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# ROMANTICS IN ISRAEL'S LEGAL POLITICS: Arabic Through The Lens of the Partition Plan

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## TABLE OF CONTENTS

INTRODUCTION .....	1
I. ARABIC IN THE PRE-NSL ERA .....	5
II. ARABIC IN THE POST-NSL ERA .....	7
III. IN DEFENSE OF THE COURT'S MAJORITY POSITION .....	9
IV. ONLY IF REMAINED AS ENVISIONED — A LIBERAL-SUBSTANTIVE DEMOCRACY .....	11
A. <i>Israel: The Partition Plan and the Declaration of Independence</i> .....	11
1. Formal Democracy versus Liberal-Substantive Democracy:.....	13
B. <i>Arabic Through the Lens of the Partition Plan</i> .....	14
CONCLUSION .....	18

## INTRODUCTION

Recently, Israel's High Court of Justice (the Court) was asked to decide on the constitutionality of Basic-Law: Israel – The Nation State of the Jewish People (NSL),<sup>1</sup> which stipulates, among other things, that the State language is Hebrew<sup>2</sup> and that Arabic enjoys a special status.<sup>3</sup>

The enactment of the controversial NSL, which is arguably perceived as an attempt of the rightwing nationalists and religious parties to erode Israel's

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1. On the theory of Romanticism, see Isaiah Berlin, *The Roots of Romanticism* (Henry Hardy ed., 2001).

2. See *Basic Law: Israel – The Nation State of the Jewish People* (July 19, 2018) (NSL); HCJ 5555/18 et al. *MK Akram Hasson v. The Knesset* (July 8, 2021).

3. *Id.* at art. 4(b).

pledge to establish a “Jewish and democratic state,” thus, shaking the fragile balance between both values by giving Israel’s Jewish values supremacy over Israel’s democratic commitments, and failing to mention, leaving aside protect, the non-Jewish minorities’ democratic values and rights.

In legislating the NSL, and shortly afterward, many scholars voiced allegations whereby the new legislation deprives the Arabic of its present official status,<sup>4</sup> which is already anchored in section 82 of the King’s Order-in-Council.<sup>5</sup> While rejecting the petitions, by the majority of opinions, the Court held, *inter alia*, that nothing in the NSL suggests that Arabic has ceased to exist as an official language.<sup>6</sup> The Court’s understanding is that the term “special status” only describes and preserves the unique status that Arabic enjoys as an official language.<sup>7</sup> Besides, in its validity of laws clause, the NSL makes it clear that nothing in this law shall affect the Arabic language’s legal status as recognized on the eve of its enactment.<sup>8</sup>

In defense of the Court’s holding, this Paper argues that the NSL solidifies Arabic’s pre-NSL legal status.<sup>9</sup> Thus, it was legislated precisely to highlight the legal status of Hebrew as the State language, but not necessarily to deny Arabic its official legal status. However, while it is possible to agree, in principle, that in the pre-NSL era, Arabic had enjoyed an official legal status, still there has been a significant dispute about the meaning, scope, and consequences of such recognition.<sup>10</sup> Accordingly, it is more likely that the NSL reinstates, rather than downgrades, the legal status of the Arabic language.

This Paper argues that despite the Court’s *prima facie* holding in favor of Arabic being an official language, still, the Court has failed to decisively resolve the question concerning the meaning, scope, and consequences of such

4. It has also been argued that the NSL encumbers any potential to further upgrade Arabic’s legal status. See, *inter alia*, Meital Pinto, *Why Does Basic-Law the Nation Worsen the Legal Status of Arabic*, ICON-S-IL 31 (Oct. 2018) (Hebrew).

5. Upon its establishment, the State of Israel adopted The King’s Order in Council, 1922–1947, as was amended in 1948 by s15(b) of the Government and Legal System Organization Act. This is a legislation of the British Mandate, which was described as the constitution of *Eretz Yizrael* (the Land of Israel). See AMNON RUBINSTEIN & BARAK MEDINA, CONSTITUTIONAL LAW OF THE STATE OF ISRAEL VOL II 1172 (5th ed., 1997).

6. *MK Akram Hasson et al.*, *supra* note 2, Judgment by Chief Justice Esther Hayut. Other judges adopted Chief Justice Esther Hayut’s opinion with each adding his own remarks and notes.

7. Deputy Chief Justice Hanan Melcer noted that Hebrew and Arabic are official languages in Israel. Hebrew is the State language, while Arabic is described as a special language. See Judgment by Deputy Chief Justice Hanan Melcer, *id.*, ¶ 28.

8. NSL, art 4(c). The term means the recognition of already existing laws.

9. See also Mohammed S. Wattad, *The Nation State Law and the Arabic Language in Israel: Downgrading, Replicating or Upgrading?* 52(2) ISRAEL L. REV. 263, 274–279 (2021); H CJ 4112/99 *Adalah – The Legal Center for Arab Minority Rights in Israel v City of Tel Aviv-Jaffa* (22 July 2002).

10. See Wattad, *supra* note 9, at 268–73.

recognition.<sup>11</sup> Thus, the Court has missed an opportunity, which could have been faithfully addressed had the Court viewed the question at stake romantically,<sup>12</sup> through the genesis of its legal-political premises,<sup>13</sup> upon which it was established; namely, the 1947 Resolution 181(II) of the United Nations General Assembly (the Partition Plan), wherein the collective rights, including linguistic rights, of the Arab minority citizens, were promised to be constitutionally protected.<sup>14</sup>

In this context, it is remarkable to mention that while rejecting the petitions against the constitutionality of the NSL, the Court made straightforward reference to the Partition Plan. The Court viewed the Partition Plan as constituting a regime of a partnership between the Jewish and the Arab citizens of Israel,<sup>15</sup> as well as establishing a balance between Israel's Jewish identity and its commitment to democratic values, thereby guaranteeing equal protection rights for minorities, including, primarily, the Arab minority in Israel.<sup>16</sup> This judicial reference to the Partition Plan recalls the pre-NSL ruling,<sup>17</sup> where Justice Dalia Doner took the position that Arabic is comprehensively an official language in Israel, noting that section 82 should be interpreted in light of the Partition Plan, which guarantees the legal protection for the Arabic language.<sup>18</sup>

Addressing the question concerning the Arabic language's legal status through the lens of Partition Plan, this Paper argues that the Court should have interpreted the NSL as upgrading the legal status of Arabic to become a decisively and comprehensively official language; namely, not disputed anymore as in the pre-NSL era. For the first time in the legal history of Israel, Arabic's legal status is protected in a basic-law—rather than mandatory legislation—which enjoys a special constitutional normative status under Israel's constitutional jurisprudence.<sup>19</sup> Additionally, unlike section 82, the NSL is not limited in its

11. *MK Akram Hasson*, Judgment by Chief Justice Esther Hayut, *supra* note 2, ¶ 76.

