM, BOOK I: THE OFFICIAL LANGUAGES 41 (1967) (Can.).

65. For example, in his ruling in the matter of *Adalah*, Justice Barak described a theatre’s decision in 1950 to prohibit staging Yiddish plays. He harshly criticized this decision by noting: “Those days of language censorship are long gone, but we can see that freedom of language was not always understood in the way we would think.” *Judgments of the Supreme Court of Israel*, THE SUPREME COURT OF ISRAEL, HCJ 4112/99 para. 23 <https://supreme.court.gov.il/sites/en/Pages/fullsearch.aspx> (search for all translations, then find HCJ 4112/99) (last visited Jan. 17, 2021) (translating the *Adalah*, *supra* note 36)). Barak’s ruling mainly clarifies the difference between protecting the negative aspect of language rights (what he terms “freedom of language”), which does not prohibit a person from speaking her or his mother tongue, and which he does not question in the case’s circumstances, versus the positive aspect that requires the nation to allocate resources for advancing the Arabic language in the public space. *Id.* at para. 17–19.

66. See e.g., Denise G. Réaume, *Official-Language Rights: Intrinsic Value and the Protection of Difference*, in CITIZENSHIP IN DIVERSE SOCIETIES 245, 247 (Will Kymlicka & Wayne Norman eds., 2000); Denise G. Réaume, *The Constitutional Protection of Language: Survival or Security?*, in LANGUAGE AND THE STATE: THE LAW AND POLITICS OF IDENTITY 37, 45–47 (David Shneiderman ed., 1991); Denise G. Réaume, *Beyond Personality: The Territorial and Personal Principles of Language Policy Reconsidered*, in LANGUAGE RIGHTS AND POLITICAL THEORY 271, 283 (Will Kymlicka & Alan Patten eds., 2003); Leslie Green, *Are Language Rights Fundamental?*, 25 OSGOODE HALL L.J. 639, 659 (1987).

meaning of a word in a particular language is inseparable from its cultural source and from an entire semantic field, and is thus reflective of the history of the culture and its values.⁶⁷ The second way in which language serves as a marker of identity is in its role as medium of cultural artifacts, such as songs, sentences, sayings and newspapers.⁶⁸ There are traits, words and concepts that, when translated into other languages, lose the meaning that only exists in the original language.⁶⁹ For example, Justice Vogelman explained how important it is for administrative bodies and the courts to be cautious when examining translated transcripts of recorded interviews:

No translation is perfect. Obviously, when an asylum seeker does not directly communicate with the interviewer and the two sides need an interpreter, the clarity of the messages is impaired. This is true even when there is a very experienced interpreter.⁷⁰

Put together, these two first components lead to the third component of the language as a marker of cultural identity. When a language articulates certain cultural perceptions, and when the resulting cultural creativity, in its entirety, is connected through the medium of the language, people who speak the language relate to it as an intimate carrier of their identities, memories and imagined communities. When an imagined community identifies with its language, it takes pride in all the achievements that it made possible and produced.⁷¹

Understanding the cultural centrality of linguistic communities and identification through and with languages helps make the case for stronger legal protections for minority languages than would have been the case were we to adopt a narrow conception of languages as merely an instrument of communication. In the narrow conceptualization of languages, an individual from a minority group who gains sufficient

67. JOSHUA A. FISHMAN, REVERSING LANGUAGE SHIFT 20–21 (1991).

68. Stephen May, *Uncommon Languages: The Challenges and Possibilities of Minority Language Rights*, 21J. MULTILINGUAL & MULTICULTURAL DEV. 366, 374 (2000).

69. In the matter of the difficulty of translating words that express a certain cultural perception into a different language, in relation to the potential harm this may cause to cultural identity, see Nancy C. Dorian, Commentary, *Choices and Values in Language Shift and Its Study*, 110 INT'L. J. SOC. LANG. 113, 115 (1994).

70. AdminA 8675/11 Tedesa v. The Treatment Unit of Asylum Seekers, 14–15(May 14, 2012) (Vogelman, J.).

71. Réaume, *supra* note 66, at 251; May, *supra* note 68, at 374

proficiency in the majority's language no longer requires his or her minority language to be protected.⁷² The argument regarding the intrinsic value of language as a marker of cultural identity, by comparison, makes a stronger case for protecting minority languages. Even if large parts of the minority were to gain widespread proficiency in the majority language, this would not make a difference in the need to protect their culturally unique heritage, encoded in their minority language, from erosion.

Elsewhere, I have argued that in light of the intrinsic interest in language as a marker of cultural identity, minority languages whose speakers have a strong interest in their language as a marker of cultural identity merit strong protection from the law.⁷³ When we think about the extent to which the Arabic language should be protected in Israel, we should bear in mind that its speakers have a strong intrinsic interest in its protection. This is because the Arabic language serves as an exclusive marker of identity of the Palestinian-Arab minority in Israel. Without the language, an essential tenet of its culture would be silenced.⁷⁴

Following the establishment of the State of Israel, at the end of a difficult war, some Arab-Palestinians became a national minority in a Jewish-majority state. Most of them continue to see themselves as belonging to a people, culture and religion that are different from those of the Jewish majority. This is also how the Jewish population in Israel perceives them. It is clear, then, that Hebrew is not a marker of cultural identity for the Palestinian-Arab population in Israel: Arabic is.⁷⁵

72. Meital Pinto, *On the Intrinsic Value of Arabic in Israel: Challenging Kymlicka on Language Rights*, 20 CAN. J.L. & JURIS. 143, 158–65 (2007).

73. *Id.* at 166–68.

74. *See id.* at 171–72.

75. *See* Muhammad Amara, *The Place of Arabic in Israel*, 158 INT'L J. SOC. LANGUAGE 53, 57–59 (2002); *id.* at 170; *see also* Iyas Yosef Nasser, *And Arabic: What Will Be with It*, HAARETZ (Sept. 29, 2018) (Isr.) <https://www.haaretz.co.il/opinions/.premium-1.6513869> (“For me the Arabic language is not just letters and words. It is my being, my identity and my roots. It is my song and my poetry and legacy. It is my neighborhood and my village and my people, and it is the voices of my grandfather and grandmothers that echo in the branches of the olive trees, to which I return, once a year, with my family in order to harvest their fruits. The Arabic language is my historical roots, which connects me to my ancestors in this homeland. It is the source of my strength and my pride, in light of the vast literary legacy instilled in me by Amra Alkis and Abu Tammam and Almatanbi. Each time that I stood on the stage for my evening of Arabic songs, in Jerusalem, Shefaram, Haifa, or somewhere else, I felt unending happiness

The consideration of the intrinsic interest of the Arabic language in Israel reorients the discussion on the allegedly “symbolic” or the “emotional” harm of the INS. Since language is a collective repository of culture and a chief component in the collective identity of imagined communities rather than only an emotional intimate attachment, one can not only speak of demoting it as doing harm purely on a symbolic or an emotional level. Whoever asserts as much, would, therefore, consider any curtailment or offense to a particular culture or cultural identity as purely symbolic or emotional. Based on this logic, the harm caused by laws that limit identification with a certain religion in public, such as engagement in public prayer or wearing items that identify a person with a certain religion, could also be construed as emotional or symbolic slights. In most western democracies today, however, curtailing a person’s right to worship is considered a serious violation of rights, not ‘symbolic’ or ‘emotional’ ‘damage’.⁷⁶ A minority’s language rights, I believe, should be accorded the same level of gravity and the same protections from the law as religious freedoms.

