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THE STATUS OF ARABIC IN ISRAEL: REFLECTIONS ON THE POWER OF LAW TO PRODUCE SOCIAL CHANGE

ILAN SABAN AND MUHAMMAD AMARA

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*Ilan Saban and Muhammad Amara**

Abstract

The status of Arabic in Israel gives rise to question. Israel is a rare case of an ethnic nation-state that grants the language of minority group with a legal status which is *prima facie* one of equality. Both Hebrew and Arabic are the official languages of the State of Israel. What are the reasons for this special state of affairs? The answer is threefold: historic, sociological and legal. In various ways the potential inherent in the legal status of Arabic has been depleted of content, and as a result of that, as well as other reasons, the socio-political status of Arabic closely resembles what you would expect the status of a language of a minority group in a state that identifies itself as the state of the majority group to be. This answer, however, is another source of puzzlement – how does such a dissonance between law and practice evolve, what perpetuates it for so long, is change possible, is it to be expected?

We present an analysis of the legal status of Arabic in Israel and at the same time we proceed to try and answer the questions regarding the gap between the legal and the sociopolitical status of Arabic. We reach some of our answers through a comparison with the use of law to change the

* Lecturer, Faculty of Law, Haifa University and Senior Lecturer, Political Studies and English Departments, Bar-Ilan University. The paper adds and develops ideas propounded in another article: Ilan Saban, "Minority Rights in Deeply Divided Societies: A Framework for Analysis and the Case of the Arab-Palestinian Minority in Israel," N.Y.U. J. Int'l L. & Pol. (expected, 2004). A slightly different Hebrew version of the article is to appear in *Medina v'Chevra* in 2004. We are deeply grateful to the editors, Barak Medina and David Weisburd, and to Aeyal Gross for their thoughtful comments and to Maor Fishman and Revital Sella for excellent support in more technical aspects.

status of the French language in Canada. One of these answers is that given the present constellation in Israel, the sociopolitical status of Arabic cannot meaningfully be altered by legal means.

I. Introduction – *Israel's National Identity and the Riddle of Arabic's Status as One of Israel's Two Official Languages*

Arabic is one of Israel's two official languages. Its status gives rise to both curiosity and wonder. Bilingualism is a characteristic feature of two small groups of states. First and foremost, it characterizes binational states; that is, states that maintain extensive partnership between their national communities, with bilingualism constituting a major expression of this partnership (see Switzerland, Belgium, Canada).¹ Another small group of states that grant comprehensive language rights to minority languages is a subgroup of the civic nation-states. Civic nation states are societies which seek to dispel the national, ethnical, or other differences that divide societies by amalgamating different communities into a single nation: one in which the common citizenship will become the overarching (and prominent) identity of the members of the society. However, some civic nation states confront minority communities with strong identities; these nation states choose a multicultural strategy to accommodate these identities and gradually achieve their persistent goal of nation-building. Two notable examples of this type of nation-building are South Africa and India (at least until recent years).²

1 We are using "binational" here as a short term for "multinational" states too. Canada is to be discussed in some detail below. For multilingualism in Switzerland, see Article 70 of the Swiss constitution. In the Belgian constitution there is no article devoted to "official languages," but see Article 189 on the languages of the constitution. For an important discussion of the multilingual (and multinational) states, see, Kenneth D. McAra, "The Principle of Territoriality and the Principle of Personality in Multilingual States," (1975) 4 International Journal of the Sociology of Language 5.

2 See Article 6 of the South African constitution and see Kay McCormick and Rajend Mesthrie, "Post-Apartheid South Africa," (1999) 136 International Journal of the Sociology of Language 1, at 1-6. For India's multilingual policy, see Vasuki Nesiha, "Federalism and Diversity in India" in Yash Ghai, ed. *Autonomy and Ethnicity: Negotiating Competing Claims in Multi-ethnic States* (Cambridge, Cambridge University

Israel falls into neither of these two categories; it is neither a bi-national state nor a multi-cultural civic nation state. By its own definition it is a Jewish state – a state with a distinct affiliation with one national community – the Jewish people. By standard categorization then, Israel is an ethnic nation state.³ By and large ethnic nation states practice a one-official-language policy.⁴ How, then, came Arabic to enjoy the status of the second official language?⁵

Press, 2000) at 55-58; Ilana Kofman, "The Israeli State Option" in Sarah Oracky-Lazar, Asad Ghanem and Ilan Pappé, eds. *Seven Roads: Theoretical Options for the Status of the Arabs in Israel* (Givat Haviva, The Institute for Peace Research, 1999) 201-242 [Hebrew]. India's civic-nation orientation has changed however in recent years, and she might deserve another classification at present: see Gautharaj Singh, *Ethnic Conflict in India: a case-study of Punjab* (New York: St. Martin's Press, 2000). Additionally, Italy – regarding the Austrian minority in South Tyrol, Finland – regarding the Swedish minority in the Aland Islands, and Spain – regarding especially Catalonia, the Basque country and Galicia, employ a multilingual policy. It is important to note that the multilingual policy of these multicultural civic nation states is limited to the *minority regions themselves*. For the European examples mentioned, see Antony Alcock, "The Development of Governmental Attitudes to Cultural Minorities in Western States", in Antony Alcock, et al eds. *The Future of Cultural Minorities* (New York, St. Martin's Press, 1979) 102-119; Minority Rights Group, *World Directory of Minorities*, (London, Minority Rights Publications, 1997) 174-176 [hereinafter: World Directory of Minorities].

3 For a discussion of the different types of deeply-divided countries, see Sammy Smooha, "Types of Democracy and Modes of Conflict Management in Ethnically Divided Societies," (2002) 8(4) *Nation and Nationalism* 423-431; Ilan Saban, "The Minority Rights of the Palestinian-Arabs in Israel: What is, What isn't and What is Taboo," (2002) 26 *Iyunei Mishpat* 241, at 257-259 [Hebrew] [hereinafter: Saban, "Minority Rights in Israel"]; Saban, "Minority Rights", *supra* n. *.

4 See, for example, the status of Sinhalese in Sri Lanka, Malay in Malaysia, Slovak in Slovakia; Milton Esmann, "The State and Language Policy" (1992) 13(4) *Intl Political Science Rev.* 381-396; Beata Kovacs Nas, "Hungarians in Slovakia: The Last Stage of Communism is Nationalism," in Ted Robert Gurr, *Peoples versus States: Minority at Risk in the New Century*, (Washington DC: United States Institute of Peace, 2000) at 183.

5 The literature dealing with the legal status and socio-linguistic status of Arabic in Israel is important. However, much of the literature date before the quite important developments of the last decade, and for the most part the theoretical perspectives of most writings are somewhat different than the one adopted here. See, *inter alia*, Jacob M. Landau, *The Arab Minority in Israel, 1967-1991: Political Aspects* (Tel Aviv: Am Oved, 1993) 64-65 [Hebrew]; Amnon Rubinstein and Barak Medina, *The Constitutional Law of the State of Israel* (Tel Aviv, Schocken, 5th ed., 1996) 97-105 [Hebrew] [hereinafter: Rubinstein and Medina]; Haya Fisherman and Joshua Fishman, "The Official Languages of Israel: Their Status in Law, and Police Attitudes and Knowledge Concerning Them"

The (partial) answer to this puzzle is twofold – first, the status of Arabic as an “official language” owes its origins to certain historic and political constellations; second, it has survived mainly because for decades (and for various reasons) it carried almost no practical sociolinguistic consequence. Thus, the real – socio-political – status of Arabic is neither more nor less than what you would expect in an ethnic nation state identified with its primary national community.