12. *See supra* note 1.

13. As a liberal-substantive democracy, not a Jewish-ethnic democracy. *See* Sammy Smooha, *The Model of Ethnic Democracy: Israel as a Jewish and Democratic State*, 8(4) *NATIONS & NATIONALISM* 475, 475–503 (2002); Sammy Smooha, *Types of Democracy and Modes of Conflict-Management in Ethnically Divided Societies*, 8(4) *NATIONS & NATIONALISM* 423, 423–31 (2002); Sammy Smooha, *Israel 70 Global Enigma*, *FATHOM* (July 2018).

14. United Nations General Assembly, Resolution 181, Future Government of Palestine, November 29, 1947, UN Doc A/RES/181, United Nations Information System on the Question of Palestine Documents Collections (the Partition Plan). *See* League of Nations, Mandate for Palestine, July 24, 1922, United Nations Information System on the Question of Palestine Documents Collections (the Mandate for Palestine); Abd Al-Wahhab Al-Kayyali, *Tareekh Falastin al-Hadeeth [The Road for Modern Palestine]* 37 (Beirut: al-Mu'assasat al-Arabiyya, 1985).

15. Both in the State's establishment and administration. *See MK Akram Hasson*, *supra* note 2, Judgment by Justice Neal Hendel, ¶ 12.

16. *Id.*, Judgment by Justice Menachem Mazuz, ¶ 6.

17. *See Adalah*, *supra* note 9.

18. *Id.*, Judgment by Justice Dalia Dorner.

19. When Israel was established, all efforts aimed at introducing a written constitution

scope of recognition of Arabic's legal status. Moreover, the NSL establishes an official judicial recognition of the Arab minority as an indigenous national minority that is entitled to collective rights, such as linguistic rights, especially in light of the enactment of the NSL, which is nation-based legislation that highlights the national aspirations and features of the Jewish nation.<sup>20</sup> To conclude, this Paper contends that this reading of the NSL fulfills Israel's commitment to liberal-substantive democratic values, as were promised in the Partition Plan and as were ultimately embodied in Israel's Declaration of Independence.<sup>21</sup>

Part I presents the legal status of the Arabic language in the pre-NSL era. Part II addresses the NSL and the Court's views concerning its proper interpretation compared to the pre-NSL laws and the case-law on this matter. Part III exhibits my defense for the Court's majority opinion on the proper understanding of the NSL in this regard, thus challenging contentions whereby the NSL downgrades the legal status of Arabic and prevents its further legal development. Finally, part IV proposes that reading the NSL in light of the Partition Plan demands interpreting the legal status of Arabic within the normative framework of its constitutional identity as a "Jewish and democratic state." This is because this term was envisioned in the Partition Plan, thus emphasizing Israel as a liberal-substantive democracy rather than a Jewish-ethnic democracy. Accordingly,

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failed, due, in large part, to unbridgeable disagreements between Knesset members around many fundamental constitutional issues. Eventually, in 1950, the Knesset endorsed the famous Harari Resolution, according to which, Israel's constitution would be established 'chapter by chapter,' in the form of a series of basic-laws. See SUZIE NAVOT, *THE CONSTITUTION OF ISRAEL: A CONTEXTUAL ANALYSIS* 36–37 (2014); Mohammed S. Wattad, *Israel's Laws on Referendum—A Tale of Unconstitutional Legal Structure*, 27 FLORIDA J. INT'L LAW 213, 221–26 (2015). Yet, until 1992, all of the enacted basic-laws had not been granted any constitutional status, mainly as they were not formulated as anticipating essential parts of the future Israeli written constitution. The most significant turning point was in 1992, when Basic-Law: Human Dignity and Liberty, which focused on protecting a number of basic human rights against their infringement by governmental branches, was enacted. In 1995's *Bank Hamizrachi*, the Court held that Israel's basic-laws were adopted as *supra*-legal chapters in Israel's future and final constitution. See CA 6821/93 United Mizrachi Bank v. Migdal Cooperative Village (Nov. 9, 1995). This is deemed as a touchstone case in the constitutional legal history of Israel, where the normative status of Israel's basic-laws was discussed, as well as the Court's power on judicial review. Since these basic-laws evidently include characteristic constitutional elements, the Court, through its rulings, raised them to a supreme normative status rising above the ordinary laws. As a result, a basic-law norm overrides that of an ordinary law.

20. The inclusion of such legal protection of Arabic should be interpreted as reflecting on the national characteristics of the Arab minority collectively. See also Dafna Yitzhaki, *The Status of Arabic in the Discourse of Israeli Policymakers*, 19 ISRAEL AFF. 290, 337–38 (2013). Article 4 is the first basic-law legislation in Israel's entire history, that speaks for, and refers to a particular national feature of the Arab minority. Saban, *infra* note 31. Israel's basic-laws constitute an important pillar in establishing the fundamental constitutional principles of the state of Israel. Incorporating the legal status of Arabic in a basic-law is a clear recognition by the legislature of Arabic's special elevated status.

21. The Declaration of the Establishment of the State of Israel, 1948 [hereafter the Declaration of Independence].

I argue that the Court should have interpreted the NSL as upgrading the legal status of the Arabic language, to be treated, from now on, as a comprehensive constitutional right, which represents a significant facet of the collective rights to which the Arab minority citizens are entitled, being a national indigenous minority in Israel.

## I. ARABIC IN THE PRE-NSL ERA

Already at its establishment, Israel adopted legislation of the British Mandate in Mandatory Palestine, which includes section 82, entitled “Official Language,” providing that: “All Ordinances, official notices, and official forms of the Government and all official notices by local authorities and municipalities in areas to be prescribed by order of the High Commissioner shall be published in both Hebrew and Arabic.”<sup>22</sup> For many years since its adoption, section 82 has served the Court to establish the legal status of Arabic as an official language in Israel.<sup>23</sup> In support, the Court has noted that this is the language of the largest minority in Israel; despite the tearing Arab-Israeli conflict,<sup>24</sup> they lived in Israel as loyal citizens whose equal rights are guaranteed by the Declaration of Independence.<sup>25</sup> Nonetheless, despite this recognition in principle, the Court has expressed several disputes regarding its meaning and scope. Leading among others, these have been the following judicial approaches that received the premiere status.

*First*, Arabic enjoys a special elevated status, but not an official one, of course not an equivalent status to the English and French languages in Canada.<sup>26</sup> Although section 82 is entitled “official languages,” this term is vague and holds multiple meanings. Thus, nothing positive shall be inferred from the title itself,<sup>27</sup> but only that it means that it has some kind of “special elevated status.”<sup>28</sup> *Second*, Arabic is a limited official language,<sup>29</sup> as it binds only on the central government, but not the local authorities,<sup>30</sup> and solely regarding the instances listed

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22. See *supra* note 1.