In another article, I pointed out that there is no reason to differentiate between the broad protections the law accords to exercise one’s religious freedoms and language rights.⁷⁷ Both

and pride looking at the people who left their homes for a short time to come to hear poetry. This is the inner urge and desire of the Arab person from the days of the Acat market, up until today, and his love of words, poetry and the Arabic language that covers him in magic. He is a prisoner in the wonders of his language, in its rhetoric, in its words; it is like blood flowing in his veins. There is no power in the world that can diminish this magic.”).

76. Religious freedom today is broadly understood not only in terms of the freedom to believe, but also in terms of the freedom to identify with a religious community, its cultural norms and practices; See ELIZABETH SHAKMAN HURD, *BEYOND RELIGIOUS FREEDOM: THE NEW GLOBAL POLITICS OF RELIGION* 59–60 (2017); Israeli Supreme Court decisions also reflect the notion that religious freedom includes the freedom to identify publicly with religion by taking an active part in its rituals and cultural norms, HCJ 292/83 *Temple Mount Believers v. the Police Command in the Jerusalem District*, 38(2) PD 449, 454 (1984) (Isr.), translated in *Temple Mount Believers v. the Police Command in the Jerusalem District*, VERSA (last visited Jan. 17, 2021) <https://versa.cardozo.yu.edu/opinions/temple-mount-loyalists-society-v-police-commander-jerusalem-region>; HCJ 47/82 *The Foundation of the Movement for Progressive Judaism in Israel v. the Minister of Religions*, PD 43(2) 661, 692 (1989) (Isr.); HCJ 650/88 *The Movement for Progressive Judaism in Israel v. The Minister for Religious Affairs*, PD 42(3) 377, 381 (1988) (Isr.); HCJ 11585/05 *The Movement for Progressive Judaism in Israel v. The Office of Absorption and Immigration*, para. 16 in the ruling of the President Beinisch (2009) (Isr.); See also the Canadian ruling in *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, para. 100 (Can.).

77. Pinto, *supra* note 38, at 244–50.

should be understood as protecting minority cultures. Language and religion are parts of the cultural identity of people who identify with a given culture and are identified with it. Any suppression of either in the public sphere seriously curtails individual freedoms. In order to exist and flourish, both languages and religions require practices that have public visibility. Therefore, there is no logical reason to consider damage to the public status of a religion as a form of legal persecution but consider limiting and discouraging the use of a minority's language as only "emotional" or "symbolic" slights.

In the next section, I will clarify the scope of the damage caused to the Arabic language by comparing the concepts of a language with "a special status" with an "official language." I will examine the different proposals of the INS and their respective treatment of the Arabic language, and revisit the fierce debates that took place in the special Knesset committee that was charged with considering the different INS proposals and their future implications.

C. The Discussions in the Knesset Concerning the INS Prior to its Enactment

As previously mentioned, the INS stipulates that, while Hebrew is the sole official language of the State of Israel, Arabic is to be accorded a "special status." But what does a "special status" mean exactly? What is the essential and normative difference between a state's language and a language with a "special status"? In order to clarify what exactly the INS changed in the State of Israel's relationship to the Arabic language, I first relate to the intention of the legislature as recorded in the minutes of the special Knesset committee for legislating the INS. I will then try to measure the actual effects of the law by examining to court decisions relevant to the public status of Arabic language in the State of Israel after the INS was passed by the Knesset.

The original proposal of the INS, submitted by MK Avi Dichter (Likud) in 2011,⁷⁸ defined Arabic as language that would receive a "special status" in Israel. This early proposal is explicit

78. Basic Law Proposal: Israel – the Nation-State of the Jewish People, 5771–2011, HH (Knesset) P/18/3541 (Isr.) (placed on the Knesset table on August 3, 2011). For English version of the proposal *see* <https://law.acri.org.il/en/wp-content/uploads/2011/10/Jewish-state-bill-ENG.pdf>.

about its intention to enshrine the characteristics of the State of Israel as the nation-state of the Jewish people into law, and that it considers language to be one of those characteristics. Dichter insisted, however, that the law did not undermine the democratic character of the State of Israel, and partially based his claim on the nebulous clause 4, which deals with the official status of languages.

The intent of the clause seems to demote the status of the Arabic language but not to unrecognize it entirely, something that could be detrimental to the democratic character of the State and exact a heavy political price from the government. Otherwise, it is hard to imagine why a clause was added to the draft proposal that explicitly claimed that the democratic nature of the state is preserved. The first proposal of the INS makes two things clear: Arabic had to have a different and lower status from that of Hebrew, but since Israel is a democratic state with a sizable Arab Palestinian minority, it had to accord the language some kind of official recognition.

While later drafts introduced new changes and refined some of Dichter's original points, the language clause remained more or less untouched. The proposal by MK Ayelet Shaked (The Jewish Home), for instance, made no explicit reference to the issue of language, although clause 9 of the law proposal did state that "the country will work toward making it possible for all Israeli residents, regardless of religion or nationality, to work toward the preservation of their culture, legacy, language and identity."⁷⁹ MK Benny Begin's proposal (Likud), too, made no reference to language.⁸⁰

On the left, however, members of the Knesset – especially from the Joint Arab List and from Meretz party – were vehemently opposed to the planned downgrade of the Arabic language from its mandatory-era parity with Hebrew as one of the State's official languages. Opposition members pointed out that even before the legislation of the INS, Arabic language in the public space was marginalized to such a degree that Arabic

79. Basic Law Proposal: Israel – The Nation-State of the Jewish People, 5773–2013, HH (Knesset) P/1550/19 (Isr.) (placed on the Knesset's desk on July 22, 2013). For an English description of this proposal see Alon Harel, *How the Proposed Basic Law: Israel — Nation-State of the Jewish People Actually Impairs Judaism*, MOLAD (Aug. 26, 2013) <http://www.molad.org/en/articles/Proposed-Basic-Law-Impairs-Judaism>.

80. Basic Law Proposal: Israel – The Nation-State of the Jewish People, 5778–2017, HH (Knesset) P/4921/20 (Isr.) (placed on the Knesset's desk on Dec. 25, 2017).

was already de facto inferior to Hebrew in the public sphere. The proposed official downgrading of Arabic, they continued, would not so much constitute a change in the status quo, as stave off on-going and future attempts to strengthen Arabic in the public space. In the deliberations about the law, MK Jabarin explained how:

“(. . .) this is perhaps the most conspicuous innovation, as we speak about the positive law. From a situation of an official language to a situation in which the language loses its official status to the exclusive favor of the Hebrew language. It is not that the Arabic language enjoys this status today, but at least we had the argument that it is an official language that needs to be protected and that we could depend on that in order to try to promote it. And, I say to you, if the official status of the language will be abolished, we will have almost no chance to directly try and promote its status; we have been fighting for many years to promote the language. And, by the way, we, the Arab population, almost never petitioned the Supreme Court on topics concerning the Arabic language, due to the fear that there would be a negative precedent. Therefore, you will not find many petitions to the Supreme Court on this matter . . . the little that exists, this law now wants to remove and harm”.⁸¹

An exasperated MK Ahmad Tibi similarly wondered:

“Why do MKs or the coalition, or the government feel threatened by the Arabic language in the public space? (. . .) and in spite of the fact that it is defined today as an official language, its status is not that of an official language”.⁸²

Tibi and the initiator of the law, MK Dichter, continued debating after Tibi compared the current situation Israel to the Canadian government’s dealings with the French-speaking minority in Quebec.

Avi Dichter (the Likud): “Israel is not a bi-linguistic nation. That’s just the way things are”.

