SPEAKING ARABIC IN ISRAEL: "HE WHOSE HAND IS IN THE WATER IS NOT LIKE WHOSE HAND IS IN THE FIRE"*

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I. INTRODUCTION

Recently, in 2018, the Israeli parliament (the *Knesset*) ratified Basic-Law: Israel[1] - The Nation State of the Jewish People (NSL),[2] which stipulates, among other things, that the State language is Hebrew[3] and that Arabic enjoys a special status.[4] In legislating the NSL, and shortly afterward, many assertions were voiced alleging that the new legislation deprives the Arabic language of its present official status,[5] which is already anchored in Section 82 of the King's Order-in-Council.[6] However, the NSL makes it clear that

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* A well-known Arabic idiom. Justice George Karra of the Supreme Court of Israel, referred to this idiom, in his dissenting opinion, in order to illustrate that the Jewish majority citizens of the state of Israel cannot feel the suffer that they cause to the Arab minority, especially by virtue of Basic-Law: Israel – The Nation State of the Jewish People (2018) (NSL). *See* HCJ 5555/18 MK Akram Hasson v. The Knesset 57(2021) (Isr.) [hereinafter MK Akram Hasson v. The Knesset].

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1 *Basic-Law: Israel – The Nation State of the Jewish People*, THE KNESSET (2018) https://main.knesset.gov.il/EN/activity/Documents/BasicLawsPDF/BasicLawNationState.pdf [hereinafter Basic-Law: Israel – The Nation State of the Jewish People].

2 It is worth noting that the constitutionality of the NSL has been challenged before Israel's High Court of Justice (the Court) through more than a dozen of petitions, including concerning the question with which this article is concerned. *See* MK Akram Hasson v. The Knesset.

3 Section 4(a), Basic Law: Israel the Nation State of the Jewish People, 5778-2018 (Isr.).

4 *Id.* at § 4(b).

5 It has also been argued that the NSL encumbers any potential to further upgrade Arabic's legal status. *See* Meital Pinto, *Symposium on the Basic Law: Nationality and the Surrogacy Clause Why the Basic Law of Nationality Does Change the Legal Status of the Arabic Language in Israel for the Worse*, ICON-S-IL BLOG (Oct. 31, 2018) (Hebrew).

6 Section 82 provides that: "[A]ll 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." Upon its

nothing in this law shall affect the Arabic's legal status as recognized on the eve of its enactment (the Validity of Laws clause).[7]

This presentation compels us to wonder whether there is an actual legal conflict over symbols; namely, whether the NSL indeed jeopardizes the legal status of Arabic as an official language—a symbol that constitutes a significant facet of the collective national identity of the Arab minority citizens of the state of Israel. Or, rather, the whole saga surrounding Arabic is better categorized as a symbolic conflict, particularly given the sensitivity that the NSL triggers concerning the Arab minority; namely, has Arabic's legal status as an official language remained as it was before the NSL? The question is significant because it affects the choice of appropriate means for intervention in this conflict. Legal conflicts call for legal resolutions, while such means are insufficient, and sometimes harmful when the symbolic level of the conflict is predominant.

Asked to decide on the constitutionality of the NSL, Israel's High Court of Justice (the Court) rejected the petitions, by the majority of opinions, holding, *inter alia*, nothing in the NSL alludes to that Arabic has ceased to exist as an official language in Israel; particularly, given the manifest stipulation by the Validity of Laws clause.[8] It has been the Court's understanding that the term "special status," as attached to the Arabic language, only describes and preserves the unique status that Arabic enjoys as an official language (besides Hebrew),[9] including the already existing judicial dispute over the meaning, the scope, and the consequences of such recognition.[10] However, this has not been the opinion of Justice

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establishment, the State of Israel adopted The King's Order in Council, 1922–1947, as was amended in 1948 by § 15(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 1172 (5th ed. 1996).

7 Section 4(c), Basic Law: Israel the Nation State of the Jewish People, 5778-2018 (Isr.). (The term means recognition of already existing laws.)

8 The Validity of Laws clause stipulates that the Basic Law does not change existing legislation and affects only newly legislated rules. MK Akram Hasson v. The Knesset.

9 *Id.* at 28. Deputy President Hanan Meltzer noted that Hebrew is not only an official language in Israel, but also it is the State language, and that Arabic is an official language that is described as enjoying a special language.