23. See CA 4926/08 Wael & Co. v. The National Water and Sewage Authority (Oct. 9, 2013), Judgment by Justice Salim Joubran; *Adalah*, *supra* note 9, Judgment by Justice Dalia Dorner.

24. *Adalah*, Judgment by Chief Justice Aharon Barak, ¶ 25.

25. The Court added that the Arabic language has the potential to bridge the gaps between the State and its Arab citizens, and potentially the neighboring Arab states. See *Id.*, Judgment by Chief Justice Aharon Barak, ¶ 25.

26. See also LCA 12/99 Mar’ei v. Sabek (Apr. 25, 1999), Judgment by Justice Mishael Cheshin.

27. *Adalah*, *supra* note 9, Judgment by Justice Mishael Cheshin, ¶ 10.

28. *Id.* ¶¶ 10–12.

29. *Id.*, Judgment by Chief Justice Aharon Barak.

30. Section 82 mandates, *inter alia*, that all ordinances, official notices, etc. shall be published in both Hebrew and Arabic; however, no such orders were ever issued. Accordingly, Section 82 applies to, and binds, the central government only. It does not apply to, nor does it

in section 82.<sup>31</sup> *Third*, Arabic is comprehensively an official language, wherein the list of cases provided in section 82 is only illustrative.<sup>32</sup> In support of the third approach, several specific legislative instruments elaborate on this official legal status.

Moreover, when inquiring into the case-law, it is almost impossible to point out a clear judicial policy regarding the consequences of recognizing Arabic as an official language.<sup>33</sup> To elaborate, here are some examples: *First*, the Court forced municipalities with sizable Arab populations to add Arabic to all signage in their jurisdictions.<sup>34</sup> *Second*, the National Insurance Institute (NII), which is the leading professional social security organization in Israel, agreed that the official status of Arabic means that all forms should be translated to Arabic and that the NII should be ready to accept documents written in Arabic.<sup>35</sup> *Third*, the Court held that the official status of Arabic mandates that summons for a public hearing before administrative authorities must also be published in the Arabic language in Arabic newspapers.<sup>36</sup> *Fourth*, the Court voided a notice for a hearing before criminal indictment as it was sent to an Arab suspect without any translation into Arabic.<sup>37</sup> And *fifth*, the Court held that in instances where the Arabic-speaking litigants before the Court are many, the expenses for translating the litigation should be borne by the Court and not by the litigants, to comply with the Court's duty to treat all litigants equally.<sup>38</sup>

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bind, the local authorities.

31. *i.e.*, ordinances, official notices, and official forms. Consider Ilan Saban and Muhammad Amara, *The Status of Arabic in Israel: Reflections on the Power of Law to Produce Social Change*, 36 ISRAEL L. REV. 5, 21 (2002); Ilan Saban, *Appropriate Representation of Minorities: Canada's Two Types Structure and the Arab-Palestinian Minority in Israel*, 24 PENN ST. INT'L L. REV. 587 (2006). In *Adalah*, *supra* note 9, Chief Justice Aharon Barak held that even if section 82 were meant to apply to the local authorities, it would require assuming that the term "official notices" be interpreted as extended to municipal signage. Note Chief Justice Aharon Barak admits that such assumption is not to be made without doubts. *See id.*, Judgment by Chief Justice Aharon Barak, ¶ 13. For the sake of clarity, it is worth noting that although Chief Justice Aharon Barak accepted the petition, he grounded this not on section 82, but rather on the freedom of language and the rights to dignity and to equality as promised for the Arab minority in Israel's Declaration of Independence. *See id.*, ¶¶ 16–18.

32. *Id.*, Judgment by Justice Dalia Dorner.

33. It is argued that Section 82, which recognizes Arabic as an official language in Israel, "owes its origins to certain historic and political constellations;" and that this recognition carries "almost no practical sociolinguistic consequence." *See Saban & Amara, supra* note 31, at 4.

34. *Adalah, supra* note 9, Judgments by Chief Justice Aharon Barak and Justice Dalia Dorner.

35. HCJ 2203/01 *AVI* – The International Association for Children Rights DCI – Israel v. The National Insurance Institute (Dec. 15, 2005).

36. *Wael & Co., supra* note 23, Judgment by Justice Salim Joubran.

37. Crim File (District Court – Jerusalem) 333/09 The State of Israel v. Husin (Jan. 5, 2010), ¶ 8.

38. Civil File (Jerusalem Court of Peace) 2636–09 Mustafa v. Ali (June 24, 2012). In

Be the dispute on the Arabic language's legal status as it might be, it is remarkable that even whenever Arabic has been recognized as an official language, the Court felt compelled to emphasize that Hebrew is the State language and its first official language. Moreover, the Court notably clarified that recognizing Arabic as an official language does not jeopardize the legal status of Hebrew as the dominant language.<sup>39</sup> For the Court, section 82 must, first and foremost, be interpreted in light of legislation granting the Hebrew language preference and superior status in a Jewish and democratic state,<sup>40</sup> being "one of the ties that bind us as a nation."<sup>41</sup>

## II. ARABIC IN THE POST-NSL ERA

- Language 4.
- (a) Hebrew is the State language.
  - (b) The Arabic language has a special status in the State; arrangements regarding the use of Arabic in state institutions or vis-à-vis them will be set by law.
  - (c) Nothing in this Article shall affect the status given to the Arabic language before this law came into force.<sup>42</sup>

Shortly after the NLS was legislated, the Court was faced, in several instances, with the question concerning its effect on the legal status of Arabic. However, inquiring into these instances does not reveal a coherent and clear judicial approach to the principal question. To exemplify, in one case, relying on the principle of equality, the Court emphasized the significance of Arabic in Israeli life, noting its fundamental role in expressing and preserving the minority Arab's culture and identity.<sup>43</sup> However, in another case, the Court held that the Hebrew language is the official language in Israel, besides the special status that the Arabic language, *per* section 82, enjoys.<sup>44</sup>

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this case, all the litigants and the witnesses were Arabic speakers, and it was only the Court that needed translation into Hebrew. The Court held that the legal status of Arabic as an official language is derived from Section 82.

39. *Adalah*, *supra* note 9, Judgment by Chief Justice Aharon Barak, ¶ 23, and Judgment by Justice Dalia Dorner, ¶ 6.

40. *Id.*, Judgment by Justice Dalia Dorner, ¶¶ 6–8.

41. For the Court, Hebrew is the language of the Israelis, and it is an element in the definition of Israel as a sovereign state, just as French and English, respectively, constitute an element in the definition of France and England as sovereign states. *Id.*, judgment by Chief Justice Aharon Barak, ¶ 21. The word "Israelis" refers to all citizens of the state of Israel, Jews and Arabs alike. Is it really true that Hebrew is also the language of Arab citizens?