Achmad Tibi (the Joint List): “Because it chose not to be. It

81. Protocol from meeting number 2 of the Joint Committee of the Knesset Committee and the Constitution Committee concerning the proposal of the Basic Law: Israel – The Nation-State of the Jewish People, the 20th Knesset, 42.

82. Protocol from meeting number 17 of the Joint Committee of the Knesset Committee and the Constitution Committee concerning the proposal of the Basic Law: Israel – The Nation-State of the Jewish People, the 20th Knesset, 17.

decided. With this law, the little that there is, the margins there are, you are asking to revoke”.

Avi Dichter (the Likud): “We decided not to”.⁸³

We can learn something interesting about the legislature’s intention from this exchange. Both Dichter and Tibi essentially agree that before its legislation there was no actual equality between the languages. While Tibi expressed his fear that this existing inequality will worsen following the legislation, MK Dichter unapologetically wants the law to reflect the existing inequality between Hebrew and Arabic, and entrench this inequality by making it a basic law. By attempting to perpetuate the inequality between the two languages, instead of fighting to rectify the situation by providing strong protection of the status of the Arabic language, the MKs intentionally send a demeaning message towards Arabic speakers in Israel, as MK Jabarin aptly pointed out:

“On the one hand you are saying about the clause that ‘there is nothing in this clause to hurt the status given to the Arabic language from this new Basic Law’. But, you do cause harm; you are changing things. If you do not want to change the situation now, on the eve of this law being accepted, then leave the same language as an official language, and then you are actually saying: ‘Okay, it will remain an official language.’ But, on the one hand, it revokes the official status because you are leaving Hebrew as the state’s only language. On the other hand, you say that you are not harming the existing situation. But of course you are harming the existing situation . . . harming the official status of the Arabic language is a dramatic and acute assault and [its intent] is unclear, unless [it is] understood as demeaning Arabic speakers . . . when today you propose to revoke the official status, after about 100 years, this is a real “Nakba” of the language. This is a cultural “Nakba” of Arabic speakers”.⁸⁴

There is little doubt, then, that the legislators intended to create a hierarchy between a superior Hebrew language and an inferior Arabic language.⁸⁵ Some of the right wing MKs who sponsored the bill adopted the narrative that ensuring a superior

83. *Id.* at 19.

84. *Id.* at 42.

85. See Dafna Yitzhaki, *The Status of Arabic in the Discourse of Israeli Policymakers*, 19 *ISR. AFF.* 290, 297–300 (2013) (discussing the Hierarchy Approach’ that differentiates between a majority language that has a superior status over a minority language).

status for Hebrew was inseparable from the assertion of the State of Israel's Zionist, Jewish character. For example, MK Amir Ohana, from the Likud party, commented immediately after acceptance of the INS that Israel: "is not a bi-national or bi-lingual or bi-capital state – it is the one nation state of the Jewish people and its language is Hebrew and its capital is Jerusalem".⁸⁶ The legislators' objective of creating a clear hierarchy between Hebrew and Arabic also found its way to the official commentaries and explanatory materials that accompanied the law:

"It is proposed to rectify the status of the Hebrew language and the Arabic language in the country. Article 82 of the Palestinian Order in Council determines that Hebrew and Arabic are both official languages in the country. However, in reality, both in legislation and in rulings, the Hebrew language is awarded a senior status. Therefore, it is proposed to determine that Hebrew is the state's language and, by doing so, to express the centrality of the language in the character of the state as the nation state of the Jewish people and to the importance given to the renewal of the Hebrew language in the Zionist project, from its beginnings."⁸⁷

The assertion that the superiority of the Hebrew language and the inferiority of the Arabic language flow naturally from Israel's definition as the nation state of the Jewish people goes to the very first drafts and discussions of the INS in 2011. The first INS' proposal explains:

Throughout the law, there are practical aspects that are included that reflect that the State of Israel is the nation of the Jewish people, and some of these aspects are expressed in existing legislation: the country's symbols (the anthem, flag, symbol), its language, the Law of Return, the ingathering of the exiles, Jewish settlement, the connection with Jews in the Diaspora, Jewish heritage, the Hebrew calendar and the holy places.⁸⁸

In the next section, I will examine what we can learn about the meaning of the special status of the Arabic language from

86. Susan Hattis Rolef, *Think About It: Israel – The National State of the Jewish people*, JERUSALEM POST (July 22, 2018, 9:39 PM), <https://www.jpost.com/opinion/think-about-it-israel-the-national-state-of-the-jewish-people-563149>.

87. Basic Law: Israel - The Nation State of the Jewish People, 5778–2018, P 768 (placed on the Knesset's desk on March 13, 2018).

88. MACMILLAN, *supra* note 64.

different court decisions that dealt with the Arabic language after the INS was enacted.

D. Judicial Decisions in the Matter of the Arabic Language after the INS Enactment

A number of judicial decisions related to the status of the Arabic language follow the enactment of the INS. Almost all of them ignored the change in the status of the language introduced by the new legislation. In fact, most of them do not mention the INS at all. The only statute that is mentioned in some of them is Article 82 of the Palestine Order in Council. The Abu Nab case, for example, deals with the National Council for Planning and Building's approval of a plan for the establishment of a visitors' center in the national park near the Jerusalem walls and the City of David. The petitioners, residents of the neighboring Silwan neighborhood living close to the proposed visitors' center, opposed the plan, since, they argued, it aggravated the dearth of public spaces in the neighborhood, and was expected to increase the volume of motorized traffic in the area.

The appellants, most of whom were Arabic speakers, argued that their right to voice argument before the national council was impeded, since no interpreter was made available to facilitate the discussion. Justice Elron, with the majority opinion, ignored both the INS and Article 82. According to him, optimal realization of the right to voice argument of all of the parties connected to the issue requires that there be a simultaneous and exact translation into Arabic during the hearing and the discussion concerning opposition to the plan. He eventually determined, however, that the right to voice argument was realized since the appellants were given a number of alternatives for simultaneous translation to Arabic by one of the individuals who was present in the discussion and by the representative of the appellants, who was fluent in both Arabic and Hebrew.⁸⁹

Justice Kara, in the minority opinion, stated that the right of the appellants to voice their argument was severely infringed, since the respondents did not hire a translator for Arabic. Justice Kara noted that "it is imperative that the council hold such a

89. AdminA 694/18 Abu Nab v. The National Council of Planning and Building, para. 24–25 of Justice Elron's decision (2019) (Isr.).

discussion in the presence of an interpreter [given] the circumstances in this matter. This is due to Article 82 of the Palestinian Order in Council . . . which determines the status of the Arabic language as an official language”.⁹⁰

The post-INS unclarity regarding the State of Israel’s official languages allowed leeway for personal interpretations by justices on a case-by-case basis. In the Grib case, for instance, the appellant submitted a request for permission to appeal to the court in English.⁹¹ In response, Justice Mintz pointed out that Hebrew “is the official language of the State of Israel, alongside the special status awarded to the Arabic language”, and referred to the INS in the matter of the status of Arabic. To Judge Mintz, Article 82 remained valid: without “explicit instructions concerning the update legislation and regulations that determine what language needs to be used when submitting appeals and pleadings to the courts,” he explained, Article 82 must be adhered to. Since the instruction in Article 82 that permits the use of the English language was long abolished, Judge Mintz ruled that an appeal cannot be submitted in English.