However, immediately, another question begs to be asked – in a state whose ethos and many major features are democratic, how is such a dissonance between law and reality maintained? And what has sustained it all these years? Is it susceptible to change? Is one imminent?

in Jean-Guy Savard and Richard Vigneault, *Multilingual Political Systems, Problems and Solutions*, (Quebec: International Centre for Research on Bilingualism, 1975); Mala Tabory, “Language Rights in Israel,” (1981) 11 *Israel Yearbook on Human Rights*, at 272–306 [hereinafter: Tabory]; Jacob M. Landau, “Hebrew and Arabic in the State of Israel: Political Aspects of the Language Issue,” (1987) 67 *International J. of Sociology of Language*, at 117–133; David L. Gold, “A Sketch of the Linguistic Situation in Israel Today,” (1989) 18 *Language and Society*, at 361–388; David Kretzmer, *The Legal Status of the Arabs in Israel* (Boulder, Colorado, Westview Press, 1990) 39–40, 165–166 [hereinafter: Kretzmer]; Bernard Spolsky, and Robert Cooper, *The Languages of Jerusalem* (Oxford, Clarendon Press, 1991); Immanuel Koplewitz, “Arabic in Israel: The Sociolinguistic Situation of Israel’s Arab Minority,” (1992) 98 *International Journal of the Sociology of Language*, at 29–66; Eliezer Ben-Rafael, *Language, Identity and Social Division: The Case of Israel* (London, Oxford Clarendon Press Contact, 1994); Bernard Spolsky, “The Situation of Arabic in Israel” in Yasir Suleiman, ed. *Arabic Sociolinguistics: Issues and Perspectives* (Richmond, Curzon Press, 1994) 227–234; ACRI (The Association for Civil Rights in Israel), *Comments on the Combined Initial and First Periodic Report Concerning the Implementation of the International Covenant on Civil and Political Rights (ICCPR)*, 168; Adalah – The Legal Centre for Arab Minority Rights in Israel, *Legal Violations of Arab Minority Rights in Israel* (1998) 66–70 [hereinafter: Adalah Report]; Israel (The State of Israel), *Implementation of the International Covenant on Civil and Political Rights (ICCPR) and Smadar Donitsa-First Periodic Report*, (1998) 22, 329, 360–361; Eliana Shohamy and Smadar Donitsa-Schmidt, *Jews vs. Arabs: Language Attitudes and Stereotypes* (Tel Aviv, The Tami Steinmetz Center for Peace Research, 1998); Bernard Spolsky and Eliana Shohamy, “Language in Israeli Society and Education,” (1999) 137 *International Journal of the Sociology of Language*, at 93–114; Bernard Spolsky and Eliana Shohamy, *Languages of Israel: Policy, Ideology and Practice* (Cleveland, Multilingual Matters, 1999); Yuval Merin, “The Case against Official Monolingualism: The Idiosyncrasies of Minority Language Rights in Israel and the United States,” (1999) 6 *ILSA J. Int’l & Comp. Law*, at 1.

We will set out to answer these questions with the aid of two methodological tools – one comparative and the other conceptual. The first will lead us through a partial comparison with the Canadian bilingual arrangement, and the second to a discussion of lingual rights in the broader context of group-differentiated rights. Preempting ourselves to a certain extent, we shall outline the core of the answers we have reached:

1. Close scrutiny of the legal status of Arabic reveals that the actual gap between the legal and the sociopolitical status of Arabic is not as wide as may seem at first glance. When compared to the status of French in Canada it transpires that Israeli law does indeed grant important rights to Arabic as an official language, but it fails to shape a formal bilingualism that would comprehensively put it legally on a par with Hebrew.

2. Even if this gap between the *de jure* and *de facto* status of Arabic is less marked than it is usually assumed, it is still significantly wide. For the most part, this gap is the outcome of considerable differences in the relative power of the two national-lingual communities in Israel and of a practice by the majority Jewish community that exploits the difference to its own advantage. What ensued is economic dependence of the minority on a Hebrew-speaking labor market, cultural hegemony of the majority and almost exclusive use of Hebrew in government offices (with the exception of Arab local authorities). All these coerced the minority into unilateral bilingualism whereas the majority remained monolingual.

3. For decades, despite the uncontested aspects of the legal status of Arabic, Israel was being managed monolingually and confronted no challenge on this front. This is due, partly, to the fact that Arab-led non-governmental-organizations with a transformative agenda for the Israeli society emerged on the scene relatively late in the day. In addition, an important part of the contemporary legal status of Arabic is not constitutionally protected, so that if grasped as a serious threat to axioms of the majority community, the entire lingual – legal arrangement can be relatively easily altered. Therefore direct confrontation with the ethnic nationalism of the state has to be prudent.

4. Notwithstanding all that has been said so far, certain changes have been occurring in recent years. Since the mid 1990s, human rights organizations have been endeavoring to use the legal status of Arabic as

a lever to improve its sociopolitical status. They are proceeding with caution but have met some success.

5. Nevertheless, we shall argue that the legal venue (even if the majority community does not actively obstruct it) has very restricted potential to change the lingual reality in Israel. A comparison of the relative status of the Palestinian Arab minority in Israel and the French speakers in Canada is a case in point. It can be used to illustrate why, given the present legal and political constellation in Israel, the sociopolitical status of Arabic cannot be altered by legal means.

Let us emphasize at the start that this conclusion is a descriptive, not normative conclusion. The question of whether Israel should become comprehensively and fully bilingual and the question of the moral justification for Israel's self-definition as a Jewish and democratic state are both beyond the scope of this paper. This is, firstly, because we (the writers) are not in full agreement on these issues ourselves, and secondly, because discussing this issue would make our already full load too cumbersome to attempt. We shall adhere, therefore, to the complex enough issue of the descriptive analysis of the legal status of Arabic and the viability of a sociolingual change through law in the Israeli context.

II. Arabic in Israel – Rights and Reality – the First 45 Years

A. Article 82 of the Palestine Order-in-Council, 1922

The major provisions regarding the status of Arabic in Israel are contained in Article 82 of the Palestine Order-in-Council, 1922. This is a Mandatory legislation that was adopted into Israeli law with the establishment of the state in 1948. Under the subtitle "official languages" Article 82 states as follows:⁶

All ordinances, 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

6 Drayton (1934)3 Laws of Palestine 2569, 2588.

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.

The first statute enacted by the State of Israel was the Law and Administration Ordinance, 1948.⁷ With a negligible number of amendments the ordinance incorporated into the Israeli legal system almost all the legal norms of the Mandatory rule. One of the few alterations introduced was the dilution of the status of English as an official language (section 15(b) of the Ordinance). It is obvious then, that retaining the status of Arabic as an official language was a conscious decision on the part of the Israeli legislator.

An important legal issue that has recently enjoyed an in-depth debate in the Supreme Court is whether other legal norms, besides Article 82, affect the status of Arabic.⁸ We shall return to this question below. For now, suffice it to say that Article 82 is very central to the issue at hand, and the starting point of any legal analysis in the sphere of languages in Israel.

A scrutiny of Article 82 soon reveals that it addresses three issues. 1) It defines the obligations regarding the languages in which the *Central government* must carry out central functions. 2) It sets down an arrangement for the languages in which official notices must be issued by the *local authorities*. 3) It names the languages in which an individual would be able to access the *public service* of the central government including the Law Courts.

The lingual arrangement is not uniform for the three categories of operation. On the *central government* level, communication (oral and written) between the authority and the citizen, both through directives, and in supplying services, must be bilingual – Knesset legislation, secondary legislation, official notices, application forms etc. As regards

7 1 L.S.I. 7, at 9.

8 H.C. 4112/99, Adalah et al. v. The Municipality of Tel-Aviv-Jaffa et al., 56(5) P.D. 393 [hereinafter Adalah v. The Municipality of Tel-Aviv-Jaffa].

access of the individual to the central government and its branches the law here is also clear and generous. It states as follows: "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". The possibility of curtailment (by regulations) of the right to use Arabic in Government offices and Law Courts that is suggested has not come to pass, meaning that legally Arabic may be used in communications between the citizen and any Government office or any court. In the third category of arrangement – the *local authorities* (local government) – the bilingual obligation inherent in Article 82 seems more restricted. It refers only to official notices, and more important still, only where prescribed by special order: "all official notices of local authorities and municipalities in areas to be prescribed by order of the High Commissioner."

Such an order was in fact issued during the Mandatory period, and it prescribed trilingual districts in which the local authorities are legally bound to publish in the (then) three official languages.⁹ Paragraph 5 of the order states as follows:

In Municipal and Rural areas where there is considerable Jewish population, the three languages will be used in the offices of the district and sub-district Governors, of the Municipalities and of other official bodies, in the same manner as in the Government Departments. Such Districts will be termed Tri-Lingual Areas. They will be specified by the High Commissioner. The present Tri-Lingual Areas are Jerusalem City, Jaffa Town and District, Ramleh Town and Sub-District, Haifa Town, Zummarrin Sub-Districts, and Sub-Districts of Tiberias and Safed. Other areas could be added from time to time, the guiding principle being the presence of a proportion of not less than 20% of Jews in the population of the area.¹⁰

⁹ Tabory, *supra* n. 5, at 274.

¹⁰ "Use of Official Languages" [1920] *Official Gazette of the Government of Palestine* lno. 2815, paras. 2–5. This Mandatory Order has been forgotten. The probable reasons for this unawareness are outlined elsewhere. See Ilan Saban, "A Lone (Bilingual) Cry in the Dark?" (2003) 27 *Iyunei Mishpat* 109, at 137–8 [Hebrew]. Thus, the parties to the

It should be noted, at the outset, that the legal commitments set in Article 82 are significant and even far-reaching. It manifestly goes beyond recognizing the right of the Arab minority to use its own language. It shapes a framework in which three (and since 1948, two) official languages co-exist and in the context of which the government is legally bound to use Arabic and to ensure access in Arabic on all levels and in every branch of the central authority.