10 *Id.* at 76. Note that prior to the NSL, the Court has been divided – particularly between three judicial approaches – on the meaning of the Arabic's official legal status by virtue of Section 82. *See* HCJ 4112/99 Adalah—The Legal Ctr. for Arab Minority Rts. in Israel v. City of Tel Aviv-Jaffa ¶ 55–62 (2002). The *first* approach refrained from protecting Arabic as an official language, particularly in order to refrain from extending judicial recognition to the Arab minority as an indigenous national minority in Israel, deeming this issue to be of a political nature that needs to be determined by the legislature (Judgment by Justice Mishael Cheshin). The *second*

George Karra,[11] who reasoned, in a dissenting opinion, that although Section 82 entitles, *de jure*, Arabic an official language; however, *de facto*, it has never been treated fully as an official language in Israel.[12] According to Justice Karra, the Validity of Laws clause perpetuates Arabic's *de facto* legal status, thus making it the new *de jure* legal status.[13]

A thorough reading of the Court's decision, together with the case law before the NSL, leads us to think, for three reasons, that the conflict surrounding the legal status of Arabic in Israel is more symbolic than legal. *First*, as official as it might be, or as it might have been, it has always been of the utmost concern of the Court to describe Hebrew as the State language and its first official language.[14] For the Court, it has been crucial to reason that recognizing Arabic as an official language does not jeopardize the legal status of Hebrew as the dominant language[15] and that Section 82 must, first and foremost, be interpreted in light of legislation granting the Hebrew language preference and superior status.[16] *Second*, the Court has knowingly refrained from addressing the possible emotional insult to the Arabic language and the Arabic speakers, holding that the question at stake is a legal-constitutional interpretation. *Third*, in concluding his dissenting opinion, Justice Karra made a very unusual statement, noting that the majority, being so, does not feel the pain that the minority suffers from, thus referring to the Arabic idiom, whereby "he whose hand is in the water is not like whose hand is in the fire."[17] It is unusual, as it is not a legal statement but rather a personal and emotional one. It is not even articulated in legal terms, but as a metaphor composed of symbolic

approach suggests protecting the legal status of Arabic as an official status based on the right to equality entitled for all citizens alike, but not on the grounds of the concept of collective rights as granted to native minorities (Judgment by CJ Aharon Barak). Finally, the *third* approach emphasizes that the equal protection to freedom of language of the Arab minority is an exception to the rule whereby the equality principle between Jews and Arabs applies to individual rights only (Judgment by Justice Dalia Dorner, ¶ 6–8).

11 The only Arab Justice of the Court.

12 MK Akram Hasson v. The Knesset 35 (2021) (Isr.).

13 *Id.* Justice Karra explains that this is an ambiguous term.

14 *Adalah—The Legal Ctr. for Arab Minority Rts. in Israel*.

15 *Id*. at 23.

16 *Id.* at 6–8.

17 A well-known Arabic idiom (sometimes translated also as "the one whose hand is in the water is not the same as the one who is in the fire"). *See* MK Akram Hasson v. The Knesset.

words; a common tool for dealing with intercultural conflicts, such as the one between Arabs and Jews in Israel.[18]

For these three reasons, we think that the saga regarding Arabic's legal status represents more of a symbolic conflict than a legal one, dealing with a fundamental characteristic that constitutes the collective national identity of the Arab minority in Israel. Such classification of the conflict leads us to address the question at stake by the comprehensions that the theory on symbolic conflict resolutions offers. This theory contends that most conflicts, if not all of them, certainly intercultural ones, include a symbolic level.[19] This level considers the meaning of the issues at stake to the people involved.[20] These meanings are rooted in people's identities, values, and worldviews, thus directly affecting their needs on the conflict's material and relational levels.[21]

Accordingly, we argue that the limited scope that legal means have to offer not only fails to address meaning-making processes and perception-shaping values, but it could also perpetuate violence and defiance.[22] However, we do not suggest that legal analysis is futile. On the contrary, such analysis helps to understand how the law shapes and reflects the identities and values of the dominant group in society.[23] Furthermore, most conflicts, and maybe all of them, involve both material and relational dimensions, which could be addressed by legal means. However, sufficing for a quick legal fix without substantive investment in time, effort, and relationship-building process aimed to address the conflicting parties' profound symbols assures any resolution to be superficial and temporary.[24]

In Part II, we present the legal discussion surrounding the legal status of Arabic in Israel before the NSL. In Part III, we exhibit the NSL regarding the question at stake, discuss and analyze possible approaches for understanding the NSL on this matter, and

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18 MICHELLE LEBARON & VENASHRI PILLAY, CONFLICT ACROSS CULTURE: A UNIQUE EXPERIENCE OF BRIDGING DIFFERENCES 123–24 (2006). On the use and importance of metaphors in law, *see* Michelle LeBaron, *Is the Blush off the Rose: Legal Education Metaphors in a Changing World*, 43 J.L. & SOC'Y 144, 146–48 (2016).

19 LEBARON & PILLAY, *supra* note 17, at 19.

20 *Id.*

21 *Id.* at 20.

22 Yael Efron, Michelle LeBaron, Maged Senbel & Mohammed S. Wattad, *Like a Prayer? Applying Conflicts with Religious Dimensions Theory to the "Muezzin Law" Conflict*, 63 WASH. U. J. L. & POL'Y 119, 14041 (2020).

23 Benita Ramsey, *Excluded Voices: Realities in Law and Law Reform - Introduction*, 42 U. MIAMI L. REV. 1, 2 (1987).

24 LEBARON & PILLAY, *supra* note 18, at 21.

present the Court's decision on the proper interpretation of the NSL on this matter. Finally, in Part IV, we inquire into the possibility of classifying the conflict on the Arabic's legal status as a symbolic conflict rather than a legal one, to be addressed by the theory of symbolic conflict resolutions, which shall be presented in detail.