In another matter that dealt with translation of a matriculation exam in geography into Arabic, the Ministry of Education decided not to translate the digitized part of the exam, an obligatory part for every student matriculating in geography, including those from the Arab educational sector. After the petition was made, however, the Ministry of Education acceded to the request and had the digitized part of the exam translated into Arabic in printed appendices. In addition, it gave extra time to the students who were being tested with the printed appendices. Upon dismissing the petition, Justice Elron remarked how the Ministry would do well to learn a lesson from this case by ensuring it provides equal testing arrangements for Hebrew and Arabic speaking students in the future, “while giving full weight to the status of the Arabic language in the State of Israel and the wellbeing of the students for whom Hebrews is not their mother tongue”.⁹² Both the INS and Article 82 were not mentioned in the proceedings.

It appears, therefore, that it is difficult to clearly deduce the

90. *Id.* at para. 2–4 of Justice Kara’s decision.

91. MC 815/19 *Grib v. Fidam Select (in liquidation) Company Number B89058* (2019) (Isr.).

92. HCJ *Salach v. CEO of the Ministry of Education*, para 10 of Justice Elron’s decision (2019) (Isr.).

ways in which the special status of the Arabic language is to be interpreted from the decisions made after the INS was legislated. It is possible, of course, that the INS is purposefully being ignored until the numerous petitions filed against it are discussed and appropriate amendments made.

The only recently issued that directly mentions the new status of the Arabic language in the INS was in the Machamid case from the magistrate court in Haifa.⁹³ The decision dealt with the requirement of a bowling club to pay damages as a result of negligence that caused an accident to the plaintiff. The court accepted the plaintiff's argument that the club was negligent since it did not provide warning instructions in Arabic in the bowling area. The plaintiff, who went bowling for the first time, argued that she did not know Hebrew and therefore did not understand the warning signs in the place. Oblivious to the danger, she walked onto the alley's slippery area to which the Hebrew signs forbade entry, slipped, and was injured. In its defense, the bowling club tried to argue that in the area there were no warning signs in other languages either, such as Spanish or Portuguese. In response, the court ruled that:

. . . unlike Spanish and Portuguese, the Arabic language is the language of the largest minority in the State of Israel and acknowledged as an official language in the country . . . and even in the Basic Law: Israel – the Nation State of the Jewish People – that was passed after the time of the accident, it was ruled that it has a 'special status in the state'.⁹⁴

For those who wish to continue extending the protection of the Arabic language in Israel even in the post INS era, the ruling in the Machamid case set an important precedent. The Machamid case imposed the obligation of damages on a private business which is not explicitly required by any law to publishing information in Arabic. It is hoped that the Machamid case will serve as a positive example for many Israeli businesses currently catering to Palestinian-Arab customers that, to date, refuse to add Arabic to their obligatory warning signs.⁹⁵

93. CC (Hi) 29062-10-15 *Machamid v. Bowling Gan Shmuel Ltd.* (2019) (Isr.).

94. *Id.* at para. 12.

95. For example, Superland, Luna Park and the Meymadion in Israel (water and amusement parks) are visited by many Palestinian-Arab children. While it is logical to assume that the children do not read Hebrew, the parks do not have any signs in Arabic. Telem Yahav, אתרי בילוי בלי ערבית, [Entertainment Sites Without Arabic], YEDIOTH AHRONOTH (Aug. 11, 2018), <https://www.yediot.co.il/articles/0,7340,L-5326706,00.html> (mentioning the

In the next section, I will refer to Kazakhstan and Estonia, two countries that legislated laws that created a hierarchy between the majority language and the Russian minority language and discuss the motivations behind such laws. I will contrast them to countries such as Canada and Finland, which chose the opposite path of recognizing the minority language and accord it a more equal status to the majority language.

E. Comparative Linguistic Policy: Negative Hierarchy v. Equal Recognition

It is difficult to find countries whose constitutions designate a “special status” to a minority language. Many countries, however, officially relate differently to two different languages in their constitutions. Like other post-Soviet states outside Russia, the legal regime in Kazakhstan sought to strike a new balance between the national desire to establish and promote the use of Kazakh – the national language – while preserving the rights of linguistic minorities, particularly the Russian-speaking minority.⁹⁶ In Kazakhstan’s first constitution (1993), written after the Iron Curtain fell, Kazakh was designated the state’s language. However, the first Kazakh constitution also recognized Russian as the country’s lingua franca, the primary language to be used in communication between Kazakhstan’s different ethnic groups.⁹⁷ The second constitution (1995) went a step further, stipulating that all governmental institutions would use both Russian and Kazakh for official business and communiques.⁹⁸ A law from 1997 added specific instructions to the constitution’s stipulations regarding language. It determines that at least 50% of the television and radio broadcasts need to be in Kazakh, in the belief that, in so doing, gradually all citizens

lack of Arab language signage specifically at Superland Amusement Park) (Isr.); Hadar Keneh, *Family Recreation Sites that Ignore Arab Visitors*, SIKKUY (Feb. 12, 2018), <http://www.sikkuy.org.il/11728-2/> (rating Luna Park, Superland and Meymadion as the worst amusement parks in Israel for availability of Arab language signage) (Isr.).

96. MICHAEL NEWCITY, *International Law, Minority Language Rights and Russian(s) in the ‘Near Abroad’*, in *THE RUSSIAN LANGUAGE OUTSIDE THE NATION* 33, 41 (Lara Ryazanova-Clarke ed., 2014).

97. Aziz Burkhanov, *Kazakhstan’s National Identity-Building Policy: Soviet Legacy, State Efforts, and Societal Reactions*, 50 *CORNELL INT’L L.J.*, 1, 5 (2017).

98. *Id.* at 6.

will gain proficiency in the Kazakh language.⁹⁹ Critics of the Kazakh language law, most of whom are Russian speakers, argued that it has been applied in such a way to suppress political criticism of the regime.¹⁰⁰

There are both notable similarities and important differences between the constitutional situation in Kazakhstan and in Israel following the legislation of the INS. Similarly to the Arab minority in Israel, Russians are the second largest ethnic group in Kazakhstan. Like the Arab citizens of Israel, Russians make about 20 percentage of the population in Kazakhstan.¹⁰¹ In both countries, the minority languages (Arabic in Israel and Russian in Kazakhstan) are not defined in the constitution as the “state’s language”, and do not have an official status. Still, the state’s authorities are required to publish its announcements and conduct business in this language, alongside the official majority language (Hebrew and Kazakh).

The main difference between the two cases is the political and historical background of the countries’ respective dominant language. During the Soviet regime, Kazakh was identified as the language of the nationalist opposition to the Soviet regime. A similar situation could hardly be said to exist for Hebrew.¹⁰² Despite its being the language of a small minority, the British Mandatory government recognized it as an official language. Nevertheless, it is clear that the background to the normative difference between Kazakh and Russian and the normative difference between Hebrew and Arabic is the political tension between the groups identified with each of these languages. If indeed, the arguments about enforcement of the laws concerning the language are motivated by the regime’s desire to silence anti-government political criticism (and I do not pretend to know if these arguments are true or not in relation to Kazakhstan), one should hope that a similar situation will not come to pass in Israel. In fact, it is possible to see the situation in Kazakhstan as a warning about how attempts to bridge the normative gap

99. *See id.*

100. *Id.*

101. Zinaida Sabitova & Akbota Alishariyeva, *The Russian Language in Kazakhstan: Status and Functions*, 7 *RUSS. J. COMM.* 213, 214 (2015).