However, in order to understand fully the various obligations and certain lacunae in Article 82, we must first clarify the distinction between individual rights and group-differentiated rights. In addition, within the latter we should be able to distinguish three significant sub-categories. The following is a concise categorization based on Kymlicka's groundbreaking categorization.¹¹

B. *Language and Categorization of Rights*

Individual rights are the rights common to all members of a society – equal citizenship rights. They are allotted to a person due to her/his very humanity or to his/her relationship with the state – the fact of her/his citizenship. We refer here to two main types of rights – freedoms and entitlements. The freedoms – most important of which are the freedom of expression (including a free choice of language), of association, of religion and conscience and of movement – are derived from the value we attach to human autonomy. The entitlements stem from the basic equality we assume to exist between people, by virtue of their essence as free intelligent beings, in their right to enjoy that human autonomy (the principle of non-discrimination), and the understanding that unless certain basic

most important petition to the High Court of Justice regarding the status of Arabic (*Adalah v. The Municipality of Tel Aviv-Jaffa*, *supra* n. 8) were unaware of its existence. See esp. Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, esp. Chs. 2&3 (New York, Oxford University Press, 1995) [hereinafter *Kymlicka*, *Multicultural Citizenship*]; Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship*, Ch.1 (New York, Oxford University Press, 2001) [hereinafter *Kymlicka*, *Politics in the Vernacular*]. See also, Saban, "Minority Rights in Israel," *supra* n. 3, at 247–256; Saban, "Minority Rights: A Framework," *supra* n. *

needs are answered human freedoms will lack substance (needs such as food, health-care, shelter, education and more).

Since our focus here is on minority groups, it is important to note that when duly allocated and adequately upheld, individual rights are expected to somewhat shield minorities and help preserve their culture and group-identity. Freedom of expression and of association, for example, enables individuals of the minority community to create and to maintain sub-groups and organizations that preserve various dimensions of the minority culture and allows the minority certain flexibility in adapting to the dynamic social circumstances.¹² However, recognizing individual rights is not in itself sufficient protection of the minority culture. Certain cultural particularisms definitely require protective arrangements beyond the granting of individual rights. One clear example is precisely the language of the minority. In order for a minority culture to exist, at least in modern times, its language must be one of the languages of public life. Unless special protective measures are taken – especially group-differentiated rights that form a shielding “linguistic environment” – the economic, cultural, and other pressures, used by the majority community to urge the minority to adopt and master its language, would almost inevitably erode the minority language.¹³

Indeed, whereas the equal rights of citizenship are extended to every individual on the basis of her/his humanity and her/his citizenship in the state – that is, apart from her/his membership in any social subgroup – there are some rights that may be possessed by individuals and organizations precisely because of their special group membership. As mentioned, these rights *group-differentiated rights* are intended to compensate for the vulnerability of the minority community and its culture in the face of the interests and pressures of the general society. The moral consideration that supports them is the awareness of the fragility of minority cultures, and the pain and bereavement that people belonging to these cultures will feel if the culture is indeed lost. Cultural (national, religious) affiliation is for most of us a core of our self-identity. It is that which gives our lives much of their content and significance and dictates

¹² Kymlicka, *Multicultural Citizenship*, *ibid.*, at 26.
¹³ Kymlicka, *ibid.*, at 111–2.

a vast number of crucial, as well as mundane decisions in the course of our lives.

We are entitled, therefore, to significant (though not unlimited) protection against external attempts – direct and indirect, intentional and unintentional – to weaken our group-cultural identity, replace it with another identity, and so on. Among the important means of protection are the group-differentiated rights. Let us now consider the three sub-categories of group-differentiated rights.

The first sub-category of rights that stems from group distinctness is *accommodation rights*, which are sometimes called polyethnic rights. The obligations derived from these rights extend significantly beyond the obligations that individual rights impose upon the state. The latter require the state, *inter alia*, not to limit freedom of religion, not to prohibit a private education system for children of the minority, and not to tolerate discrimination on the basis of group affiliation. However, accommodation rights impose upon the state positive obligations of a broader nature: upholding the major cultural practices of the minority; secondly, it is obliged to make special adjustments in economic and political institutions that aim to accommodate the minority. Two main examples of the first obligation are public funding of education in the language of the minority as well as the funding of museums, communal organizations and cultural events of the minority community. The aim of the second type of obligation is to protect the minority from having to choose between preserving its cultural uniqueness and enjoying equal opportunity in the social and political life of the general society. These measures include, for example, exemption from norms that conflict with the minority's religious or cultural practices, e.g., a special day of rest, and permission to wear traditional attire.

Rights of self-government form the second sub-category of group-differentiated rights; one far greater in magnitude than that of accommodation rights. Like accommodation rights, self-government rights seek to preserve the minority culture and its capacity to develop. However, the two kinds of rights operate on different levels. Self-government rights broaden the extent to which the minority itself shapes the relevant areas of life for the individuals belonging to it. Providing these rights is an act of decentralization of power; of delegating authority and granting certain

immunity to the minority against majority decisions on issues of special importance to the culture of the minority. Such issues may include education, religion, language, personal status, immigration to minority regions, development etc. To be more concrete, the right of self-government, if it encompasses the field of education, for example, would go beyond the accommodation right of a minority to a state-financed educational system in its language. It would reach the issue of the minority's right (as a group or individual members of it) to manage this educational system – determine the curriculum, the choice of teaching, managerial and supervisory staff and the funding priorities.

In contrast to the rights of self-government that shape especially the internal life of the minority community, the third category – *rights to special representation and allocation* – focuses on the level of the central authority of society and deals with the overall assets of power and public goods allotted on that level. These rights are indicative of the extent to which a minority is a sharing partner in the assets being allocated by the institutions of society, and to what extent it participates in the allocation process itself. The question of representation and allocation centers, then, on appointments to important agencies such as the government and the civil service, the allocation of budgets and public services, and the allocation of aspects of culture and status, such as the official languages and state symbols.

A minority enjoying a comprehensive category of rights to special representation and allocation in governmental appointments will have members appointed not only due to personal merit but also by dint of their group affiliation. This is the "proportionality principle" – a striving towards some basic correlation in the ratio of appointments to demography.¹⁴ Moreover, in special circumstances pertaining to areas vital to the existence of the minority, the minority may even enjoy over-representation such as would enable it to veto any real injury to vital aspects of its life.¹⁵

In the case of the shared allocation of symbolic assets (the symbols

¹⁴ Arend Lijphart, *Democracies in Plural Societies: A Comparative Exploration* (New Haven, Yale University Press, 1977) 25, 38–41.

¹⁵ Cf. Lijphart, *ibid.*, at 36–38.

common to the entire society) the measure of proportionality is often an inappropriate tool of allocation. Therefore, a state resolute about comprehensive special allocation to the minority community in this connection would choose one of the following paths – (1) the symbols of the state will be "new/external" – they will not be the distinctive symbols of any one of the communities; or (2) the symbols will indeed be ones that are historically rooted in one of the communities, but over time, have acquired a common significance,¹⁶ (3) where a symbol cannot be either "external" or common, it will be multiple – bilingualism, for example.

To use the terminology of rights just introduced, the status of Arabic as an official language in Israel is a decision which *prima facie* grants a definite and far-reaching group-differentiated right. Far reaching in the sense that what is implied is not only an accommodation right (aimed at protecting the minority from linguistic pressures of the majority) but the right to special (equal?) allocation. This is much more radical in its potential economic, social and political implications. Try to imagine what would have happened had the Arab citizens' ability to use only Arabic in all their dealings with state institutions been fully and truly realized. If they had been dealt with in Arabic in all government offices and Courts of Law, exactly the same as if they used Hebrew. Imagine the effect this would have had, for example, on the composition of the Civil Service (the number of Arab and Arab-speaking civil servants) and on the status of Arabic in the eyes of its users and of the majority.¹⁷

The potential implications on the symbolic level are far reaching as well. The "official" stamp grants a language a unique added value (distinct

¹⁶ Compare, for example, what occurs in the context of the religious-secular rift among the Jewish majority community in Israel: the way in which symbols whose source is religious are adopted by the entire Jewish national community, but after being invested with non-religious, national significance. See Charles Liebman and Eliezer Don-Yehiya, *Civil Religion in Israel: Traditional Judaism and Political Culture in the Jewish State* (Berkeley, University of California Press, 1983), at 165–166, 228–229.