II. The Legal Status of Arabic in Israel: The History of the Legal Conflict

Already at its establishment in 1948, 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. . . ."

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.[25] In support, the Court has noted that this is the language of the largest minority in Israel, which, despite the tearing Arab-Israeli conflict,[26] lived in Israel as loyal citizens whose equal rights are guaranteed by the Declaration of Independence.[27] However, 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.[28] 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,[29] but only that in Ruritania, it means that it has some kind of 'special elevated status.'[30] *Second*, Arabic is a limited offi-

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25 CA 4926/08 Wael & Co v. The Nat'l Water and Sewage Auth. (2013); LCA 12/99 Mar'ei v. Sabek (1999), Jubran; *Adalah—The Legal Ctr. for Arab Minority Rts. in Israel.*

26 *Adalah—The Legal Ctr. for Arab Minority Rts. in Israel* at 25.

27 The Court added that the Arabic language has the potential to bridge the gaps between the State and its Arab citizens, all the more so its Arab neighbor states. *See Adalah—The Legal Ctr. for Arab Minority Rts. in Israel* at 25.

28 *Mar'ei v. Sabek*, *supra* note 25.

29 *Adalah—The Legal Ctr. for Arab Minority Rts. in Israel* at 10.

30 *Id.* at 10–12.

cial language in Israel,[31] as it binds only on the central government, but not local authorities,[32] and solely regarding the instances listed in Section 82, *i.e.*, ordinances, official notices, and official forms.[33] *Third*, Arabic is comprehensively an official language in Israel, wherein the list of instances provided in Section 82 is only illustrative.[34]

In the same vein, the complication concerning Arabic's legal status as an "official language" has also been voiced regarding the consequences of such recognition.[35] On this matter, it is almost impossible to point out a clear judicial policy; instead, it is only possible and plausible to refer to ad-hoc determinations. Here are some examples: *First*, the Court forced municipalities with sizable Arab populations to add Arabic to all signage in their jurisdic-

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31 *Id.*

32 Section 82 deals only with the central government, not the local authorities. It mandates, *inter alia*, that all ordinances, official notices and official forms shall be published in both Hebrew and Arabic. However, no such orders were ever issued for local authorities. Section 82 applies to, and binds on, the central government only; it does not apply to, nor does it bind, the local authorities.

33 *Consider* Ilan Saban & Muhammad Amara, T*he Status of Arabic in Israel: Reflections on the Power of Law to Produce Social Change*, 36 ISR. L. REV. 5, 21 (2004) ('In sum, the scope and strength of the legal obligation with regard to the status of Arabic is more limited than is commonly thought.'); Ilan Saban, *Appropriate Representation of Minorities: Canada's Two Types Structure and the Arab-Palestinian Minority in Israel*, 24 PENN STATE INT'L L. REV. 563, 587 (2006) ('It is true that Israeli law prima facie grants the Arab language the status of an official language; however, for various reasons, its official status holds little weight in practical terms.'). In *Adalah*, the Chief Justice, Aharon Barak, held that even if Section 82 was meant to apply to the local authorities, it would require assuming that the term 'official notices' be interpreted as extended to municipal signage, an assumption that Chief Justice Barak admits is not to be made without doubts. *See Adalah—The Legal Ctr. for Arab Minority Rts. in Israel* at 13. For the sake of clarity, it is worth noting that ultimately Chief Justice Barak, although he accepted the petition, did not ground this in Section 82 but rather in the freedom of language and the rights to dignity and to equality as promised for the Arab minority in Israel in the Declaration of Independence. *See id.* at 16–18.

34 See *Adalah—The Legal Ctr. for Arab Minority Rts. in Israel*. In support of this view, it was noted: (1) several specific legislative instruments elaborate on this official legal status; (2) Section 82 should be perceived through the new societal norms within which Israel was established, *i.e.*, the Arab citizens who became a minority in the Jewish and democratic State; and (3) Section 82 should be interpreted in light of the United Nations' November 29, 1947 decision to recognize the establishment of a Jewish State in the Land of Israel, which provided, *inter alia*, "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.' G.A. Res. 181, (29 Nov. 1947).

35 Saban and Amara argue that the reason Section 82 of the King's Order recognizes Arabic as an official language in Israel "owes its origins to certain historic and political constellations," however, this recognition carries "almost no practical sociolinguistic consequence." *See* Saban & Amara, *supra* note 32, at 8.

tions.[36] *Second*, the National Insurance Institute (NII) agreed that the official status of Arabic means that all forms should be translated into Arabic and that the NII should be ready to accept documents that are written in Arabic.[37] *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.[38] *Fourth*, the Court voided a notice for hearing before criminal indictment as it was sent to an Arab suspect without any translation into Arabic.[39] 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 on the litigants, to comply with the Court's duty to treat all litigants equally.[40]