42. NSL, *supra* note 2.

43. HCJ 8676/18 Kabaha v. The Minister of Justice (May 14, 2019).

44. See Judgment by Justice David Mintz, GCA 815/19 Gareeb v. Fidam Select (in Liquidation) Company no B89058 (Feb. 5, 2019). Reading his words, it is reasonable to think that before the NSL, only Hebrew was perceived as an official language and that Arabic only enjoyed a special status; this is mainly because, in writing his position, Justice Mintz does not refer only to Article 4 but also generally to the case-law (the *Adalah* case, *supra* note 9). It would be wrong to assume that Justice Mintz was not aware of the various positions in the



On December 22, 2020, the Court heard a dozen petitions that targeted the constitutionality of several provisions of the NSL, including Article 4 concerning the legal status of Arabic. The petitioners asserted that the NSL has implicitly invalidated Section 82, thus downgrading Arabic's legal status to enjoy a special status, rather than an official status. Additionally, they contended that the validity of laws clause does not preserve Arabic's official legal status, as incorporated *de jure* in Section 82, but rather its *de facto* legal status as a limited official language, and in any case as inferior to the Hebrew language.

Seven months later, on July 8, 2021, the Court rejected the petitions, by the majority of opinions, holding that the NSL shall be interpreted in complete harmony with other existing laws.<sup>45</sup> The Court also held, again by the majority of opinions, that nothing in the NSL alludes that Arabic has ceased to exist as an official language in Israel; particularly, given the manifest stipulation in this specific question, whereby nothing in the new legislation shall affect the legal status of Arabic as recognized on the eve of its enactment.<sup>46</sup> On its face, it seems that the Court understands then that the term "special status" only as describing the unique status that Arabic enjoys as an official language.<sup>47</sup> In her notes, the Court's president, Chief Justice Esther Hayut,<sup>48</sup> added, remarkably, that the primary objective purpose of the NSL concerning languages is not to downgrade the legal status of Arabic, but rather to emphasize that which has already been stated in the case-law, which is that the Hebrew language is the State language and its first official language, given its national importance and the inherent correlation between the Jewish People's struggle for political independence and the resurrection of the Hebrew language.<sup>49</sup> In any case, the Court added that nothing in the NSL alludes to the idea that Arabic's legal status cannot be further developed in the future.<sup>50</sup>

In his dissenting opinion, Justice George Karra suggested a different reading of article 4, thus holding that the NSL downgrades the legal status of

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case-law regarding the Arabic's legal status. However, it would be plausible to think of Justice Mintz as adopting Justice Mishael Cheshin's position, in *Adalah*, *supra* note 9, according to which, before the enactment of the NSL, Arabic was not an official language in Israel but instead enjoyed a special elevated status. In sum, Justice Mintz still refers to section 82 as a valid legal norm, namely, that Article 4 has not invalidated Section 82.

45. *MK Akram Hasson*, *supra* note 2, Judgment by Chief Justice Esther Hayut, and other supporting judgments.

46. *Id.*

47. *Id.*, Judgment by Deputy Chief Justice Hanan Melcer, ¶ 28.

48. *Id.*, ¶¶ 72–73.

49. *Id.*, ¶ 77. *See also id.*, Judgment by Deputy Chief Justice Hanan Melcer, ¶ 28; Judgment by Justice Yitzhak Amit, ¶ 3; and Judgment by Justice Uzi Vogelmann, ¶ 8. Justice Noam Solberg, who joined her judgment, emphasized the importance of the Hebrew as enjoying a superior legal status being the first official, *id.*, ¶ 40. *See also id.*, Judgment by Justice Davis Mintz, ¶ 35.

50. *Id.*, Judgment by Chief Justice Esther Hayut, ¶¶ 79–80.

Arabic from the level of an official language to the level of enjoying a “special status.”<sup>51</sup> According to Justice George Karra, the NSL seeks to preserve the legal status of Arabic as existed *de facto*, not *de jure*, before its enactment. He noted that before the passage of the NSL, Arabic had enjoyed *de jure* an official legal status through section 82; however, *de facto* Arabic has never been treated fully as an official language in Israel, of course not equal to the Hebrew language.<sup>52</sup> For Justice George Karra, the question at stake should be addressed by understanding that the NSL has purposely ignored the existence of the Arab minority in Israel, thus refraining from mentioning it and/or its right to equality. Particularly given this, according to Justice George Karra, the *Knesset* seeks to prevent Arabic’s further legal development.<sup>53</sup> Especially, when the *Knesset* refers to Arabic as solely enjoying a special status, omitting to use the words “official status,” and recognizing the legal protection of the Arabic, *de facto*, in the pre-NSL era.<sup>54</sup>

To conclude on this matter, reading through the Court’s decision clarifies that the Court, by the majority, perceives section 82 as still valid, including all the dispute among judges on the meaning, scope, and consequences of section 82. To that extent, the legal status of Arabic has not been decisively resolved.

### III. IN DEFENSE OF THE COURT’S MAJORITY POSITION

In defense of the Court’s majority position, I submit that the NSL solidifies Arabic’s pre-NSL legal status.<sup>55</sup> While it is possible to agree, in principle, that before the enactment of the NSL, Arabic has enjoyed an official legal status, there has still been a significant dispute about the meaning, scope, and consequences of such recognition.<sup>56</sup> Accordingly, it is more likely that Article 4 reinstates, rather than downgrades, the legal status of the Arabic language as it was perceived before the enactment of the NSL.

This reading of Article 4 suggests that Hebrew and Arabic still are official languages in Israel and that Hebrew still is the State language. In addition, this interpretive approach contends that although Article 4(c) preserves the pre-NSL status of Arabic, it still does not prevent the potential to upgrade it further. At the end of the day, the same variety of legal interpretations that lead to the development of the legal status of Arabic before the enactment of the NSL is still valid after its enactment.<sup>57</sup>

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51. He explained that this term is an ambiguous one.

52. *Id.*, Judgment by Justice George Karra, ¶¶ 35–39.

53. *Id.*, ¶ 38.

54. *Id.*

55. Wattad, *supra* note 9, at 274–79.

56. Although Section 82 establishes the official status of Arabic, together with Hebrew, in Israel, there is nothing in the case-law from which one can decisively infer the consequences of such recognition. See *Wael & Co*, *supra* note 23, Judgment by Justice Salim Joubran, ¶¶ 21–22.