¹⁷ For the profound political and economical ramifications of Canada's movement towards bilingualism, see Joseph E. Magne, *The Official Languages of Canada*, (Quebec, Editions Yvon Blais, 1995) [hereinafter: Magne]; Ilan Saban, *The Legal Status of Minorities in Democratic Deeply-Divided Countries: The Arab Minority in Israel and the Francophone Minority in Canada* (2000) (Ph.D. thesis, the Hebrew University, Jerusalem) [Hebrew] [hereinafter Saban, *The Legal Status of Minorities*], esp. at 150–1.

from that enjoyed by a "recognized" language, that only protects a minority's right to accessibility in its own tongue) especially when the official status is not limited to certain regions, but binding for the entire territory of the state. "Official" would seem then to imply "representative", a reflection of some partnership between the communities.¹⁸

Again we must ask – how does Israel – "the Jewish and democratic state" – fit in?

C. *Trying to Solve the Puzzle*

The answer involves three dimensions – historic, sociological and legal. First, the event of the linguistic divergence of Israel from the paradigm to which it belongs – the ethnic nation state – was made easy by the legal and historic juncture at which it occurred. The origin of the status of Arabic as an official language on a par with Hebrew was anchored in Mandatory legislation. Revoking Mandatory legislation regarding Arabic by the newly founded state would probably have met severe criticism from the international community. In the UN partition resolution of November 1947, there is a clear dictate to uphold a series of individual and minority rights, linguistic among them, in both the states that were supposed to be established in Palestine – the Jewish and the Arab.

At the same time, one must take into account that the wording of the Partition Resolution apparently did not require the preservation of "official language" status for Arabic in the Jewish state (nor for Hebrew in the Arab state), but rather the preservation of the minority's right to use it. The UN resolution details the right to use the minority language in many contexts: the individual level, commercial relations, religion, journalism and publications of all kinds, political activities, and so on (see Part I, B, § 10(d) of the Partition Resolution; and Part I, C, Chapter 2, § 7 of the Partition Resolution). Likewise, according to the footnote that accompanies

¹⁸ On the difference between an "official language" on the one hand and a "recognized," "national," or "working" language on the other, see: McBae, *supra* n. 1; Magnét, *The Official Languages of Canada*, *supra* n. 17; Claude Klein, *Israel as a Nation-State and the Problem of the Arab Minority: In Search of a Status* (Tel Aviv, International Center for Peace in the Middle East, 1987).

the above-mentioned § 7, the Jewish State's declaration to the organs of the United Nations must include an undertaking to the effect that: "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." These stipulations give Arabic the status of a "working language," but not the status of an official language. For instance, there is no requirement that acts of legislation and secondary legislation, or other documents directed to the public whose source is in legislation, the government or its organs, or in the courts, be provided in the two languages. This point is reinforced by comparison with the status that the two languages were supposed to have in the special entity of Jerusalem. (See Part I, C, chapter 3, §10 of the Partition Resolution, which explicitly states that Arabic and Hebrew are to be the "official languages" of that city).

The historical explanation does not, then, fully account for Israel's "deviation" from the expectation we have vis-à-vis an ethnic nation-state in the area of language. There are two additional explanations, and they serve to mitigate the wonder in face of what seems to be a discrepancy between the national identity of Israel and the status of the minority language in it.

One explanation tends to the sociological – to the familiar gap between rhetoric and practice. Looked at in this way one realizes that there is no real discrepancy since the symbolic alignment of Israel was never really troubled with the need to share status with Arabic.¹⁹ Simply, instead of taking the problematic step of annulling the official status of Arabic, Israel settled for unilingual practice among all the official bodies in the country (with the exception of the Arab local authorities), and counted on the dominance of Hebrew in the Israeli labor market to do the rest. We shall enlarge upon this shortly.

An additional and final explanation lies in the legal sphere. It considers the discordance between the legal status of Arabic and the national identity of Israel from a different angle. We maintain that the legal promise relating

¹⁹ See Adalah Report, *supra* n. 5, at 66–70; Gad Barzilai, *Communities and Law: Politics and Cultures of Legal Identities* (Ann Arbor, University of Michigan Press, 2003) 110–14 [hereinafter: Barzilai, *Communities and Law*].

to the status of Arabic is a little more restricted in scope than is commonly assumed. This is because the Israeli Law, like the Mandatory Law, does not formulate a comprehensive bilingual arrangement. It does not grant Arabic the full and comprehensive status of an official language. This point is best illustrated through comparative law, and we have chosen the Canadian Charter of Rights and Freedoms — the core of the Canadian constitution — as a comparison.

The Charter of Rights and Freedoms contains broad and detailed provisions concerning the official languages of Canada (primarily in articles 16-23). Article 16(1) of the Charter makes a general, unequivocal stipulation:

English and French are the official languages of Canada and have equality of status and equal rights and privileges as to their use in all institutions of the parliament and government of Canada.

This general stipulation is accompanied by a number of detailed provisions. Article 17 of the Charter states explicitly that every person has the right to use English or French in any discussion or procedure that is conducted in the Federal Parliament. Article 18 states lucidly that the laws, rulings of Parliament, and official records will be printed and published both in English and French, and that the two versions are "equally authoritative." Article 19 states explicitly that every person can use both English and French in any legal proceeding in the courts established by Parliament. Article 20 states explicitly that every member of the Canadian community is entitled to use, and receive service in, English or French in any office of the federal civil service (with few qualifications that will not be specified here).²⁰

A comparison between Article 82 of the Palestine Order-in-Council, 1922 and the Canadian Charter reveals the following weaknesses of the former. First, Article 82 is more laconic and has no such web of explicit

obligations around the "officiality" of the languages as do those that appear in the Charter. Neither does it contain a general stipulation along the lines of Article 16 of the Charter, according to which "English and French are the official languages of Canada." Nor does Article 82 include the set of provisions that appear in the Charter to emphasize and elaborate the "equal status" of the two languages. Article 82 indeed contains the heading "Official Languages," but according to Israeli law, an article's heading does not have independent normative power.²¹ In other words, this heading will help in interpreting the obligations set forth in Article 82, but may not have the power to add obligations that are not specified there. A third weakness that appears through the comparison with the Canadian Charter has to do, not with the extent of the bilingualism, but with the extent of its constitutional protection.

While in bilingual states the status of the official languages is often entrenched in the constitution,²² in Israel, the status of the minority language is mainly grounded in a regular statutory stipulation — Article 82. Although (as we shall see shortly) certain aspects of the status of Arabic also receive their protection from Israel's material Constitution or from its (partial) formal Constitution, this does not alter the basic state of affairs: Article 82 — which is the main legal arrangement to provide the "officiality" of Arabic is (merely) a statute. This difference between the normative status of the minority language in Israel and the status of the minority language in the above-mentioned bilingual states is not trivial. A statutory stipulation has a weaker symbolic weight than a constitutional stipulation, and is also much easier to annul or alter. Indeed, the Arab-Palestinian minority in Israel harbors the fear that the normative state of affairs with regard to the Arabic language will be changed relatively easily if it is perceived as threatening to the "axioms" of the majority community.

In sum, the scope and strength of the legal obligation with regard to the status of Arabic is more limited than is commonly thought.

²⁰ For a more extensive discussion of the language rights that are given to the French language in Canada, see, *inter alia*, Magnét, *supra* n. 17; Saban, *The Legal Status of*

Minorities, *supra* n. 17, at Ch.5.

²¹ Cf. Aharon Barak, *Purposive Interpretation in Law* (Jerusalem, Nevo, 2003) 402 [Hebrew].

²² Canada was discussed above; for the Swiss and Belgium contexts see, *supra* n. 1.

Nevertheless, it is important to bear in mind that the language rights that are clearly provided to the minority on the basis of Article 82 are – by any standard – very substantial. As analyzed above, they involve a full obligation for publishing legislation and secondary legislation in both languages, for official forms to be available in both languages, for full access in Arabic to the courts and the civil service, and for corresponding obligations in some of the municipalities.

However, this quite impressive list of linguistic rights has eroded over the years in various ways. The following are points that reflect the weakness of Arabic. Sometimes it is a legal weakness – a shortcoming of its legal standing as it was promulgated in Article 82; sometimes it is a sociopolitical weakness: legal rights that belong to Arabic beyond doubt but were either never enforced or were eroded in ways outlined below.