It is remarkable that whenever Arabic has been recognized as an official language in Israel, the Court felt compelled to emphasize that such recognition does not aim to equalize between Arabic and Hebrew. Put otherwise, the Court made it clear that such recognition does not jeopardize the legal status of Hebrew as the State language, *i.e.*, its first official and its dominant language,[41] being the language of the majority, thus enjoys preference and superior status.[42]

We later explain this rhetoric using conflict resolution theories. We wish to emphasize that the Court, comprised mainly of the Jewish hegemony,[43] recruits legal tools to base cultural supremacy. We do not believe that this is a conscious attempt to derogate the Arab culture in Israel. It is merely an illustration of one of the metaphors used to describe culture: "Like a fish in water, culture surrounds an individual, albeit its impact is seldom a salient feature of an individual's self-concept; individuals rarely recognize the imprint of their own culture and its ubiquitous na-

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36 *Adalah—The Legal Ctr. for Arab Minority Rts. in Israel*.

37 HCJ 2203/01 AVI – The Int'l Ass'n for Children Rights DCI – Israel v. The Nat'l Ins. Inst. (2005).

38 CivA 4926/08 Wael & Co v. Nat'l Water and Sewage Auth., (2013).

39 CrimC (DC Jer) 333/09 The State of Israel v. Husin, 8 (2010).

40 CivC (Court of Peace Jer) 2636-09 Mustafa v. Ali (2012). In 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 in derived from Section 82.

41 Adalah—The Legal Ctr. for Arab Minority Rts. in Israel v. City of Tel Aviv-Jaffa, 6–23 (2002).

42 *Id.* at 6–8.

43 Out of 15 justices currently serving on the Supreme Court, only one of them is an Arab.

ture."[44] Furthermore, we use conflict resolution theories to place the conflict over the status of a language within a larger frame of cultural conflicts between the Jewish majority population and the Arab-speaking minority in Israel. After more than seven decades with no clear and permanent resolution to some of the burning issues that the conflicted cultures of those two groups face, we fear that a definition of "Intractable Conflict" is becoming more and more fitting.[45] After describing the legal issue, we explain how conflict resolution theories on cultural conflicts and intractable conflicts apply and why ignoring their symbolic dimension is wrong.

III. Arabic and the Nation-State Law

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.[46]

At the very beginning, it is notable that the NSL omits using the term "official languages" but instead refers to the word "language." The NSL refers to the Hebrew language as the State language, which might plausibly allude to its being an official language, although the term is not directed to expressly. As for Arabic, the NSL provides that it enjoys a special status. Although the NSL does not refer to Arabic as the State language and not even as an official language, it still does not invalidate Section 82, which grants Arabic official status, but somewhat clarifies that the NSL shall not affect this official status. The questions then become: Should the term 'special statuses' be necessarily interpreted as downgrading Arabic's legal status? What does the Validity of

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[44] Nan M. Sussman, *The Dynamic Nature of Cultural Identity Throughout Cultural Transitions: Why Home Is Not So Sweet*, 4 Personality and Soc. Psych. Rev. 355, 363 (2000).

[45] Intractability refers to conflicts that seem to be stuck for a long time in an increasingly destructive spiral, yet the parties seem unable to extricate themselves, either alone or with outside help. When the issues of the conflict stem from identities and values, the adversary is perceived so dangerous that the costs of the battle feel justified. Barbara Gray, Peter T. Coleman & Linda L. Putnam, *Introduction: Intractable Conflict: New Perspectives on the Causes and Conditions for Change,* 50 Am. Behav. Scientist 1415, 1416 (2007).

[46] Basic-Law: Israel – The Nation State of the Jewish People, *supra* note 1.

the Laws clause mean, and what does it aim to achieve? How could it be that from among all other common spoken languages in Israel, the *Knesset* decided to protect only the legal status of Arabic (besides Hebrew), all the more so in a basic-law, which enjoys a special constitutional normative status,[47] and particularly the NSL, which defines Israel's national characteristics?

From a legal point of view, the Israeli literature has proposed three possible main perspectives—which shall, later on, compete against each other—on the proper reading of Article 4.

First, it has been argued that the NSL divests Arabic from its official status[48] and prevents its further legal status' enhancement in the future.[49] This position relies on the understanding that the *Knesset* was well aware of the option of describing Arabic as an official language but chose not to do so.[50] Moreover, this sugges-

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47 When the Israeli state was established, all efforts aimed at introducing a written constitution failed, basically because there were large and 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 will 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 (Hart Publishing, 2014); *see also* Mohammed S. Wattad, *Israel's Laws on Referendum—A Tale of Unconstitutional Legal Structure*, 27 FL. J. OF INT'L L. 213, 221–26 (2015). Yet, until 1992, all 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, that focused on protecting a number of basic human rights against their infringement by governmental branches, was enacted. In 1995's *Bank Hamizrahi,* 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 Ltd v. Migdal Coop. Village (1995). This is deemed a touchstone case in the constitutional legal history of Israel, where the normative status of Israel's basic laws were discussed, as well as the Court's power on judicial review. Since they evidently include characteristic constitutional elements, the Court, through its rulings, uplifted these basic-laws to a supreme normative status rising above the ordinary laws. Namely, a basic-law norm overrides an ordinary law's one.