57. Underlying this point of view is the understanding that the legal question is not

In my view, the distinction between the different status of both languages, as incorporated in Article 4, does not necessarily conclude that Hebrew is an official language and that Arabic is not. Instead, this distinction could be viewed as one between official languages and the State language; namely, both Hebrew and Arabic are official languages, but Hebrew is the State language.<sup>58</sup> Regardless, the case-law does not support the view that the term “special status” necessarily connotes an inferior position and a downgrading attitude.<sup>59</sup>

Ultimately, reading through Article 4, including its title, it is notable that the legislature does not use the term “official language,” about neither Hebrew Arabic. The legislature’s choice not to use the term “official languages,” both regarding Hebrew and Arabic, should not be viewed as downgrading Arabic’s legal status from its “official status” to the “special status.” Still, it ought to be considered an attempt by the legislature to dull the symbolic abuse—not the legal abuse—to the Arabic language.<sup>60</sup> Eventually, the legislature had consciously chosen to refrain from using the term “official language” in both contexts, namely, Hebrew and Arabic, and this must be for a reason.<sup>61</sup>

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whether Article 4 constitutes a symbolic insult to the Arabic language and Arabic speakers; instead, it is a legal question of constitutional interpretation.

58. See CA 105/92 Re'em Engineering Contractors Ltd v. The City of Upper Nazareth (Mar. 21, 1993). Both Chief Justice Aharon Barak and Justice Dov Levin declared Arabic and Hebrew as official languages in Israel, but emphasized that Hebrew is the State language. In this context, Justice Dov Levin noted that it is possible for Israel to have more than one official language, while only one is the State language.

59. In one instance, Justice Mishael Cheshin referred to Arabic as enjoying a special, but not official, elevated status in Israel. See *Mar'ei*, *supra* note 26, at 142. However, in another instance, Chief Justice Aharon Barak referred to the same term, “a special elevated status,” in order to establish that by means of Section 82, Arabic, as distinguished from other commonly spoken languages in Israel, is an official language with a special elevated status. See *Adalah*, *supra* note 9, ¶ 13. In addition, following the enactment of the NSL, the Court referred to Article 4 by defining both Hebrew and Arabic as enjoying “special status.” See BL 31534–05–18 (The Court for Local Issues in Tel-Aviv-Jaffa) *The State of Israel v. Mehgistsv Desslg Zelalem* (Feb. 10, 2019), ¶ 3. It is worth noting that the Court did not refer at all to the term “official language,” about neither Hebrew nor Arabic.

60. Ultimately, when the legislature aspired to invalidate the official status of English in Israel, this was explicitly stated by the legislature, who enacted Section 15(b) of the Government and Legal System Organization Act, where it was provided: “Any law requiring the use of the English language is void.” This has not been the case in relation to the legal status of Arabic.

61. It seems that the legislature is not aware of the meaning of the distinction, if any, between “special status” and “official status;” a conclusion which can be decisively drawn from the Knesset committee’s protocols. See Protocol no. 15, The Joint Committee of the Knesset Committee and the Constitution, Law and Justice Committee discussing the bill on Basic-Law: Israel – the Nation State of the Jewish People (July 10, 2018) (“There was a large consensus that a hierarchy between the two languages must be established; but there was a question, at the symbolic level, that it is difficult for us, and we said that, as a legal issue, to distinguish between the issue of special status and the issue of official status. However, indeed there was a general perspective according to which from a symbolic point of view, if today

#### IV. ONLY IF REMAINED AS ENVISIONED—A LIBERAL-SUBSTANTIVE DEMOCRACY

Reading through the Court's various majority opinions, it becomes clear that the Court is in complete consensus that the NSL has not affected the legal status of Arabic in Israel as it existed in the pre-NSL era. However, what has been this status? The answer to this question depends on which judge you ask. On the one hand, most of the Court justices joined Chief Justice Esther Hayut in her view that Arabic has remained, as it was, an official language in Israel.<sup>62</sup> But, on the other hand, they did not take any position on the various approaches concerning the meaning, scope, and consequences of such recognition, leaving this matter as unresolved as it has been.<sup>63</sup> In any case, it has been of the utmost importance for them to state, repeat, and emphasize that Hebrew is the State language. As such, it enjoys supremacy over other languages in Israel, including the Arabic language.<sup>64</sup>

In sum, despite the Court's *prima facie* holding in favor of Arabic as an official language in the post-NSL era, this Paper argues that the Court has failed to decisively resolve the question concerning the meaning, scope, and consequences of such recognition.<sup>65</sup> Moreover, in so holding, this Paper asserts that the Court has missed an opportunity to redirect Israel's path from a Jewish ethnic-democracy to a liberal-substantive democracy, precisely as it was envisioned to be in the Partition Plan, thus protecting, *inter alia*, the comprehensive collective rights, including linguistic rights, of the Arab minority in Israel.

##### A. *Israel: The Partition Plan and the Declaration of Independence*

Insofar as the Partition Plan is concerned,<sup>66</sup> it perceived both the Arab and the Jewish inhabitants of Mandatory Palestine as Palestinian citizens, whom the international community should recognize as two entities with venerable national and cultural identities, whereby two separate nation-based independent states should be established; one, a Jewish state, and the other, an Arab

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both languages are official languages in accordance with section 82 of the King's Order, in practice Hebrew is deemed as the State language and the principal language, and here is the basic law [the NSL] approval to this matter.”)

62. See *MK Akram Hasson*, *supra* note 2. Justice Noam Solberg, emphasized the importance of the Hebrew language as enjoying a superior legal status because it was the first official language, *id.*, ¶ 40. Similarly, see Judgment by Justice Davis Mintz, *id.*, ¶ 35.

63. *Id.*, Judgment by Chief Justice Esther Hayut, ¶ 73.

64. *Id.*, ¶ 77. See also *id.*, Judgment by Deputy Chief Justice Hanan Melcer, ¶ 28; *id.*, Judgment by Justice Yitzhak Amit, ¶ 3; and *id.*, Judgment by Justice Uzi Vogelman, ¶ 8.

65. *Id.*

66. In my view, the Partition Plan was the first official international document to adopt the 1917 Balfour Declaration's interpretation as “the establishment of a national home for the Jewish people.”

state.<sup>67</sup> Moreover, each state was expected to apply a liberal-substantive democratic regime,<sup>68</sup> which protects civil and political rights to all citizens alike,<sup>69</sup> as well as a particular set of mutual collective rights for national minorities; the Arab national minority of the Jewish state, and the Jewish national minority of the Arab state.<sup>70</sup>

The Partition Plan's provisions, under which the international community accepted Israel<sup>71</sup> as a "Jewish and democratic" state,<sup>72</sup> were based on three accumulative elements: *first*, Israel must be a nation-based state, namely, a Jewish state; *second*, Israel must be a constitutional democratic state (liberal-substantive democracy); and *third*, a mutually respectful and proper balance between Israel's renown and historical Jewish identity and democracy, and the expectations that its national indigenous minorities would become full legal citizens of the newborn Jewish state, who are thus entitled for collective rights.<sup>73</sup>

This must be noted now, the mere historical fact that the Partition Plan was ultimately accepted solely by the Jewish Agency for Palestine but rejected by all the Arab leaders and their governments<sup>74</sup> cannot, for two causes, afford Israel to omit or to neglect to adhere to the Partition Plan: *first*, the plan provides the fundamental international legal justification for the establishment of Israel; and *second*, it is in force and effect even today because Israel officially adopted the merits and terminology, as well as the legal and political structure of governance anticipated by the Partition Plan in its Declaration of Independence.