D. Ways in Which the Legal Status of Arabic was Undermined

1. The legislation of the State is indeed published in the *Official Gazette* in an Arabic version as well, but usually many months after its publication in Hebrew.²³ Seemingly, this delay does not affect the validity of the legislation: the legislation's coming into force is not conditional on publication in the two languages, but rather on "its publication in the *Official Gazette*."²⁴ Moreover, a preference exists for Hebrew that stems from the interpretative principle, as stated today in the Interpretation Law, 1981,²⁵ that there is no equality in weight between the two versions: "The authoritative version of any law is the version in the language in which it is given." This means – in the great majority of cases – the Hebrew language.

2. In practice, except for local branches of State agencies in Arab communities, offices of the central government are inaccessible in Arabic. There is no bureaucratic provision to enable meaningful access in Arabic,

²³ Tabory, *supra* n. 5, at 284–85

²⁴ The Law and Administration Ordinance, 1948 S.H., Article 10.

²⁵ The Interpretation Law, 1981 S.H. 302.

and many official documents, perhaps most, have no available Arabic version.²⁶

3. A person can testify in Arabic in his own or someone else's trial, and is entitled to a translator if subject to criminal proceedings;²⁷ but a person cannot, in practice, conduct a criminal or civil proceeding primarily in Arabic. The court system – in the vast majority of courts and tribunals – does not contain effective institutional mechanisms for translating from Arabic to Hebrew and vice versa. Often the "solution" devolves upon the Arab litigants themselves, who must make due with poor translation, testify in stammering Hebrew, or carry the costs of external translation services. The result reduces the chances of legal success.²⁸

4. Official announcements of the government appear, for the most part, in Hebrew only,²⁹ and likewise, until recently, road signs were almost solely in Hebrew. Sometimes English was added, but only rarely Arabic. As for most local authorities, the municipal signs and bylaws are given or enacted in Hebrew only. This was the case not only in the Jewish local authorities, but also, until very recently, in mixed cities (cities that include a substantial Arab minority). For many years the only exception was Jerusalem. In a discussion of the developments of the last decade, we shall dwell on this at greater length. However, for a relevant (long) period, the Jewish local authorities and some mixed local authorities went further and declared linguistic restrictions upon private notices in the public domain. Usually, the bylaws carried the following instruction, a veritable graphic illustration of the hegemony of Hebrew:

A person will not publish a notice or present a sign unless licensed by the head of the local authority and according to the conditions of the license unless the notice or sign are 1)

²⁶ See the following two petitions, H.C. 2203/01, DCI – Defence for Children International (Israel Section) v. National Insurance Institute of Israel (Unpublished decision) and H.C. 8875/00, Jerusalem Center for Social and Economic Rights v. National Insurance Institute of Israel (on file with authors.)

²⁷ See Criminal Procedure Law (Consolidated Version), 1982, S.H. 1982, at 41.

²⁸ See the claims and the submitted affidavits in Adalah's petition: H.C. 792/02, *Adalah v. The Director of the Courts* (on file with authors.)

²⁹ Barzilai, *Communities and Law*, *supra* n. 19 at, 110–14.

written in Hebrew, or 2) written partly in Hebrew and partly in a foreign tongue and the Hebrew takes up at least two thirds of the top part of the spread and the Hebrew fonts are bigger than those of the foreign language.

The citation is of para 2(a) of a bylaw in Nazareth Illit (Advertisements and Notices) 1964. The paragraph, however, was revoked by the Supreme Court in the early 1990s.³⁰

5. During the years additional legislation was added to Article 82 relating to language. We refer to laws regulating the languages in which notices to the public, security instructions, examinations, qualification requirements for various posts, conditions of naturalization etc. will be issued. The new legislation is not uniform in its attitude towards Arabic. Some of it contains a clear obligation to publish in Arabic, see, for example, section 76 of the Knesset and Prime Minister Elections [Consolidated Version] Law, 1969³¹ (proclaiming that the ballots must be in both languages). On the other hand, an obligation to publish in Hebrew (or a demand for sufficient knowledge of Hebrew) is common, with no similar compulsion as regards Arabic. A characteristic example is provision 9(b) of Local Municipalities Order, 1950: "A notice regarding public tender [of a local authority] will be published in at least two dailies printed in Israel, at least one of which is in Hebrew." In other words, publication in Hebrew is obligatory whereas in all other languages, it is optional (i.e., preference may be given to a Russian-language daily). Another example with much symbolic significance expressing a clear preference of Hebrew is the instruction in section 5(a)(4) of the Citizenship Law, 1952,³² which requires "A certain knowledge of Hebrew" as a condition for naturalization.

6. Another point that contributes to the gap between normative rhetoric and practical governance in the issue at hand emanates from the remedy provided by courts of law in cases of digression from the obligation to publish in Arabic. The praxis taking shape in courts is that,

30 H.C. 105/92 Ram Engineers v. Municipality of Nazareth Illit 47(5) P.D. 189, [hereinafter: Ram Engineers case].

31 The Knesset and Prime Minister Elections (Consolidated Version) 1969 S.H. 106.

32 The Citizenship Law, 1952, S.H. 146.

notwithstanding that the government and other authorities are bound by law to publish in Arabic (including laws and bylaws), failure to do so does not in itself invalidate the legislation. Remedy will be given to the person only if proved she/he suffered personal injustice due to the monolingual publication or if there exists a clear and concrete legal provision, beyond Article 82, instructing to publish in Arabic.³³ In the long reality in which the minority has been oriented to bilingualism, personal injury incurred due to lack of an Arabic translation of a notice would be difficult to prove.

7. The practical significance of the status of Arabic has for many years diminished to basically the level of protection of the internal life of the minority, especially to the right to education in Arabic. A comprehensive educational system (primary and secondary State education) exists in Arabic, and the right to operate private Arab schools is being upheld, and from the 1980s on, they are to a large extent state financed.

However, a minority's right to education in its language belongs to the category of the more restricted accommodation rights.³⁴ Moreover, even

33 H.C. 527/74 Khalf v. The District Committee for Planning and Construction, Northern District 29(2) P.D. 319; Rubinstein and Medina, *supra* n. 5, at 102-104; Kretzner, *supra* n. 5, at 166.

34 The Arab-Palestinian educational institutions are denied self-government rights, denied the autonomy enjoyed, for example, by the orthodox and ultra-orthodox Jewish educational systems. Neither is the Arab-Palestinian minority granted special representation rights; the world-view and history of the minority do not feature in the general curriculum of state schools in Israel. For discussions of Arab education in Israel, see, *inter alia*, Majid Al-Haj *Education, Empowerment, and Control: The Case of the Arabs in Israel* (Albany, State University of New York Press, 1995); Kretzner, *supra* n. 5, at 120-1, 152-4, 169-172; Khalid Abu Asba, *The Arab Educational System in Israel: Existent Situation and Possible Structural Alternatives* (Givat Haviva, The Institute for Peace Research, 1997) [Hebrew]; Ori Ichilov and Andre Elias Mazaawi, "Choice in Education and its Social Significance in the Arab Community in Jaffa," (1997) 38 *Megamot* 421-432 [Hebrew]; Ismail Abu-Saad, "The Bedouin Educational System in a Changing Social Reality" in Eliad Peled, ed. *Fiftieth Year Jubilee to Israel's Education System* (Jerusalem, The Ministry of Education, 1999), at 1101-1111 [Hebrew]; Muhammad H. Amara and Abd Al-Rahman Mari, *Issues in Language Education Policy of Arab Schools in Israel* (Givat Haviva, The Institute for Peace Research, 1999) [Hebrew]; Yousef T. Jabareen, "Education with Identity" (1999) 1 *Adalah Notebooks* 26-29; Yoram Rabin, *The Right to Education* (Jerusalem, New, 2003) [Hebrew]; Saban, "Minority Rights in Israel," *supra* n. 3, at 269-271, 278-280; Saban, "Minority Rights: A Framework," *supra* n. *.

the accommodation rights in the educational sphere are limited, since there is no Arabic university in Israel.³⁵

The reality, as described above with its serious two types of gaps, between official (legal) rhetoric and governmental praxis and between the legal and the sociopolitical status of Arabic evolved and accompanied Israel's public life for almost the first five decades of its existence. It has somewhat changed since then. However, before we address this change and in order to be able to explain its scope, and especially its limits, let us try to grasp the deep causes for these two types of gap. We discern two such causes.