48 *See generally* Pnina Sharvit Baruch, *The Ramifications of the Nation State Law: Is Israeli Democracy at Risk*? INST. FOR NAT'L SEC. STUD. (Aug. 1, 2018), https://www.inss.org.il/publication/ramifications-nation-state-law-israeli-democracy-risk/ [https://perma.cc/2QMR-39K3]; *see also* Jamal Amal, *Israel's New Constitutional Imagination: The Nation State Law and Beyond*, 18 J. HOLY LAND & PALESTINE STUD. 193, 210 (2019).

49 *See generally* Tamar Hostovsky Brandes, *Basic Law: Israel as the Nation State of the Jewish People: Implications for Equality, Self-Determination and Social Solidarity*, 29 MINN. J. INT'L L. 65, 79–80 (2020).

50 On this matter, see the comments of Adv. Gur Blai, the legal advisor of the Constitution, Law and Justice Committee in the Knesset, who provided that to the best of his understanding it is in large agreement between the members of the Committee that Arabic should be considered as enjoying a second official legal status, but not a special status thus, yet Hebrew is the State Language. *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* (2018).

tion lies on the objective purpose of the NSL's legislation, whereby the national Jewish symbols and values of the State enjoy a peculiarly higher position.

Second, it has been contended that the NSL solidifies the legal status of Arabic pre-NSL status.[51] It was legislated precisely to highlight the legal status of Hebrew as the State language and not necessarily deny Arabic from its official legal status. While it is possible to agree, in principle, that before the enactment of the NSL, Arabic had enjoyed an official legal status,[52] there has still been a significant dispute about the meaning, the scope, and the consequences of such recognition. 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.[53] 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. By the end of the day, the Validity of the Laws clause paves the way to all judicial approaches to keep the Arabic's pre-NSL legal status's validity for further elaboration and discussion. Furthermore, 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. Underlying this point of view is understanding the legal question which is not whether Article 4 constitutes a symbolic emotional insult to the Arabic language and the Arabic speakers or not; instead, it is a legal question of constitutional interpretation.[54]

Third, it has been asserted that the NSL upgraded the legal status of the Arabic language, notably.[55] For the first time in the

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51 Mohammed S. Wattad, *The Nation State Law and the Arabic Language in Israel: Downgrading, Replicating or Upgrading?* 54 ISR. L. REV. 263, 274–79 (2021).

52 *Supra* note 6.

53 Whatever this matter might be, the case-law does not support the view that the term 'special status' alludes necessarily to an inferior position and a downgrading attitude. In one instance, Justice Mishael Cheshin referred to Arabic as enjoying a special, but not official, elevated status in Israel. *See Mar'ei v. Sabek* 142 n.4. However, in another instance, Chief Justice Aharon Barak referred to the same term—namely, 'a special elevated status'— in order to establish that by means of Section 82, Arabic, as distinguished from other common spoken languages in Israel, is an official language, wherefrom its special elevated status. *See* HCJ 4112/99 Adalah—The Legal Ctr. for Arab Minority Rts. in Israel v. City of Tel Aviv-Jaffa (2002).

54 *R. v. Big M Drug Mart Ltd.,* [1985] 1 S.C.R. 295, 344 (Can.); PETER W. HOGG, CONST. L. OF CANADA 819 (Carswell, 4th ed. 1997).

55 *The Nation State Law and the Arabic Language in Israel, supra* note 51.

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.[56] Additionally, unlike Section 82, Article 4 is not limited in its scope of recognition of Arabic's legal status. Moreover, Article 4 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.[57]

Shortly after the NSL was legislated, the courts were 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 place,[58] 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. 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.[59]

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 petion-

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[56] 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 the Arabic's special elevated status, just as has been the case since the establishment of the state of Israel and even beyond.

[57] We believe that 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. On the nexus between language rights and collective rights, consider Dafna Yitzhaki, *The Status of Arabic in the Discourse of Israeli Policymakers*, 19 Isr. Aff.'s 290, 299 (2013). Remarkably, it is worth noting that 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. *Consider* Saban & Amara, *supra* note 32.

[58] Kabaha v. The Minister of Just. (2019) (Isr.).

[59] *See* Gareeb v. Fidam Select (in Liquidation) Co. B89058 (2019) (Isr.). 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). It would be wrong to assume that Justice Mintz was not aware of the various positions in the 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 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.

ers asserted that the NSL has implicitly invalidated the official legal status of Arabic in Israel, thus downgrading it by enjoying 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. This has been a manifest principle constitutional legal challenge of the NSL, including the matter of our concern. Let us scrutinize the Court's holding.