Given Israel's historical desire to be admitted and recognized by the international community, it did not have much choice but to compromise and accept its firm demands, as expressed in the Partition Plan. *First*, the Partition Plan set forth the supreme values that should be included in the Declaration of Independence. *Second*, for Israel's Founding Fathers, who considered this historical document as the realization of a two-thousand-year-old dream, it was crucial to venerate that document, being the first international and official recognition ever, of the Jewish nation's right for self-determination, more specifically, the Jewish people's right to establish a state of their own as an "irrevocable" right.<sup>75</sup> Accordingly, one would rightfully expect the Declaration to be in complete harmony

67. See the Partition Plan, *supra* note 14, sec. B, part 1, ch. A, art. 3.

68. *Id.*, sec. B, part 1, ch. B, art. 10, ¶ 1.

69. *Id.*, sec. B, part 1, ch. B, art. 10, sub-paras. (a), (d), and (e); sec. C, ch. 2, arts. 1–8.

70. *Id.*, sec. C, ch. 2, art. 6.

71. See *MK Akram Hasson*, *supra* note 2, Judgment by Justice Menachem Mazuz, ¶ 6, and Judgment by Justice Neal Hendel, ¶ 12.

72. *Id.*, Judgment by Chief Justice Esther Hayut, ¶¶ 20–26.

73. *Id.*, Judgment by Justice Neal Hendel, ¶ 12.

74. See the Partition Plan, *supra* note 14, ch. 2. See also Al-Kayyali, *supra* note 14, at 284; BENNY MORRIS, 1948: A HISTORY OF THE FIRST ARAB-ISRAELI WAR 66–67, 72–73, 75 (2008); SAMI HADAWI, BITTER HARVEST: A MODERN HISTORY OF PALESTINE 76 (1989).

75. See Declaration of Independence, *supra* note 21, ¶ 9.

with the Partition Plan concerning the nature of Israel, not only as a Jewish and democratic state but a Jewish and liberal-substantive democratic state.<sup>76</sup>

While its well-selected and weighed wording indicates that Israel will be a true democracy, it must be noted that the Declaration of Independence failed to include the terms “Jewish and democratic state” and refrained from including the word “democracy.” However, as correctly held by the Court, a plausible interpretation of the Declaration leaves no doubt about the democratic nature of Israel.<sup>77</sup> In any case, later on, Article 1A of the 1992 Basic Law: Human Dignity and Liberty, as amended in 1994, and then again Article 2 of the 1994 Basic Law: Freedom of Occupation, have provided that “[T]he purpose of this Basic Law is to protect . . . in order to establish in a Basic Law the values of the State of Israel as a “Jewish and democratic state.” Additionally, Article 1 of both Basic Laws state that the “[F]undamental human rights in Israel . . . shall be upheld in the spirit of the principles outlined in the Declaration of the establishment of the State of Israel.” This crucial change in the wording of Israel’s Basic Laws leads to the only decisive conclusion that according to the values outlined in the Declaration, Israel is a Jewish and democratic state. This is “a dramatic change in the status of the Declaration of Independence: It is no longer a mere source of interpretation but has become an independent source of human rights.”<sup>78</sup>

#### 1. Formal Democracy versus Liberal-Substantive Democracy:<sup>79</sup>

*American Philosopher* John Rawls distinguishes between liberal and non-liberal societies. Liberal societies are pluralistic and peaceful. They are governed by reasonable people who protect fundamental human rights. These rights include providing a certain minimum to means of subsistence, security, liberty, personal property, and formal equality and self-respect as expressed by the rules of natural justice.<sup>80</sup> In contrast, non-liberal societies fail to treat their people genuinely free and equal. Instead, they adopt norms based on compulsion and coercion.

A state is democratic, not “if,” but “when” the great mass of the population can effectively influence the decision-making process. Liberal democracy is

76. *Id.*, ¶¶ 12–13.

77. See H CJ 73/53 et al. Kol Ha’am Co., Ltd. V. Minister of the Interior, 7(2) PD 871, 876–78 (Oct. 16, 1953).

78. See H CJ 726/94 Clal Insurance Co. Ltd. V. Minister of Finance, 48(5) PD 441, 465 (Oct. 19, 1994). However, note that the legal status of the Declaration of Independence, has remained, by majority voices of the Court’s justices solely as expressing the credo of Israel as a Jewish and democratic state, thus in the absence of a complete constitution, the Declaration has remained relevant, yet only “as a document that can bridge the divides in Israeli society.” See also Navot, *supra* note 19, at 13.

79. Raphael Cohen-Almagor & Mohammed S. Wattad, *The Legal Status of Israeli-Arabs/Palestinians in Israel*, 1 GNLU LAW & SOC’Y REV. 1, 5–10 (2019).

80. See JOHN RAWLS, *THE LAW OF PEOPLES* ch. 2 (2002); Richard Rorty, *Justice as a Larger Loyalty*, 4 ETHICAL PERSPECTIVES 139–151 (1997).

commonly defined as a form of government in which the political power belongs to the public as a whole and not merely to a single person or a particular group of people. Liberalism places the individual on a legal equality status and challenges the right of the monarch to govern while ignoring the interests of its citizens.<sup>81</sup> Liberal states afford their citizens the freedom to develop their subjective conceptions of the good. However, whereas, in every democracy, the range of norms that society can respect has limitations, certain norms and moral codes must be shared by all people despite their cultural differences, the most fundamental norms democracy has to secure are respecting others as human beings.<sup>82</sup>

Within the concept of liberal democracy, it is possible to distinguish between formal and substantive democracies. Formal democracy acts by the legislature's rule, no matter how right, decent, just, and fair the legislature might be; whenever the legislature says "the law is . . .," it becomes binding law. Any abuse of power inherently contradicts the essential ideal of democracy. However, substantive democracy scrutinizes the legislature's actions for compatibility with the fundamental principles of fairness, reason, justice, and good.<sup>83</sup> The distinction between formal and substantive democracies is represented by the meaning attributed to the concept of the rule of law. Namely, the law is binding not because it has been enacted in a proper formal procedure by a duly elected legislature but because it is just and appropriate.<sup>84</sup> In this context, the rule of law deals with the aspiration for governmental actions to comply with specific fundamental requirements intended to guarantee the internal morality of the law.<sup>85</sup>

### B. *Arabic Through the Lens of the Partition Plan*

It is asserted in this chapter that the Partition Plan acknowledges the conceptual distinction between formal and liberal-substantive democracies and eventually emphasizes its adoption of the latter one. However, Israel is a Jewish-ethnic democracy.<sup>86</sup> The governance framework is democratic, but its

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81. See F. A. HAYEK, *THE COUNTER-REVOLUTION OF SCIENCE* 36–43 (1955); C. B. MACPHERSON, *THE LIFE AND TIMES OF LIBERAL DEMOCRACY* 12 (1977); L. T. HOBHOUSE, *LIBERALISM* 54 (1945).