First, through the prism of their political culture, the Israeli-Jews saw no evil in the adverse impact inflicted upon Arabic. After all, Arabic (in the minority sector) was less eroded than the languages of the (Jewish) immigrants in Israel. In addition, all language-erosions occurred with the major participation of forces which seemed 'natural and neutral': i.e., especially work-place demands. Moreover, Hebrew skills seemed gradually less of a problem vis-à-vis most members of the Arab minority. The Arab citizens were considered (rightly in many instances, but not all) bi-lingual. The majority in Israel is blind to the fact that certain aspects of state policy pressured the minority to become bi-lingual, and that this bilingualism is unilateral and adopted by the minority only. An example of such a policy is the exclusive use of Hebrew by the Israeli authorities (with the exception of the local Arab authorities). An unmistakable cycle is apparent here; the monolingual praxis of the Israeli government, relied on the evolving bilingualism of the Arab minority (which it itself nurtured while ignoring its legal obligations.)³⁶

35 Another important issue that is too lengthy to discuss here is the lack of group-differentiated rights (from the three types) of mass communication in the media. The (in) visibility of Arabic and of the Arab-Palestinian minority itself in the publicly-financed electronic media and in the powerful private electronic media in Israel, and the lack of minority operated television channel or radio station which could be a forum for discussing, setting and promoting the minority agenda(s). There is only one radio station controlled by minority members, and it is private and regional. See, *inter alia*, Saban, "Minority Rights in Israel," *supra* n. 3, at 285-7.

36 On the issue of unilateral bilingualism, see Sammy Smooha, "Existent and Alternative Policy towards the Arabs in Israel," (1980) 26 *Megamon* 15-18 [Hebrew]; Al-Hajj, 1995, at 110.

A second factor contributing to the rift between the legal and the sociopolitical status of Arabic is that for decades the monolingual governmental praxis, though most often illegal, was not challenged by the Arab minority or any other segment in Israeli civil society. The practice was not challenged mainly because of the late emergence of legal organizations with an Arab leadership and an agenda to change Israeli society. Additionally, the organizations that have emerged since then are cautious. As mentioned above, the status of Arabic is quite fragile since its main features are primarily grounded in a regular statutory stipulation (Article 82).

Indeed, following events that took place in recent years and will be described shortly, a right wing Knesset Member, Michael Kleiner, was quick to propose to amend Article 82 so that Hebrew will become the sole official language.³⁷ The proposal was defeated or deferred but the option has not died away.

III. *The Last Decade: A Change of Orientation Holding Out Possibilities that Should Neither be Ignored nor Exaggerated*

A. The Emergence of an Assertive Civil Society within the Minority Circles

While presenting his motion, MK Kleiner gave a telling description of the first 45 years of Israel's existence: "Up to now there was an informal arrangement: the Jews did not change the law and the Arabs did not seriously try to enforce it" (Knesset minutes, 7 November, 2001).

This 'arrangement' has, however, changed during the 1990s. The state authorities most involved in the recent developments are the Supreme Court and the Attorney General. The important point, however, is that these bodies were mobilized by civil society groups, especially from among the Arab-Palestinian minority. Since the second half of the 1990s, human rights organizations, especially Adalah (the Legal Centre for Arab Minority Rights in Israel), but also the Association for Civil Rights in Israel, have

37 Proposed Law (Order in Council - Amendment - Official Language) 1999 - P/579.

been cautiously promoting a process of using the legal status of Arabic as a lever to change its sociopolitical status. It is a pattern to be remembered: the promise inherent in Law (here, the legal status of Arabic) will only be realized if the minority will insist upon its materialization. Left to its own devices the State has taken no positive steps, initiated no policy to actively close the gap that has evolved over the years between the legal and the sociopolitical status of Arabic.

The first important development was the *Ram Engineers* case.³⁸ The Supreme Court ruling here resulted from the insistence of an Arab construction company on its right to publish advertisements only in Arabic in neighborhoods of the city of Nazareth-Ilit. The municipality did not conceal the reason for its opposition: "...emphasis on the nature of the municipality as a place of primarily Hebrew and Jewish residence." These words reveal the profound discomfort aroused by the migration of Arabs into Nazareth-Ilit because of the housing shortage in Nazareth, with Nazareth-Ilit becoming a mixed city over the years.³⁹ The Supreme Court confirmed the right of the construction company (and of others) to publish private ads only in Arabic on billboards owned by the local authorities, even in towns and cities whose residents are mostly or solely Jews. It invalidated the bylaw of the city of Nazareth-Ilit that required the use of Hebrew in all publications, even private ones, on billboards anywhere in the city.

This outcome and its possible implications are unquestionably important. However, the court chose to base the ruling on freedom of expression and only incidentally addressed the status of Arabic as one of the two official languages of the state.⁴⁰

A second development in the status of Arabic appeared in a secondary legislation. In 1995, through a noteworthy change of regulations, the Minister of Finance imposed the obligation to publish notices of

38 *Ram Engineers*, *supra* n. 30.

39 *Ibid.*, at 217. For a comprehensive discussion of ethnic relations in Nazareth-Ilit, see, Dan Rabinowitz, *Overlooking Nazareth: The Ethnography of Exclusion in a Mixed Town in Galilee* (Cambridge, Cambridge University Press, 1997).

40 For a more thorough discussion, see Gad Barzilai, "Fantasies of Liberalism and Liberal Jurisprudence: State Law, Politics, and the Israeli-Arab-Palestinian Community," (2002) 34(3) *Israel Law Review*, 425-451, at 438-9; Adalah Report, *supra* n. 5, at 67.

governmental tenders in Arabic as well as Hebrew.⁴¹ In addition, the Attorney General instructed government offices to publish notices inviting civil bodies to apply for state funding in Arabic as well as Hebrew.⁴²

A third development in the status of Arabic resulted from a petition by Adalah and the Association for Civil Rights in Israel. The subject of the petition was the language of road signs; governmental marking of the major public roads. The petition led to an undertaking by the State to complete the transition to fully bilingual signs on these roads by 2004.⁴³

Why is the language of road signs so crucial? The stormiest legal proceedings in Canada in recent decades also occurred with regard to legislation concerning the language of signs – in Quebec.⁴⁴ The answer probably lies in the importance of signs (and their language/s) in signaling many otherwise unexpressed aspects of the character of a place. Thus, by force of the correlation between language and nationality in divided states signs in the public domain can carry a range of messages. They can indicate demographic composition, differences in socioeconomic standing of the various communities (whom the advertisements solicit as potential consumers), the weight of a minority's presence in the country of its citizenship, how respected its cultural identity is, how profitable might it be to acquire a certain language, and more.

Israel is indeed a case in point. The debate about bilingual signs on interurban roads did not end when the State undertook to make them all bilingual. The debate then turned to another question – what precisely would appear in Arabic. Would the names of communities on road signs be merely Arabic transliterations of Hebrew names, or would they be in

41 See Reg. 15 (b) of the Tenders Requirement Regulations, 1993.

42 See the letter of the Attorney General to the legal counsels of the government ministries from November 17, 1999 (copy kept with authors).

43 See the agreement that gained the status of a ruling: H.C. 4438/97 Adalah v. Ma'atz (Public Works Department) (Unpublished decision). See also the agreement that gained the status of a ruling in H.C. 2354/93 The Association for Civil Rights in Israel and the Committee for Social Development in Haifa v. Municipality of Haifa (Unpublished decision). And see especially the ruling in Adalah v. The Municipality of Tel Aviv-Jaffa, *supra* n. 8, (on the issue of the language of municipal signs).

44 Magnef, *supra* n. 17, at 35-40, 65-67; Saban, *The Legal Status of Minorities*, *supra* n. 17, at 204-209.

the Arabic script of their Arabic names? The debate sometimes arises even regarding the names of entirely Arab communities, but it occurs most often with regard to mixed communities (e.g., in Arabic, should "Akko" [Acre, in Hebrew] or "Akka" be written?), as well as communities that in the past were Arab but after 1948 are not any longer (such as Tsipori/Saphoori).⁴⁵ The State sometimes adopts an Arabic transliteration of the Hebrew name while adding in parentheses the Arabic script of the Arabic name. The parentheses, however, signal the different status of the names, and hence this practice is a subject of dispute. It is perceived as a continuation of the state practice of "Judaizing the common space".⁴⁶ In terms of the theoretical framework that was presented for group-differentiated rights, the minority's demand is for a significant right to "special representation and allocation," as distinct from linguistic representation that is merely formal (accommodation right). The minority is demanding both to be represented in the symbolic order of the State and be allowed to choose the linguistic representation that is adopted in its language. These will reflect a more substantial participation — as a national community — in determining the linguistic landscape of the common homeland.

A final development, which also gave birth to the most important ruling so far regarding the legal status of Arabic, occurred in July 2002 in the case mentioned above: *Adalah v. Municipality of Tel Aviv-Jaffa*.⁴⁷

B. Adalah et al. v. Municipality of Tel Aviv-Jaffa et al.

The importance of the ruling by the Supreme Court is difficult to overstate, even though it was passed by majority opinion with divergent reasoning from the majority justices. First, on a narrow level, the ruling deals with the language of signs in mixed cities in Israel, and establishes an obligation

45 See the important analysis of this cross-cutting issue of "naming" and language in Israel, in Meron Benvenisti, *Sacred Landscape* (Berkeley, University of California Press, 2000), esp. 52–54.