Asked to decide on the constitutionality of the NSL, the Court rejected, on July 8, 2021, the petitions, by the majority of opinions, holding the NSL shall be interpreted in complete harmony with other existing laws.[60] 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.[61] On its face, it seems that the Court understands then that the term "special status" only describes the unique status that Arabic enjoys as an official language besides Hebrew, which is an official language and the State language.[62] However, reading the Court's majority opinions carefully, we figure out that the saga concerning the meaning, scope, and consequences of such recognition of Arabic as an official language that enjoys a special status has remained as vague as before the NSL. This has been stated manifestly by the Court's president, CJ Esther Hayut,[63] adding, 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 concerning the Hebrew language, being the State's language and its first official language, given its national importance and the inherent correlation between the Jewish People's struggle for political independence as well as the resurrection of the Hebrew language.[64] In any case, the Court emphasized that

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60 MK Akram Hasson v. The Knesset (2021) (Isr.).

61 *Id.* at 74.

62 *Id.* at 28.

63 *Id.* at 72–73.

64 *Id.* at 77; *Id.* at 3; *Id.* at 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*. at 40. *See id.* at 35; *see also id.* at 28.

nothing in the NSL alludes to the idea that Arabic's legal status cannot be further developed in the future.[65]

In his dissenting opinion, Justice Karra suggested a different reading of the particular clause regarding the legal status of Arabic. In his view, the NSL downgrades the legal status of Arabic from the level of an official language to the level of enjoying a special status.[66] According to Justice Karra, the NSL seeks to preserve the legal status of Arabic as it existed *de facto*, not *de jure*, prior to its enactment. Justice Karra noted that before 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.[67] For Justice Karra, the case is broader than the question of the legal status of Arabic. This latter question should be addressed relying on the 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, referring to Arabic as solely enjoying a special status, omitting the words "official status," and recognizing the legal protection of the Arabic, *de facto*, in the pre-NSL, means, according to Justice Karra, that the *Knesset* seeks to prevent Arabic's further legal developments.[68]

Reading through the Court's decision makes us think that the Court perceives Section 82 as still valid, including all the disputes among judges on the meaning, the scope, and the consequences of Section 82. To that extent, it seems that the legal debate over the legal status of Arabic in Israel, its meaning, and the scope and consequences of its classification remains vague, unclear, disputed, and indecisive.

As important as the legal question might be, is it possible that the discussed petitions did not concern this question, mainly the emotional insult associated with depriving Arabic of its manifest title as an "official language?" Could it be the case that this emotional insult concerns not necessarily with Arabic's legal status? However, as official as it might be, it is only the Hebrew language that is described by the Court as the State language, *i.e.*, "one of the ties that bind us as a nation?" If so, the question becomes whether legal theories are the proper and apt premises to deal with

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65 *MK Akram Hasson* at 79–80.

66 Justice Karra explains that this term is an ambiguous one. MK Akram Hasson v. The Knesset, 35–39 (2021) (Isr.).

67 *Id.*

68 *Id.* at 38.

the challenges that the question at stake poses. Arguing against the classification of the conflict over Arabic's status as a legal one, we assert that it is a symbolic conflict that triggers into play the theory on symbolic conflict resolutions, which provides, in our opinion, a better set of comprehensions and other sophisticated tools that helps in comprehending the conflict from a very different point of view, all the more so solving it more comprehensively.

IV. Speaking Arabic in Israel: A Theory of Symbolic Conflict Resolutions

A thorough reading of the Court's decision on the legal status of Arabic in Israel, together with the case law before the NSL, leads us to think, for three reasons, that the conflict surrounding the legal status of Arabic in Israel is symbolic more than it is a legal one. To faithfully address this assertion, we shall first present the difference between symbolic and legal conflicts. Then, we have to explain what makes the matter of our concern be classified as a symbolic conflict. Finally, we propose what the theory on symbolic conflicts can provide for future coexistence.

A. *Symbolic Conflicts Versus Legal Conflicts*

Generally, conflicts rarely concern a single issue. Instead, they are a multifaceted social phenomenon encompassing individuals, families, states, and cultures.[69] Sociologists debate the role of conflict in societies and whether it is merely an inherent part of human behavior[70] or should be managed and intervened in for the sake of social stability.[71] The analysis' unit in sociology is usually the social group, whereas, in law and legal studies, it is often the "case," or

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[69] Robin R. Vallacher, Peter T. Coleman, Andrzej Nowak, Lan Bui-Wrzosinska, Larry Liebovitch, Katharine Kugler & Andrea Bartoli, Attracted to Conflict: Dynamic Foundations of Destructive Social Relations: Dynamic Foundations of Destructive Social Relations 1 (Daniel J. Christie ed. 2013) (asserting that conflict is a frequent feature of social life that exists between individuals, groups and cultures but is necessary for the construction of shared realities).

[70] Louis Kriesberg, Constructive Conflicts: From Escalation to Resolution 1 (3d ed. 2007).