82. Raphael Cohen-Almagor, *Harm Principle, Offense Principle, and the Skokie Affair*, 41(3) *POLITICAL STUDIES* 453, 453–70 (1993); Raphael Cohen-Almagor, *Between Neutrality and Perfectionism*, 7(2) *CANADIAN J.L. & JURISPRUDENCE* 217, 217–236 (1994); Raphael Cohen-Almagor, *JS Mill's Boundaries of Freedom of Expression: A Critique*, 92(4) *PHILOSOPHY* 565, 565–96 (2017).

83. See Cohen-Almagor & Wattad, *supra* note 79, at 9–10.

84. I do not refer to the concept of "law" in its narrow sense, *i.e.*, *Gesetz* in German, *loi* in French, and *ley* in Spanish; but rather to the concept of "Law" in its more substantive sense, *i.e.*, *Recht* in German, *droit* in French, and *derecho* in Spanish. See generally LOUIS HENKIN, *THE AGE OF RIGHTS* (1990).

85. This was exactly what captured Plato's mind in offering *The Republic*, the challenge of providing a true definition of justice; for him, democracy is the rule of law, namely, the rule of good and justice. See PLATO, *THE REPUBLIC* (trans. Sir Henry Desmond Lee, 2003).

86. See *supra* note 13.

underpinning concepts give precedence to Judaism over the Respect for Others Principle and the Harm Principle.<sup>87</sup> By defining itself as a “Jewish and Democratic” state, Israel should remain as was initially anticipated by the Partition Plan and reflected in the Declaration of Independence. However, a proper balance must be struck between Israel’s Jewish identity and its democratic nature to fulfill this promise.

As for its democracy, one would expect Israel to promote principles of liberal-substantive democracy by lending itself to liberal values, thus advancing and protecting the rights and liberties of minorities—predominantly the Arab indigenous-national minority—against any possible abuse of power by the State in general and by any democratically-elected majority in particular.<sup>88</sup>

In this Paper, I argue that the question concerning the legal status of Arabic should be controlled by the meaning of Israel’s definition as a “Jewish and democratic” state, as embodied and most precisely defined in Israel’s early predominant Declaration of Independence, and in the later Basic Law: Human Dignity and Liberty and the Basic Law: Freedom of Occupation. I argue that the meaning of Israel’s “Jewish and democratic” characters ought to be interpreted in light of Israel’s conceptual, political, and legal features as a modern liberal-substantive democracy, rather than a Jewish ethnic democracy, as these were already outlined in the Partition Plan.

At this stage, it is of utmost importance to note that the Court is highly familiar with these premises of the Partition Plan. Remarkably, while rejecting the petitions against the constitutionality of the NSL, the Court made a straightforward, significant reference to the Partition Plan. Relying on the writings of Chief Rabbi Yitzhak HaLevi Herzog<sup>89</sup> and Chief Rabbi Ben-Zion Meir Hai Uziel,<sup>90</sup> the Court views the Partition Plan as constituting a regime of partnership, between the Jewish and the Arab citizens of Israel, both in the establishment and the administration of the State, thus guaranteeing the equal protection rights of all citizens alike, including those of the minorities.<sup>91</sup> Additionally, the Court perceives the Partition Plan as establishing a balance between Israel’s Jewish identity and its commitment to democratic values; thus, stipulating that the term “Jewish and democratic” state ought to be interpreted in light of the Partition Plan, including about the guarantee of equal protection rights for minorities; primarily, the Arab minority in Israel.<sup>92</sup> This judicial reference to the Partition Plan

87. See Cohen-Almagor & Wattad, *supra* note 79, at 15.

88. See generally JOHN H. ELY, *DEMOCRACY AND DISTRUST* (1980).

89. Herzog served as the Ashkenazi Chief Rabbi of Mandatory Palestine beginning in 1936, and, after its establishment in 1948, of Israel until his death in 1959.

90. Uziel served as the Sephardi Chief Rabbi of Mandatory Palestine and subsequently, of Israel, beginning in 1939 until his death in 1953.

91. See *MK Akram Hasson et al.*, *supra* note 2, judgment by Justice Neal Hendel, ¶ 12.

92. *Id.*, Justice Menachem Mazuz, ¶ 7.



recalls the pre-NSL ruling, where Justice Dalia Doner held that Arabic is comprehensively an official language in Israel.<sup>93</sup> In her reasoning, she noted that Section 82 should be interpreted in light of the Partition Plan, which provided:

The following stipulation shall be added to the declaration concerning the Jewish State: 'In the Jewish State adequate facilities shall be given to Arabic-speaking citizens for the use of their language, either orally or in writing, in the legislature, before the Courts, and in the administration.'<sup>94</sup>

Addressing the question concerning the Arabic language through the lens of the Partition Plan, it is suggested in this Paper that the Court should have interpreted the NSL as upgrading the legal status of Arabic to decisively and comprehensively become an official language in Israel; *i.e.*, not disputed anymore, as it was in the pre-NSL era.

In this Paper, I assert that incorporating the legal status of the Arabic language in a basic-law, rather than in ordinary legislation, and given the validity of laws clause, does allow for a possible upgrade of the Arabic's legal status. In light of the unique constitutional normative status that the basic-laws enjoy under Israel's constitutional jurisprudence, which constitutes an integral part of the fundamental constitutional principles of the Israeli system of which Arabic has become a part. Such an upgrade in Arabic's legal status is both vertical and horizontal.<sup>95</sup>

At the vertical level, Arabic's legal status is not protected by mandatory legislation but rather in Israel's basic-laws. This should not be viewed as a trivial issue; for the first time in the legal history of Israel, Arabic's legal status is protected in a basic-law, which enjoys a special constitutional, normative status under Israel's constitutional jurisprudence. Indeed, the King's Order has been described as the constitution of *Eretz Yizrael* (the Land of Israel); however, judicially speaking, it has never enjoyed any constitutional status. Eventually, the King's Order was enacted in Britain as an order, which is secondary legislation. In contrast, Israel's basic-laws constitute an essential pillar in establishing the fundamental constitutional principles of Israel. Incorporating the legal status of Arabic in a basic-law is a clear recognition by the legislature of the Arabic's special elevated status, just as has been the case since the establishment of the state of Israel and even beyond.

As for the horizontal level, it incorporates this legal status in a basic-law that reflects the peculiarity of the Arabic language as a language that enjoys a special elevated status, unlike other commonly spoken languages in Israel. Therefore, such recognition allows not only for protecting the legal status of Arabic against the central government but also against the local authorities; it also provides for fulfilling the rationales underlying the Court's reasoning in granting such special

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93. See *Adalah*, *supra* note 9, Judgment by Justice Dalia Dorner.