102. Compare Richard E. Weiner, *70 Languages Equal and Free: The Legal Status of Minority Languages in the Soviet Union*, 6 *ARIZ. J. INT’L & COMP. L.* 73, 75–79 (1989) (explaining the tradition of Russian language supremacy in the Soviet Union), with Mala Tabory, *Language Rights in Israel*, 11 *ISR. Y.B. HUM. RTS.* 272, 280–83 (1981) (detailing the history of the legal status of Arabic in Israel).

between a state's language and another acknowledged, but ultimately inferior language can coincide with forms of political oppression. This could evolve in cases in which a political conflict between groups politicizes the legal arrangements regulating the status of the different communities' languages, even if state constitutions require the publication of announcements in both languages.

A second attempt by a country's government to rank languages by lowering the status of one language in comparison to another, is the case of the Russian minority in Estonia. Like Kazakhstan, Estonia was under Soviet rule for many decades. Most Estonian citizens are Estonian speakers.¹⁰³ The largest linguistic minority is the Russian minority, who, for the most part, immigrated to Estonia during the 1970s.¹⁰⁴ With the fall of the Soviet Union and the Communist Bloc, and after years of Soviet oppression, Estonia gained its independence in the beginning of the 1990s.

One of the first steps undertaken in Estonia, in 1989, even before official independence, was the legislation of the Language Act, which abolished Russian as the local government's official language and determined that Estonian was to be the sole official language in the new state. After independence, the Constitution of the Republic of Estonia of 1992 confirmed the legal status of the Estonian language as the sole official language of Estonia.¹⁰⁵ The goal of the legislation was to create a clear partition between the Estonian people and the Russian people, and to liberate the Estonians from the linguistic oppression of Soviet rule.¹⁰⁶

The legal ramifications of determining that Estonian was the sole official language in Estonia's constitution were pervasive and significant. A slew of new legislation appeared after the legislation of the constitution in 1992 building on this new language hierarchy. For example, clause 37 of the Estonian constitution, together with the law concerning Estonian elementary and high schools from 1993, made it possible for

103. See Special Eurobarometer 386, *Europeans and Their Languages: Report*, Wave EB77.1, at 10-11 (June 2012).

104. See Artemi Romanov, *The Russian Diaspora in Latvia and Estonia: Predicting Language Outcomes*, 21 J. MULTILINGUAL AND MULTICULTURAL DEV. 58, 59 (2000).

105. Lisa M. Kaplan, *International Responsibility of an Occupying Power for Environmental Harm: The Case of Estonia*, 12 TRANSNAT'L L. 153, 169 (1999).

106. Romanov, *supra* note 103.

national minorities to choose the language of instruction for their children in educational institutions.¹⁰⁷ However, the legislation only refers to institutions that do not receive governmental funds, and most of the Russian speakers do not have the financial means to pay the higher tuition costs needed to attend such private schools.¹⁰⁸ This meant that parents who wanted their children to attend a Russian-speaking school, but are unable to pay for a private education, had little choice but to forgo their preference and send their children to the state school, where Estonian was the sole language of instruction.¹⁰⁹

Another illustration of the broad and pervasive societal and political effects of the language legislation in Estonia is that country's Cultural Autonomy of National Minorities Act of 1993.¹¹⁰ Alongside clause 11 of the new version of the Language Act, of 1995, the Estonian parliament determined that the language of the national minorities can be used in internal communication between minority institutions and individual members, so long as the use is in addition to – and not instead of – the official Estonian language.¹¹¹

It should come as no surprise, then, that this strand of constitutionally harmful legislation targeting the Russian-speaking minority was one of the reasons that Estonia was placed under the close supervision of the United Nations Human Rights Council.¹¹²

The legislative linguistic experience in Estonian is commensurable to that of Israel, mainly because both countries classify themselves as 'ethnic democracies.' Both countries are dominated by a majority – Jews in Israel and Estonians in Estonia – that uses public institutions and state symbols in ways that reflect and perpetuate the dominance of their cultures over that of minorities.¹¹³ In the context of linguistic policy, the

107. Põhiseadus [PS] [Constitution] Jun. 28, 1992, pmb., art. 6 (Est.).

108. See Maarja Siiner, *Planning Language Practice: A Sociolinguistic Analysis of Language Policy in Post-Communist Estonia*, 5 LANGUAGE POL'Y 161, 166–68 (2006).

109. *Supra* note 107, art. 37 (Est.).

110. Põhikooli- ja gümnaasiumiseadus [Basic Schools and Upper Secondary Schools Act] [PGS] Riigii Teataja [RT I] [State Gazzette] 1993, 63, 892, cl. 9 (Est.).

111. Romanov, *supra* note 103, at 60.

112. Kristina Lindemann & Ellu Saar, *Ethnic Inequalities in Education: Second-Generation Russians in Estonia*, 35 ETHNIC & RACIAL STUD. 1974, 1980 (2012).

113. Kristina Lindemann & Ellu Saar, *Ethnic Inequalities in Education:*

constitutional exclusion of the Russian language by the establishment of Estonian as the sole official language of Estonia created a sharp partition between the Estonian majority group and the Russian minority group. The Estonian experience teaches us that when the majority and the minorities are partitioned on the constitutional level, the chances are much higher that additional changes further disadvantaging the minority group will be made at the lower normative legislative level.

Examining the significance of using legal tools to create a hierarchy between languages, such as the hierarchy created between Hebrew and Arabic in the INS, makes it possible to also learn from the opposite situation – that is, from countries that seek to bridge gulfs between different language communities by awarding official status or equal status to minority languages. As noted in the first section of this article, the term “official language”, which originally appeared in Article 82, lacks an agreed-upon and broadly accepted definition in all of the democratic countries that legislated protection of official languages.¹¹⁴ However, there is a consensus that awarding official status to a minority language is an acknowledgement by the state that the language is an object of cultural identity, and that it constitutes a gesture of inclusion towards all citizens of a given country, broadening the borders of joint citizenship.¹¹⁵

I will begin with the positive experiences in countries that declare that they are bilingual at the constitutional level. These cases testify to the fact that the goal of providing equal status to both majority and minority languages is the strengthening of the public visibility of both languages and the boost the sense of national belonging among all of the country’s citizens.

The Quebec province in Canada that includes a numerical majority of French speakers and a minority of English speakers is a good example of a positive experience. The majority Francophone group in Quebec is also a linguistic minority group in Canada, where the great majority of the citizens are English speakers.¹¹⁶ The Quebec experience in Canada teaches us that

Second-Generation Russians in Estonia, 35 ETHNIC & RACIAL STUD. 1974, 1980 (2012).

114. Vähemusrahvuse kultuuriautonomias seadus [National Minorities Cultural Autonomy Act] [VRKAS] Riigii Teataja [RT I] [State Gazzette] 1993, 71, 1001, cl. 4 (Est.).

115. Siner, *supra* note 109, at 59.

116. ALAN PATTEN, EQUAL RECOGNITION: THE MORAL FOUNDATIONS OF MINORITY RIGHTS 158–60 (2014).

the inclusion of bilingual signs in Quebec, specifically, and in Canada, in general, in English and in French, as well as the provision of equal status of both languages in the Canadian Charter of Rights and Freedoms of 1982, did help strengthen the sense of belonging among the Francophone minority in Canada.¹¹⁷ This goal was explicitly stated by Pierre Elliot Trudeau, the late Canadian Prime Minister, who told reporters that the Canadian Charter of Rights and Freedoms was “designed to strengthen the belonging of the French speakers in Canada” when the document was signed.¹¹⁸

Another positive and inclusive linguistic experience took place in Finland. Finnish is the majority language and Swedish is the minority language in the country.¹¹⁹ Finland acknowledged both languages as official national languages in 1922.¹²⁰ When the Finnish citizens were asked to declare the language with which they identify, less than seven percent of the citizens self-identified as Swedish speakers.¹²¹ Nevertheless, when asked to choose between defining themselves as monolingual or bi-lingual, more and more Finnish citizens today prefer to identify themselves as bi-lingual.¹²² Many of them acknowledge the advantages of being bi-lingual and actively seek bi-lingual education for their children. Today, all of the Finnish students in the public school system are required to learn Swedish for at least three years.¹²³ There are many bi-lingual educational programs for adults as well, that provide opportunities to learners to immerse themselves in the Swedish language.¹²⁴ The two languages feature regularly in the Finnish public space and in communiques by the government and

117. Meital Pinto, *The Right to Culture, the Right to Dispute and the Right to Exclude: A New Perspective on Minorities Within Minorities*, 28 *RATIO JURIS* 521, 532 (2015).