46 We are grateful to Attorney Jamil Dakwar from Adalah for drawing our attention to this unresolved issue.

47 *Supra*, n. 8.

to include Arabic in these signs. This pertains to the entire municipal jurisdiction, not only to the Arab or mixed neighborhoods within them. However, the main importance of the ruling lies in the argumentation of Chief Justice Barak.

The direct legal question in the ruling concerned the legal obligations specifically imposed on mixed local authorities concerning the language of municipal signs. Article 82 makes the implementation of linguistic obligations conditional on the inclusion of the local authority in the list of "areas to be prescribed by order."⁴⁸ The important point is that all parties to the *Adalah* petition — the petitioners, the respondents, and consequently, the Court — assumed that no such order had been issued. This, apparently, was a mistaken assumption; I mentioned above the Mandatory order that remains in force. This order was "dormant" for different reasons that will not be detailed here.⁴⁹ What is important is the effect this assumption had on the justices' argumentation.

The assumption affected how the justices answered the following question: are there no other major normative sources that influence the legal status of Arabic, apart from Article 82? The Court's response was positive: there does exist an additional source of obligations, more general and abstract — the basic values of Israel as a "Jewish and democratic" state, including the right to "human dignity" (which is entrenched in Basic Law: Human Dignity and Liberty).⁵⁰ The justices' paths parted, however, on the question of whether this source posits group-differentiated rights in the domain of language (as distinct from protection against discrimination on a linguistic basis), and whether it is the Court that should derive such rights from the basic values of Israel. Providing positive answers to both these questions was the actual (albeit the not clearly expressed) path upon which one of the majority justices, Chief Justice Barak, proceeded.

In his argumentation Chief Justice Barak introduced for the first time a crucial distinction. He did so when dealing squarely with a question

48 For the text of Article 82, see the text accompanying n. 6 *supra*.

49 See, *supra* n. 10.

50 This point appeared in the Supreme Court's jurisprudence even earlier; in H.C. 12/99 Jamal v. Sabek, 53(2) P.D. 128.

that hovers over this ruling: If far-reaching language rights for Arabic in Israel derive from "human dignity" why not provide similar protection to the array of other languages that are spoken in Israeli society – the languages of the new immigrants to Israel? Chief Justice Barak's answer is based on the distinction between a "homeland (native) minority" and "immigrant groups," and it included – for the first time – a recognition much desired by the Arab-Palestinian minority for purposes of protection – namely, recognition of its distinctness as a "native minority."⁵¹

A central paragraph in Chief Justice Barak's ruling states the following:

Against this background the following question may arise: what distinguishes the Arabic language, and why is its status different from that of other languages – in addition to Hebrew – that Israelis speak? Does our approach not imply that residents of different towns in which there are minority groups of speakers of various languages, will now be able to demand that the signs in their towns will be in their language as well? My response is negative, *since none of those languages is the same as Arabic*. The uniqueness of the Arabic language is twofold. First, Arabic is the language of the largest minority in Israel, *which has lived in Israel since far far in time*. This is a language that is linked to cultural, historical, and religious attributes of the Arab minority group in Israel. This is the language of citizens who, notwithstanding the Arab-Israeli conflict, wish to live in Israel as loyal citizens with equal rights, amid respect for their language and culture. The desire to ensure dignified coexistence between the descendants of our forefather Abraham, in mutual tolerance and equality, justifies recognizing the use of the Arabic language in urban signs – in those cities in which there is a substantial Arab minority (6%–19% of the population) – alongside its senior sister, Hebrew...⁵¹

⁵¹ *Ibid.*, para. 25 of Chief Justice Barak's ruling [references deleted, emphasis added]. See also the opinion of Justice Dornier, paras. 6 and 7 in her ruling.

We find this reply very commendable. Arabic is not similar to the mother tongues of Jews who immigrated to Israel, since a native minority is not the same as an immigrant minority. The main difference is the following: immigrants undergo a profound process of transition from a homeland to a new land. This transition is individual in nature, and involves elements of separation. Morally speaking, in most instances there is a kind of unwritten agreement between the immigrants and the new society: they come to it and are received as individuals who wish to integrate into it – as opposed to a separate national community that seeks to comprehensively preserve its original culture and the separate national existence it may have led (at the homeland) within the new country, amid the new culture.⁵²

This is, then, an express recognition of the unique status of the Arab-Palestinian population as a "native (national) minority". Important implications, beyond the Arabic issue, might follow if such recognition will be shared by more Justices of the Supreme Court.

IV. *Can the Sociopolitical Status of Arabic be Radically Changed By Legal Means? The Canadian Lessons*

The developments of the last decade might turn out to be truly important for the status of the Arab minority; however, it may be misleading to close the subject of the Arabic language in Israel without the following note or reservation.

Although these legal developments in the status of Arabic are impressive, their influence on the lingual reality of Israel is undoubtedly limited. It is possible that they fail even to counterbalance the pressures

One should add, that the nature of the Arab-Palestinian minority as a "native minority" was also emphatically held by the official Commission of Inquiry into the October 2000 events [the *Or Commission*, which dealt with the violent clashes between Arab citizens and the police, accompanying the outbreak of the second *Intifada* in the Occupied Territories; these clashes ended with twelve Arab Palestinian citizens of Israel and one Palestinian resident killed by the police.] See the *Or Commission Report*, (2003) Part 1, para. 5.

⁵² Kymlicka, *Multicultural Citizenship*, *supra* n. 11, at 95–96.

of erosion that ceaselessly affect the real standing of Arabic in Israel. The State of Israel and its society are as far away from bilingualism as ever. The status accorded Arabic in Israeli law is still devoid of any practical significance in Israeli public life. For all intents and purposes Hebrew is close to being the only language of Israeli civic life. By and large, this is the only language in which the Israeli public domain "speaks." It is the language of the bureaucracy, of higher education, almost exclusively of the domestic electronic media and more important than all, it is the language of those sectors of the labor market that are open to the minority. The main significance of the status of Arabic in Israel appears, then, not with regard to the society as a whole but to the extent of protection it affords to the internal life of the minority, especially with regard to the right to education in the minority tongue.

Thus, the status of Arabic continues to lose ground with diverse and multiple symptoms. We shall restrict ourselves here to two examples described briefly. These two examples underline Arabic's diminishing status in the eyes of its own speakers – the minority community. The first example is the attitude of pupils to the study of Arabic, as it is reflected in their preparation for the high school graduation exams. In the Arabic schools examination in Arabic on the level of three (out of possible five) units is compulsory. Only a minority of the Arab pupils – between twenty and thirty percent over the past decade – chose to sit for the optional four or five units.⁵³ The second example is the linguistic landscape in the Arab settlements. A survey on the subject was conducted in the town of Um-al-Fahem, as a case study, and found comprehensive presence of Hebrew in local notices, including commercial advertisements above local businesses. More than half the notices contained Hebrew, and in over a third, it appeared first (at the upper part of the signs).⁵⁴

Is there then no way of using Israeli law (and the tools it affords) more effectively, to bring about a deeper sociolinguistic change than has been

53 Muhammad H. Amara and Abd Al-Rahman Mari, *Language Education Policy: The Arab Minority in Israel* (Dordrecht, Kluwer Academic Publishing, 2002), at 83.

54 Muhammad H. Amara, "The Place of Arabic in Israel," (2002) 156 *International Journal of the Sociology of Language*, 53–68, at 62 [hereinafter: Amara, "The Place of Arabic in Israel"].

achieved thus far?

We believe not. Below are our reasons. It is comparative methodology, and concretely the Canadian analogy, which help us conceptualize these reasons.

1. If a real bilingualism had come about, the Arab-Palestinian minority would have been able to use its language both in the public and the private spheres. Hence, even if we assume that the minority would manage to both uphold and materialize the status of Arabic as an official language, it would still only apply to the public sphere (the government branches level). The government indeed participates in the lingual praxis adopted by society, but most often it is not half as influential as the labor market and the language spoken there.