94. See Partition Plan, *supra* note 14.

95. See Wattad, *supra* note 9, at 280–81.

elevated status solely to the Arabic language—namely, fulfilling the promise of the Declaration of Independence to guarantee the Arab minority's freedom of language and the rights to equality and dignity. This should be understood in light of the Court's aspiration to provide such legal protection not only within the internal corridors of the official authorities, but also in the public sphere.

Additionally, on top of this upgraded legal status of the Arabic language, it is asserted in this Paper that such reading of Article 4 can also be viewed as an upgrade the legal status of the Arab minority in Israel, thus establishing an official judicial recognition of their national-indigenous identity, which entitles them for collective rights, such as linguistic rights. Especially in light of the enactment of the NSL, which is nation-based legislation that highlights the national aspirations and features of the Jewish nation,<sup>96</sup> the inclusion of such legal protection of Arabic should be interpreted as reflecting on the national characteristics of the Arab minority, at the collective, not the individual, level.<sup>97</sup> This is not an odd reading of Article 4. By large, this has been the position of the majority of judges who were willing to extend, as a matter of exception, the Declaration's equal protection, concerning Arabic, on a collective basis; who were ready to speak of the Arab minority, a minority that lived in Israel for generations, as a loyal minority despite the Arab-Israeli conflict; and who emphasized the need to teach Arabic in schools as a means for bridging the gaps between the State and its Arab minority. This precise terminology establishes a judicial recognition of the Arab minority based on its national features as an indigenous minority entitled to collective rights.<sup>98</sup>

Article 4 is the first basic-law legislation in Israel's entire history that speaks for and refers to a particular national feature of the Arab minority. This is not just any national feature but rather a linguistic feature; it is a feature described by the Court in protecting the rights of minorities as representing their history, culture, and tradition. The fact that a basic-law—like the NSL, which highlights the national identity and characteristics of the Jewish majority in Israel, refers to such a bold national feature of the Arab minority—a minority that has been living for generations in Israel—is a sensitive and vital matter that reflects an official legislative—explicit or implicit—recognition of the Arab minority as a national native minority.<sup>99</sup>

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96. The inclusion of such legal protection of Arabic should be interpreted as reflecting on the national characteristics of the Arab minority, at the collective, not the individual, level. See also Dafna Yitzhaki, *The Status of Arabic in the Discourse of Israeli Policymakers*, 19 ISRAEL AFF. 290, 337–38 (2013).

97. See also Saban, *supra* note 31, at 590.

98. *Id.*, at 589–90.

99. See Meital Pinto, *Taking Language Rights Seriously*, 25 KING'S L.J. 231, 232–244 (2014); Yousef T. Jabareen, *The Politics of Equality: The Limits of Collective Rights Litigation and the Case of the Palestinian-Arab Minority in Israel*, 4 J. RACE & L. 23 (2013).

I contend that this reading of the NSL fulfills Israel's commitment to liberal-substantive democratic values, as were promised in the Partition Plan and as were ultimately embodied in the Declaration of Independence, but particularly vis-à-vis Israel's Arab minority citizens, deemed as a national indigenous minority. By the end of the day, the enactment of the NSL has not invalidated Israel's commitment to the conceptual premises of the Partition Plan and the Declaration of Independence. On the contrary, Article 1 of the NSL adheres to the exact language of the Declaration of Independence, which makes it mandatory for the Court to refer to the Declaration as a binding legal source of interpretation.<sup>100</sup> Additionally, this has been Chief Justice Esther Hayut who emphasized—remarkably, while discussing the constitutionality question of the NSL—that, although Israel has not yet explicitly recognized the possibility of an internal right for self-determination for any minority group, thus entitling its members collective rights; still, particularly in regards to the Arab minority, it practically enjoys, by law, certain collective rights, leading among others the Arabic language as an official language.<sup>101</sup>

### CONCLUSION

The question concerning the legal status of Arabic in Israel does not exist in a vacuum. Instead, it is part of a larger discourse that concerns the co-existence of two nations (the Arab and the Jewish) under one political entity, envisioned as a nation-based democracy (Israel).

The conditions for the establishment of Israel, as a Jewish and democratic state, were detailed in the Partitional Plan, the first international document to recognize the Arab and the Jewish inhabitants of Mandatory Palestine as two nations that are entitled to fulfill their national aspirations for self-determination, thereby stipulating the establishment of an Arab state and a Jewish state.

In the Jewish and democratic state, Israel was expected not only to feature, develop and enhance its national Jewish characteristics, but also to promote the equal protection of fundamental civil and political rights for all citizens alike, all the more so to guarantee the collective rights of the Arab national indigenous minority. This is how the Partition Plan envisioned Israel as a liberal-substantive democracy. This has sketched the legal-political premises of its Declaration of Independence, and later on in the basic-laws, including, though very partially, the NSL, which opens by referring to the Declaration's words.

The NSL is the first basic-law in Israel that deals comprehensively with Israel's national identity, remarkably omitting to feature its commitment to fundamental liberal-substantive democratic values, including vis-à-vis the Arab minority citizens. However, among all other commonly spoken languages in

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100. See *MK Akram Hasson*, *supra* note 2, Judgment Chief Justice Esther Hayut, ¶ 68.

101. *Id.* ¶¶ 69–70.

Israel, this has been only Arabic that received, together with Hebrew (the language of the majority), the legislature's attention. In this context, the words of Professor Meital Pinto are apt: "Language rights are commonly perceived as group rights or collective rights. But, in addition, language rights are cultural rights because they protect a minority culture."<sup>102</sup>

The fact that the NSL addressed the two nations—the Jewish and the Arab—though one of them only very partially (the Arab), recalls the Partition Plan and the Declaration of Independence, where also the Arab national minority was addressed, thus reminding us that Israel ought to adhere to values of liberal-substantive democracy, particularly regarding the Arab minority and their collective rights.

I have never deluded myself as to the sophisticated premises underlying the question of identity. So shall be the case for the State, especially concerning its Arab indigenous national minority. I could have elaborated further on this matter, but this is a subject for another paper.

At the end of the day, for the Arab minority citizens of Israel, Arabic represents their national identity, but mainly their self-being as an indigenous national minority in the Jewish and democratic state (Israel). In the famous discourse between the two intellectuals, Anton Shammas and A. B. Yehoshua:

Shammas: Buli [Yehoshua's nickname], the minute a man like you does not understand the basic difference between the Pakistani who comes to England and the Galilean who has been in Fasuta [a village in Galilee] for untold generations, then what do you want us to talk about?<sup>103</sup>

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102. Pinto, *supra* note 99, at 240.

103. DAVID GROSSMAN, *SLEEPING ON A WIRE: CONVERSATIONS WITH PALESTINIANS IN ISRAEL* 254 (Haim Watzman trans., 1993).