118. See Liora Bigon & Amer Dahamshe, *An Anatomy of Symbolic Power: Israeli Road-Sign Policy and the Palestinian Minority*, 32 *ENV'T & PLAN. D: SOC'Y & SPACE* 606, 607 (2014).

119. Paul C. Weiler, *Rights and Judges in a Democracy: A New Canadian Version*, 18 *U. MICH. J.L. & REFORM* 51, 56–57 (1984).

120. See Pauliina Raento & Kai Husso, *Cultural Diversity in Finland*, 180 *FENNIA INT'L J. GEOGRAPHY* 151, 152 (2001).

121. *Id.*

122. S. Björklund & K. Mård-Miettinen, *Integrating Multiple Languages in Immersion: Swedish Immersion in Finland*, in *IMMERSION EDUCATION: PRACTICES, POLICIES, POSSIBILITIES* 13 (Diane J. Tedick et al. eds., 2011).

123. See FIN. PRIME MINISTER'S OFFICE, *STRATEGY FOR THE NATIONAL LANGUAGES OF FINLAND* 14 (2012).

124. See Raento & Husso, *supra* note 120, at 153.

administrative authorities. Public sector employees, moreover, are expected to be able to talk to citizens in the two languages.¹²⁵

The model of countries that award official or equal status to minority languages illustrates that positive recognition of a minority language reflects a broader inclusionist attitude towards minority, which in turn creates strong citizenship bonds between majority and minority groups. The next section will propose that the special status of Arabic in the INS should be purposively interpreted not only in light of the legislative intent behind it but also in light of the potential of strong protection of Arabic to create a basis for civic solidarity between Jews and Arabs in Israel.

F. Purposive Interpretation of the INS in light of the Legislators' Intent and the Connection between Strengthening the Minority Language and Civic Solidarity

The discussion up to here illustrated that in using the expression "special status," the legislators' intention was to downgrade the status of the Arabic language. Still, there is a wide range of possible judicial interpretations of this term, especially since it has no parallel term in any other country. In this section, I will argue that we need to interpret the enigmatic "special status" formula in accordance with two central criteria. The first criterion is the intention of the legislators, as reflected by the Knesset discussions in the different Knesset committees. The second criterion to consider is the potential of extending legal protections to the Arabic language to create and strengthen civic solidarity between Jews and Arabs.

The discussion in section C of this article established the legislature's intent. The idea was to diminish the status of the Arabic language and to rank Hebrew higher than Arabic. The question that we now face now is what weight the legislature's intent should carry when speaking of application of a constitutional text.

For over two decades, since Professor Aharon Barak was President of the Supreme Court, the primary approach of interpretation in Israeli law has been purposive

125. Francis M. Hault & Sari Pietikäinen, *Shaping Discourses of Multilingualism Through a Language Ideological Debate: The Case of Swedish in Finland*, 13 J. LANGUAGE & POL. 1, 4 (2014).

interpretation.¹²⁶ The purposive interpretative approach created a Gordian knot between the 'subjective' purpose of the law's initiators and its ostensibly 'objective' purpose, one that every 'reasonable' reader of the law in a democratic country would relate to the constitution.¹²⁷ Seemingly, the simplest phrasing of this approach is that whenever there is a contradiction between subjective and objective purposes in a constitutional text, the objective purpose takes precedence.¹²⁸ Reality is rarely that neatly arranged, however. As Barak noted more than once, the 'objective purpose' is itself a subjective construct.¹²⁹ Purposive interpretation understands the subjective purpose of constitutions as expressing and grounding the fundamental values of the state and society, such as human rights and the rule of law.¹³⁰

In our case, it is possible to assert that, on the face of it, there are various subjective intentions, that the initiators of the INS perceived – for example, the desire to both emphasize the superiority of the Hebrew language over Arabic, but also to stop short of fully abolishing the official status of the Arabic language. Objective purpose can be discerned in different levels of interpretation, from the concrete level of interpretation that seeks to ascertain what the hypothetical reasonable reader would understand from a specific legal text, to a high level of interpretation, which deals with the question of what would a reasonable reader, in a democratic country, would assume is shared throughout all of a given state's legislation? The objective meaning of the constitution is drawn from the essential values that the constitution is understood to promote, such as human rights, the rule of law and fairness.¹³¹

At which point a new question arises: was the harm that was caused to the Arabic language's status – a language which is also a cultural identity marker of a significant minority population in the state – an appropriate objective purpose of the law? In addition to Israel being a Jewish state, it is also democratic. And there is little consensus that in order to protect the status of Hebrew, one must lower Arabic's status.

126. RAFI Reznik, *The Rise of American Conservatism in Israel*, 8 PENN ST. J.L. & INT'L AFF. 383, 392–93 (2020).

127. AHARON BARAK, *PURPOSIVE INTERPRETATION IN LAW* 89–90 (2005).

128. *Id.* at 91, 94–95.

129. *Id.* at 111–12.

130. *Id.*

131. *Id.* at 90.

I now turn to discuss the connection between strengthening the public visibility of the Arabic language and creating a basis for civic solidarity between Jews and Arabs in Israel. The idea is that extending broad legal protections to the Arabic language does not only not harm the Jewish character of Israel,¹³² but rather that it carries a great potential to create a new bonds of commonality between Jews and Arabs – two groups who have, at present, very limited and unstable common ground.¹³³ Most of the Arab citizens in Israel live in communities in which no Jews live; most of them attend schools in Israel's segregated educational system, do not serve in the military and do not establish families with Jews.¹³⁴ The representatives of the Arab political parties are constantly excluded from coalitional negotiations and they are not considered by Jewish Zionist parties as legitimate partners in a ruling coalition.¹³⁵ As Michael Karayanni notes, “the Jewish majority enjoys a rich republican institution of citizenship inspired by a shared political ideology. The citizenship relevant for the Palestinian-Arab minority, however, is devoid of this republican element and restricted to certain guarantees of individual liberties”.¹³⁶ Whereas in other countries, minority groups often fight over recognition of their collective rights in order to maintain their separate identity, in Israel, the separate identity of the Arab minority is a political and juridical given.¹³⁷ For the Arab minority in Israel, the main problem never was safeguarding of its separate identity: it was a lack of common ground – a separation carefully cultivated and observed by the Israeli government – with the Jewish majority.

132. See NIR KEIDAR, ISR. DEMOCRACY INST., SHOULD JEWISH IDENTITY BE ANCHORED IN ISRAELI LAW? 53–54 (2015) (“The answer to the question if the State of Israel needs, for example, to allow members of the Arab minority to teach their children in Arabic and to instill in them the Arab culture is derived from the general discussion on the theories of morality, the state and the social sciences and not from the discussion that focuses on the Jewishness of Israel. If we were to switch the words “Israel” with “France” or with “Thailand,” the basic assumptions and the values that guide the discussion would not change.”).