[71] *Id.* at 334–56; *see also* Carrie Menkel-Meadow, *Roots and Inspirations: A Brief History of the Foundations of Dispute Resolution,* The Handbook of Disp. Resol. 14 (Michael L. Moffitt & Robert C. Bordone eds. 2005).

the dispute.[72] In law, if an individual experienced a wrong, the law expects him or her to "name, blame and claim" redemption from someone else.[73] Collective "naming, blaming, and claiming" processes in law do exist, but they serve as the rare exception and require a firm basis for standing and for advocating on behalf of others.[74] Perceiving a dispute as a separate, self-contained unit of social interaction which involves some form of administrative or legal intervention is not the same as understanding a dispute as part of a socially entangled world of multiple parties, interconnected issues, and relational history.[75]

The school of legal realism, interested in looking at how disputes are formed and dealt with in particular settings, established jurisprudence of dispute resolution, which explored the legal means for resolving disputes and how institutions and social power imbalances create and nourish them.[76] In the eyes of legal realism, a lawsuit is never only a concrete claim but a reflection of a power imbalance.[77] A verdict is never a definitive solution to a problem, but a mere statement of the hegemony on perceiving the optimal balance of power.[78] Such a statement could negatively affect the conflict, but it may also perpetuate destructive responses if groups or individuals strongly feel alienated.[79]

As socio-legal scholars contribute to understanding the frameworks in which disputes form, evolve, and manifest themselves in the legal realm, conflict resolution experts offer and explain appropriate interventions based on such analysis.[80] Court petitions are integral to such interventions, but they are only a single tool in a much more diverse toolkit. Despite the almost 50-

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72 Menkel-Meadow, *supra* note 67.

73 William L.F. Felstiner, Richard L. Abel & Austin Sarat, *The Emergence and Transformation of Disputes: Naming, Blaming, Claiming*, 15 L. & SOC'Y REV. 631, 635–36 (1980).

74 *Id.* Even in procedures such as interpleader, joinder, consolidation, and class actions, which allow for more than just plaintiffs' and defendants' voices to be heard, the discourse is still structured so that parties must ultimately align themselves on one side of the adversarial line or the other, despite the distortion of truth forced by such division. Carrie Menkel-Meadow, *The Trouble with the Adversary System in a Postmodern, Multicultural World*, 38 WM. & MARY L. REV. 5, 10 (1996).

75 Menkel-Meadow, *supra* note 67.

76 Joseph William Singer, *Legal Realism Now*, 76 CALIF. L. REV. 465, 477-95 (1989).

77 *Id.* at 495.

78 Eric A. Posner, *Balance-of-Powers Arguments, the Structural Constitution, and the Problem of Executive "Underenforcement"*, 164 UNIV. PA. L. REV. 1677, 1681–82 (2016).

79 Efron et al., *supra* note 22, at 138.

80 KRIESBERG, *supra* note 70, at 1–2 (focusing mainly on large scale and inter-group conflicts).

year-old call to diversify how disputes should be managed,[81] it is only recently that legal education began to address them by introducing dispute resolution theories in the canon curriculum.[82] Therefore, we do not aim at blaming lawyers and judges who refer to the legal means at hand. Obviously, *if you are handed a hammer, it is not surprising that every problem looks like a nail*.[83] Instead, we focus on the less explored dimension of the conflict on Arabic in Israel, namely, the symbolic one.

Every conflict is multidimensional.[84] The allocation of resources on a material level is only one aspect of legal conflicts. Every conflict is also relational, and its resolution establishes means of interactions between individuals, groups, and institutions. But, most conflicts, if not all of them, also contain a symbolic dimension. This dimension involves the meanings attributed by the parties both to the resources and the relationships.[85] The core meaning that parties to a conflict give to issues and people involved in the conflict is based on their identities, values, and worldviews.[86] Effective conflict resolution must address not only the material level, nor even in its conjunction with the relational one alone, but all three dimensions of the conflict must be treated: material, relational *and* symbolic. Neglecting any of these dimensions assures an incomplete and incomprehensive resolution to the conflict.[87]

The law is very effective in resolving material disputes.[88] It also has the means to affect relationships, and with the newly studied collaborative mechanisms, such as negotiation, mediation, and other alternative dispute resolution methods, even more so.[89] However, it has yet to develop a keen eye for the symbolic. This is primarily due to the difficulty in recognizing the symbolic aspects

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81 Frank E. A. Sander, Professor of L., Harvard Univ., Paper to be Delivered at the National Conference on the Causes of Popular Dissatisfaction with the Administration of Justice, *Varieties of Dispute Processing,* 147–150 (April 8, 1976) (transcript available in the National Center for State Courts Library).

82 Yael Efron, *Varieties of Dispute Processing: The Implications on Legal Education,* DISCUSSIONS IN DISPUTE RESOLUTION: THE FOUNDATIONAL ARTICLES 342, 342–43 (Art Hinshaw, Andrea Kupfer Schneider & Sara Cole eds., 2021).

83 A common idiom used by Milton J. Horowitz, *Trends in Education,* 37 J. MED. EDUC. 634, 637 (1962).

84 LEBARON & PILLAY, *supra* note 18, at 19.

85 *Id.* at 20.

86 *Id.* at 19.

87 Efron et al., *supra* note 22, at 141.

88 Carrie Menkel-Meadow, *Peace and Justice: Notes on the Evolution and Purposes of Legal Processes*, 94 GEO. L.J. 553, 561–65 (2006).