Everyday life (and at least a substantial part of each day) is usually conducted in the language of the workplace. The 'official languages' legislation of Israel does not address this issue. A major variable that accounts for the sociolinguistic reality of Israel is, therefore, the dependency of individuals from among the minority group on the overwhelmingly Hebrew-speaking Israeli labor market. True, the law could affect the depth of dependence, but the existing legal system would certainly not suffice to produce a very comprehensive change in the economic structure of Israel and its inner-dependencies (the comparison with Canada, see below, will illustrate this point). In addition, certain geopolitical circumstances, unlikely to change in the foreseeable future, bar the Arab-Palestinian minority from a potentially wide scope of cultural and economic interrelations with the Arab world. The dependence on the Hebrew market is therefore unlikely to change for the time being.⁵⁵

2. The essential change in the status of French in Canada occurred mainly from *within* the Francophone minority itself, and relied heavily on the Canadian Federal constitutional structure.⁵⁶ We refer to the "Quiet

55 Amara, "The Place of Arabic in Israel," *ibid.*, at 64–65; Muhammad H. Amara, "The Sociolinguistic Fabric of the Arab Minority in the Hebrew State" in Muhammad H. Amara ed. *Language and Identity in Israel* (Ramallah, MADAR-The Palestinian Forum for Israeli Studies, 2002) 89, at 98–99.

56 Canada consists of 10 provinces. The relations between the Federal Government and the provinces are structured and enshrined in the Canadian Constitution. Most Canadian francophones (who by 1991 were 6.4 millions out of 27.4 millions Canadians, or 23.5%)

Revolution" in Quebec in the 1960s, which used the Francophone sovereignty in Quebec to establish a basically Francophone nation and found a Francophone quasi-state. This included nationalization of wide sections of the industry and deep involvement of the state (the province of Quebec) in the economy in order to expand French as the language of the public sector and the portion of this sector in the labor market. Coupled with this, comprehensive provincial linguistic legislation was put in motion. The language of employment in the private firms in Quebec came under pressure to change to become bi-lingual (if it was not French-alone already). Immigrant children were absorbed into the French-speaking public educational system. And the public sphere — with regard to public signposts and private advertisement — was to become predominantly and, for a period even exclusively, French. These pieces of legislation were indeed difficult to enforce and proved very controversial, however, by the assertive use of all the above mentioned measures (and more), Quebec has, to a large extent, been transformed from a bilingual province with an Anglophone economic elite into a substantially monolingual French province.⁵⁷ It is only seemingly a paradox that a realistic bilingualism is marked by a (partial) shift to monolingualism. Without the minority being able to conduct most of its life in its language, this language might not survive in the long run. Canada is then bilingual by a combination of being bilingual on the federal level but mostly monolingual (English or French as the case may be) on the provincial level.

By comparison, the Arab-Palestinian minority enjoys no political sovereignty over any large territorial unit. It does not even enjoy personal autonomy in most cultural matters. Therefore, in the absence of a lever to change its economic and political reality, it is difficult to imagine how the balance of power (and dependence), currently so much in favor of Hebrew, could change.

reside in Quebec, in which they form a decisive majority. By force of the Canadian Constitution's allocation of powers and as result of their control of the province of Quebec, the francophones have been holding very impressive self-government rights. See, *inter alia*, Kenneth McRoberts, *Quebec: Social Change and Political Crisis* (Toronto, McClelland & Stewart, 1993); Robert A. Young, *The Secession of Quebec and the Future of Canada* (Montreal, McGill University Press, 1995).

⁵⁷ McRoberts, *ibid.*, at 427-35; Saban, *The Legal Status of Minorities*, *supra* n. 17, Ch. 4-5.

3. Another point that comes to light through the Canadian comparison relates to the change in Federal Canada itself that occurred concurrently with the change described above in Quebec. In the 1970s and 1980s Canada adopted comprehensive bilingualism in the Federal branches of government and public service. This process and its political background are too complex to be presented in this context.⁵⁸ We shall only say, therefore, that Canadian bilingualism did not precede bi-nationalism but rather the opposite. Federal Canada became bilingual after a decision of the Canadian elites to truly adopt bi-nationalism. Bilingualism was one dimension of this decision. If we now return to the Israeli analogy, and if we are right in assuming that bilingualism in Israel would have to be preceded, as in Canada, by bi-nationalism, we very much doubt if it is a likely eventuality. After all, the continuing Arab-Israeli conflict makes doubtful even much less comprehensive options of change; and even if (hopefully) this conflict will be resolved it most likely will revolve around a "two (nation) states solution," not a bi-national solution.⁵⁹

4. Another question must be asked: has the dissonance between the legal promise towards Arabic and the sociopolitical reality of Arabic been challenged as much as it could be? Here we may be a little more positive, though the limits are well defined. On the one hand the appearance of transformative Arab NGOs will probably lead to more incremental changes in the status of Arabic. On the other hand, an important part of the status of Arabic is not securely enough protected. Indeed, after *Adalah v. Tel-Aviv-Jaffa Municipality*, we know that some aspects in the status of Arabic are constitutionally protected, but one may assume with relative certainty that these aspects are not "bilingualism" as a whole. A comprehensive bilingualism is arguably not a derivative of the basic values of a "Jewish and Democratic" state. Moreover, even if a claim for bilingualism could be based on the Basic Law: Human Dignity and Liberty, we must remember that an amendment to Israel's Basic Laws does not require a

⁵⁸ Magnét, *supra* n. 17, at 24-35; Saban, *The Legal Status of Minorities*, *supra* n. 17, Ch. 5.
⁵⁹ Sammy Smooha, *Autonomy for Arabs in Israel?* (Israel, Beit Berl, 1999), at 109-110 [Hebrew]; Ilan Saban, "Up to the Limits of the Zionist Paradigm" in Sarah Ozacky-Lazar et al., eds. *Seven Roads: Theoretical Options for the Status of the Arabs in Israel* (Israel, Givat Haviva, 1999), at 97-99 [Hebrew].

complex procedure as compared with other states.⁶⁰ This fact, then, is a perpetual threat to the status of Arabic.

5. The above-mentioned points may lead to some initial conclusions regarding the mutual relations between law and social reality. They have to do with the way in which radical social changes are consolidated, and more specific to our purpose how a transition to real bilingualism is affected by law, if at all.

We suggest that the transition to real bilingualism most often depends upon two main preconditions a) a labor market (usually bifurcated) operating in two languages, and b) a political culture (common to both communities) which is committed to (or at least tolerant of) bi-nationalism (or civic multiculturalism), with all the attendant economic and symbolic ramifications. Without assertively deciding whether these two conditions are prerequisite or only favorable, one should note the vital role they played in the changes in the Canadian/Quebec scene: the creation of a bifurcated labor market in Canada has offered serious opportunities in the mother tongue of the francophones, especially in Quebec; and comprehensive bilingualism on the federal level followed the transition of the Canadian regime and the Canadian political culture to bi-nationalism.

In other words, even if the status of the minority language as an official language is constituted and even staunchly upheld, much more must occur before the society becomes meaningfully bilingual.

V. *Final Two Short Notes*

It does not seem right, when dealing with law and social change in Israel, to neglect to dwell on the possible ramifications of the dire events of the last few years. More specifically – will the October 2000 shooting of 12 Arab citizens by the police, the violence between Israel and the Palestinians in the occupied territories, and more – enhance Palestinian nationalism within the minority? And will an enhanced nationalism influence minority members' attitudes towards their own language? And

⁶⁰ Saban, "Minority Rights in Israel," *supra* n. 3, at 296–297.

how will the Jewish majority react to a growing affinity between the minority in Israel and its brethren in the occupied territories?

We tend to believe that so long as these and other events do not alter the conditions that attended the sociopolitical status of Arabic up to now, its status is not likely to change. We refer predominantly to the dependence of the Arab minority upon a Jewish labor market, the absence of autonomy for the minority and the lack of tolerance on the part of the majority for bi-nationalism. We thus hold to our conclusion as outlined above: no deep change in the lingual reality of Israel is forthcoming either in the short or medium term.

Does this mean that all the legal developments of the last decade that we have reviewed have no bearing? We think they have. However, their most significant impact is felt not in the field of language, but instead in the psychological contexts in which both communities conduct their life and decide major decisions. This is because these legal achievements carry a moderate vision of a different Israel.

They help various groups within the Israel polity avoid judging Israel reality in black and white – "all or nothing" terms. They signal the existence of a "third way" option: an option which stands in-between the status-quo in ethnic relations in Israel, on the one hand, a radical transition in Israel's character (i.e. to a bi-national state) on the other.

This third – bridging – option, if seriously explored, will leave Israel "a Jewish and a democratic state", while at the same time fulfilling much more meaningfully the second part of this self-definition. It would carry, *inter alia*, the following improvements: allocating society's goods fairly (at last) providing for major self-governing powers for the minority (i.e., cultural autonomy) and indeed showing much more respect for the minority language in Israel's public life.

Let us just hope that we (both Jewish and Arab citizens) shall prove wise enough to tread this middle way as long as it stands out for us.