133. Michael Karayanni, *Two Concepts of Group Rights for the Palestinian-Arab Minority Under Israel's Constitutional Definition as a “Jewish and Democratic” State*, 10 INT'L J. CONST. L. 304, 309–10 (2012).

134. SAMMY SMOOHA, U. HAIFA & ISR. DEMOCRACY INST., STILL PLAYING BY THE RULES: INDEX OF ARAB-JEWISH RELATIONS IN ISRAEL, 2013 33 (2015).

135. Karayanni, *supra* note 133, at 314.

136. *Id.* at 309.

137. Michael Karayanni, *Multiculturalism as Covering: On the Accommodation of Minority Religions in Israel*, 66 AM. J. COMP. L. 831, 856 (2018).

For this reason, the Arab minority never fully integrated into Israeli society.¹³⁸

Not only is there no common denominator between Arabs and Jews in Israel, but one would be hard pressed to say that there is a basic sense of civic solidarity between Jews and Arabs. This is because civic solidarity among the Jews in Israel is exclusionary, anchored exclusively in Jewish nationhood and Zionist nationalism.¹³⁹ Civic solidarity reflects identification and mutual indebtedness in a political community.¹⁴⁰ As a rule, the source of identification and indebtedness between members of a community has historical roots and reflects their joint mission.¹⁴¹ A national community has a joint history and mission and, therefore, in most democratic countries, national identity serves as a source of civic solidarity.¹⁴² However, when such feelings of solidarity are reserved to only one national identity, usually that of the majority group, it does not allow the inclusion of the minority group into a collective civil society. In cases such as these, solidarity strengthens the majority group but comes at the expense of the minority group and its sense of belonging to the country.¹⁴³

The sole source of civic solidarity in Israel for Jews in Israel stems from an exclusively Jewish national identity. Palestinians-Arab citizens are thus by definition excluded from taking part in it, since they are identified and identify with a different nation.¹⁴⁴ In order for there to be a shared civic solidarity in Israel for Jews and Palestinian-Arabs, we need to find heterogeneous alternative sources for a civic solidarity that does not exclusively draw on the nationalism or history of the Jewish people.¹⁴⁵ Putnam, who related to the concept of solidarity in a heterogeneous society, writes that solidarity in a society is a process of creation of a new identity that, on the one

138. *Id.* at 864.

139. *Id.*; Hostovsky-Brandes, *supra* note 6, at 94.

140. See Tamar Hostovsky-Brandes, *Law, Citizenship and Social Solidarity: Israel's "Loyalty-Citizenship" Laws as a Test Case*, 6 POL. GROUPS, & IDENTITIES 39, 46 (2018).

141. See Jeff Spinner-Halev, *Democracy, Solidarity and Post-Nationalism*, 56 POL. STUD. 604, 606–07 (2008).

142. *Id.* at 608.

143. *Id.* at 614.

144. Hostovsky-Brandes, *supra* note 6, at 97–98.

145. See generally MAZEN MASRI, *THE DYNAMICS OF EXCLUSIONARY CONSTITUTIONALISM: ISRAEL AS A JEWISH AND DEMOCRATIC STATE* 101–25 (2017).

hand, acknowledges, respects and contains the different identities and, on the other, pursues the objective of forging a broad sense of partnership of all citizens.¹⁴⁶

In order to maintain the stability of an ethnic democracy like Israel,¹⁴⁷ there is a need for basis of solidarity that is not solely based on ethnic-national identity. Only a non-ethnic non-national civic basis could also accommodate and fully include the Palestinian-Arab minority.¹⁴⁸ Solidarity between Jews and Palestinian-Arabs in Israel, according to Putnam's prescription, would not do away with ethnic-national elements altogether. Rather, it would introduce to this ethno-nationally defined idea of citizenship elements of communication, inclusion, and cooperation, which are indispensable to the stable existence of democracy.

In many ways, the exclusion of the Arabic language from the Israeli public space symbolizes the exclusion of Palestinian-Arab citizens from the public space and their weak belonging to Israeli society.¹⁴⁹ It therefore also further excludes Palestinian-Arabs from a shared civic solidarity. Looking at the academic public space in Israel can illustrate the complexities of this point well. Arab students at the University of Haifa noted that there are no signs in Arabic, including electronic signs and announcements, on campus. Jewish students perhaps fail to notice this, but the Arab students are painfully aware of it. As they noted, the importance of the presence of the Arabic language on a campus with Arab and Jewish students, is not merely instrumental. That is, they do not need it to understand what is written on the sign. The lack of Arabic on campus tells them is that the university does not acknowledge their presence as part of the university and constitutes a failure to communicate to them that they belong there just as much as the Jewish students do.¹⁵⁰

Instituting equality between Arabic and Hebrew in the

146. See generally Robert D. Putnam, *E Pluribus Unum: Diversity and Community in the Twenty-First Century*, 30 SCANDINAVIAN POL. STUD. 137, 137 (2007).

147. See generally Sammy Smooha, *Ethnic Democracy: Israel as an Archetype*, 2 ISR. STUD. 198 (1997).

148. YOAV PELED, THE CHALLENGE OF ETHNIC DEMOCRACY: THE STATE AND MINORITY GROUPS IN ISRAEL, POLAND AND NORTHERN IRELAND 13 (2014).

149. Karayanni, *supra* note 133, at 313.

150. Sikkuy and Dirasat, PRESENT YET ABSENT: THE ISRAELI CAMPUS AND ITS RELATION TO THE ARABIC LANGUAGE – THE CURRENT STATE, http://www.sikkuy.org.il/wp-content/uploads/2014/12/present-yet-absent_internet_heb.pdf.

linguistic landscape can be a vehicle of civic empowerment and integration. It can become an extended hand and an expression of the desire for a more just and inclusive society. The absence of Arabic in the Israeli public sphere arouses a fear among the Palestinian-Arab population in Israel that, if unchallenged, the continued assault on the presence of their language in the public sphere will mean less opportunities and more outright hostility towards the language, its speakers and their culture.¹⁵¹ A strong presence of the Arabic language in the public space sends the message that upholding the Jewish character of the state does not come at the expense of the Palestinian-Arab minority nor is it demonstrated disrespecting the Arabic language and culture.¹⁵²

The Jewish nationalist attempt to banish Arabic from the public space for the sole benefit of more ubiquity for the Hebrew language raises a jingoistic specter of nationalism that essentially rejects civic solidarity with people who are not Jewish. If the INS will be interpreted as distancing Arabic from the public Israeli sphere, it will carry harsh consequences for the Palestinian-Arab minority, as well as to the Israel society as whole. As Hostovsky-Brandes rightly argues, “By defining the nature and shared values of the body-politic in Israel as association with the Israeli nation, without any reference to or recognition of minorities” [. . .] the INS “constitutes an exclusionary constitutional ethos”.¹⁵³

It is my view that the remaking of public space in Israel as a bilingual space, in which both Jews and Palestinian-Arabs can feel at home, could potentially be the beginning of a joint model of citizenship equally shared by Jews and Palestinian-Arabs in Israel. A space like this could serve as a multicultural framework for Jews and Palestinian-Arabs alike. It would also make it possible for Palestinian-Arabs in Israel to identify with their country and feel a sense of belonging, and enjoy the security of being citizens with equal rights. The heart of the idea is to enact political and cultural change by making a meaningful place in Israel’s civic society for the Arabic language, so that it

151. Elana Shohamy & Marwan Abu Ghazaleh-Mahajneh, *Linguistic Landscape as a Tool for Interpreting Language Vitality: Arabic as a “Minority” Language in Israel*, in MINORITY LANGUAGES IN THE LINGUISTIC LANDSCAPE 89–108 (Durk Gorter et al. eds., 2012).

152. ALEXANDER YAKOBSON, THE STATUS OF HEBREW AND ARABIC IN ISRAEL 7 (2014) (Hebrew).

153. Hostovsky-Brandes, *supra* note 6, at 93.

will not remain, as it currently is, an exclusive marker of the Arab minority.¹⁵⁴

It is my hope that when Arabic shares the same public space with Hebrew, Palestinian-Arabs will feel that their cultural identity has not been forgotten or marginalized, but rather has a place of respect, together with the Hebrew-Jewish identity. Unlike the Israeli public space today, this will be a public space with which all the citizens of Israel can identify. This is a clear public and national interest to Jews and to Palestinian-Arabs alike. In the end, we all live under the same national framework in the same country. We all need a common source of solidarity with the country in which we live. A public space, which protects the Arabic and Hebrew languages, is a potential source of civic solidarity for Jews and Palestinian Arabs in Israel.

The creation of a bi-lingual public space is the key to beginning to instill a new civic solidarity. It does not seek to eliminate the ethnic and national difference between Jews and Palestinian-Arabs or deny their mostly contentious history, but it is dedicated to forging a new communication channel that includes both groups and unites them. This notion of solidarity is derived from a broad reading of the concepts of citizenship and belonging. In Israel and in many states today, the identity of the minority group is usually excluded and, when it is not, considered a divisive or charged issue among the majority. It is perceived negatively as a threat to the collective identity of the majority. This situation causes minority members to become estranged from the civic society in which they live, which is suffused with the dominant values of the majority group.¹⁵⁵ Should the country take initiative and engage in positive actions of cultural acknowledgement of the minority, and first acknowledge the minority's language, it will set off towards accomplishing interlocking evolutions in civic society, both symbolic-cultural and socio-political. The formerly marginalized

154. Ayelet Harel-Shalev, *The Status of Minority Languages in Deeply Divided Societies: Urdu in India and Arabic in Israel—A Comparative Perspective*, 21 *ISR. STUD. F.* 28, 46 (2006).

155. See e.g., BHIKHU PAREKH, *RETHINKING MULTICULTURALISM: CULTURAL DIVERSITY AND POLITICAL THEORY* 196, 224, 237 (2d ed. 2000); GERSHON SHAFIR & YOAV PELED, *BEING ISRAELI: THE DYNAMICS OF MULTIPLE CITIZENSHIP* 22–23, 125–35 (2002); Linda Bosniak, *Varieties of Citizenship*, 75 *FORDHAM L. REV.* 2449 (2007); Ayelet Shachar, *Whose Republic? Citizenship and Membership in the Israeli Polity*, 13 *GEO. IMMGR. L.J.* 233 (1999); Leti Volpp, *Divesting Citizenship: On Asian American History and the Loss of Citizenship Through Marriage*, 53 *UCLA L. REV.* 405, 480–81 (2005).

culture will gain a newfound place in the public space and the civic status of the minority and the sense of belonging among its members will increase.¹⁵⁶

In addition to the potential of opening up hitherto blocked channels of communication between Jews and Arabs, which is also a remarkable benefit of Israelis learning Arabic, the Arabic language is also part of the heritage of nearly half of the Jewish citizens in Israel, the Mizrahim.¹⁵⁷ Hebrew and Arabic have common roots,¹⁵⁸ however Arabic is taught in Jewish schools in Israel schools either as a second foreign language, or in certain units in the Israeli army, as the language of the enemy.¹⁵⁹ On the Arabic Day in the Knesset, MK Yossi Yona, from the Zionist Camp, gave his speech in Arabic, saying the following things:

Nobody can abolish the common roots of these two ancient languages or deny the linguistic similarity between them. However, to my great sadness, we Jews have distanced ourselves from the Arabic language and we relate to it as a very distant and strange language. If we go back and remind ourselves that these two languages are derived from the same source, and if we go back and remind ourselves that a large part of the Jewish culture's assets was written in Arabic (Sa'dia Ga'on and the Ramban, for example), perhaps we will be able to overcome the prejudices and to look at one another in a positive and optimistic way.¹⁶⁰

156. ANNA ELISABETTA GALEOTTI, TOLERATION AS RECOGNITION 66–67, 114 (2002); Meital Pinto, *What Are Offences to Feelings Really About? A New Regulative Principle for the Multicultural Era*, 30 OXFORD J. LEGAL STUD. 695, 714 (2010).

157. Muhamed Amara et al., THE ARABIC LANGUAGE IN ACADEMIC INSTITUTIONS IN ISRAEL: THE HISTORIC ABSENCE, THE PRESENT-DAY CHALLENGES, THE CHANCES FOR THE FUTURE 18 (2016) (Hebrew); see HCJ 4/19 Michael v. The Knesset (illustrating the main argument of the Mizrahi Jewish petition against the INS: that harming the Arabic language is also an injury of the heritage and culture of Jews who came from Arab and Islamic countries; see also Jen Marlowe, *Israel's Mizrahi Activists Are Fighting the Racist Nation-State Law*, NATION (May 27, 2020) <https://www.thenation.com/article/world/israel-racism-mizrahis-palestinians/>.

158. Sarah-Claire Jordan, *Roots of the Arabic Language*, ALPHA OMEGA TRANSLATIONS (May 19, 2016), <https://alphaomegatranslations.com/foreign-language/roots-of-the-arabic-language/>.

159. Letizia Lombezi, *The Arabic Language in Israel: Official Language, Mother Tongue, Foreign Language, Teaching, Dissemination, and Competence*, *Altre Modernità* (Feb. 2018), <https://core.ac.uk/download/pdf/154947346.pdf>.

160. Yossi Yonah, YOUTUBE (May 24, 2016), https://www.youtube.com/watch?v=UR2Z_vOXX18.

In light of its potential to create some much-needed basis for a new civic solidarity between Palestinian-Arabs and Jews in Israel, strengthening the Arabic language in Israeli public space should be brought into account by court justices and policymakers when they interpret the term ‘special status’ with regard to the status of Arabic in the INS. Creating civic solidarity between Palestinian-Arabs and Jews in Israel should be an overarching imperative in the process of purposively interpreting of the INS.

Summary

For nearly a century, Article 82 of the Palestinian Order in Council determined the status of the Hebrew and Arabic languages. Hebrew and Arabic were both official languages in the State of Israel. The recently passed INS changed the situation and reassigned a “special” status for Arabic, different and lower than “the official state language,” Hebrew. This paper engages with claims that the INS does not cause significant harm to the status of the Arabic language. It points out the intrinsic interest the Palestinian-Arab community has in Arabic as its exclusive marker of cultural identity, and alerts readers to the danger of Israeli public authorities considering the INS a significant intervention that opens the floodgates towards a new a legalized hierarchy between Hebrew and Arabic. Were this to happen, the paper argues, the INS would aggravate the banishment of Arabic from the public sphere instead of reversing it. Taking up the term ‘special status’, the paper similarly argues that such a hazily-defined term should be purposively interpreted in the upcoming appeal discussions to be held before the Supreme Court of Israel so its interpretation take into account the connection between supporting Arabic in public space and creating a shared basis for civic solidarity between Palestinian-Arabs and Jews, which is currently largely missing in Israeli society.