89 *Id.* at 573–76.

of the conflict, on the most part, due to a lack of cultural fluency.[90] This type of fluency is essential both to identifying the symbolic dimension of a conflict and the choice of intervention.[91] For example, identifying the dispute over the status of Arabic in Israel as a manifestation of threats to identities, a sense of belonging, and historical and cultural coherence, is key to its resolution. Despite the method chosen for its analysis, namely a legal one, even the Court recognizes its saturated symbolism.[92]

To understand the symbolic domain of the conflict about the legal status of Arabic in Israel, we must begin with the question of what it means to give official legal status to Arabic in Israel. What does it mean for Arab speakers who have lived in a predominantly Hebrew-speaking environment for more than seven decades? What does it mean for Jews, who are not fluent in Arabic for the most part, to hail a language used by their fiercest enemies?

Meaning-making, as conflict resolution theorists see it, is not legal. Like the law, it is rooted in memories and historical continuity,[93] based on values and worldviews,[94] shaped and re-shaped by conflict and trauma.[95] Unlike the law, it is elastic and dynamic, unique for each person, rarely expressively conveyed, or clearly articulated. Moreover, deciphering meaning-making systems requires cultural fluency, which most jurists are not thoroughly trained in.[96]

B. *The Conflict on Arabic: Why Symbolic and Not Only Legal?*

We wish to justify our claim that the conflict on Arabic in Israel is symbolic more than it is a legal one by looking at it from two perspectives. One angle will zoom into the text of the decision, revealing how the Court itself struggles to maintain the dispute within legal rhetoric alone while using symbolic practices to convey what is so difficult to pronounce in clear words. Such difficulty stems from the characteristics of cultural conflicts that are elusive and hard to recognize and define. Moreover, their delicate

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90 LeBaron & Pillay, *supra* note 18, at 190.

91 *Id.*

92 HCJ 5555/18 MK Akram Hasson v. Knesset, 24 (2021) (Isr.).

93 LeBaron & Pillay, *supra* note 18, at 96.

94 *Id.* at 88.

95 *Id.* at 100.

96 Yael Efron, *The Pentalectic Sphere as Means for Questioning Legal Education—Towards a Paradigm Shift*, 9 Ariz. Summit L. Rev. 285, 363, 375 (2016).

nature makes them prone to escalation due to identity threats. The second angle zooms out of the specific legal question. Instead, it frames the case in a larger context of the ongoing—perhaps becoming intractable—cultural conflict between Arabs and Jews in Israel.

A thorough reading of the Court's decision, together with the case law before the NSL, leads us to think, for three reasons, that the conflict surrounding the legal status of Arabic in Israel is more symbolic than legal.

First, as official as it might be, or as it might have been, it has always been of the utmost concern of the Court to describe Hebrew as the State language and its first official language.[97] For the Court, it has been crucial to reason that recognizing Arabic as an official language does not jeopardize the legal status of Hebrew as the dominant language[98] and that Section 82 must, first and foremost, be interpreted in light of legislation granting the Hebrew language preference and superior status.[99] *Second*, the Court has knowingly refrained from addressing the possible emotional insult to the Arabic language and the Arabic speakers, holding that the question at stake is a legal, constitutional interpretation. *Third*, in concluding his dissenting opinion, Justice Karra made a very unusual statement, noting that the majority, being so, does not feel the pain that the minority suffers from, thus referring to the Arabic idiom, whereby "he whose hands is in the water is not like whose hand is in the fire."[100]

For these three reasons, we think that the saga regarding Arabic's legal status represents a symbolic conflict, rather than a legal one, dealing with a fundamental characteristic that constitutes the collective national identity of the Arab minority in Israel. Such classification of the conflict leads us to address the question at stake by the comprehensions that the theory on symbolic conflict resolutions offers.

Reading through Article 4 including its title, it is notable that the legislature does not use the term 'official language,' neither regarding Hebrew nor in the context of Arabic. The fact that Hebrew is described as 'the State language' but not the 'State's official language' does not necessarily void its official status. Hence, pre-

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97 Adalah—The Legal Ctr. for Arab Minority Rts. in Israel v. City of Tel Aviv-Jaffa, 6 (2002).

98 *Id.* at 23.

99 *Id.* at 6–8.

100 MK Akram Hasson v. Knesset (2021) (Isr.).

cisely in light of the Validity of Laws clause, describing Arabic as enjoying a special status does not mean that it automatically ceases to be an official language. Eventually, when the legislature aspired to invalidate the official status of English in Israel, this was explicitly stated by the legislature, which enacted Section 15(b) of the 5708/1948 Government and Legal System Organization Act, where it was provided: "Any law requiring the use of the English language is void." However, this has not been the case regarding the legal status of Arabic. Therefore, 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 '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. By the end of the day, 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.

Why do legal institutions in Israel refrain from establishing formal status to languages? While the judiciary and the legislature formally recognized other group rights of minorities in Israel, languages are an exception. Since minority group rights were granted in other spheres, the explanation cannot be only their collective nature (as opposed to individual rights); nor the fact that these rights apply only to a specific group; nor the burden they put on the state to take active measures in support of language rights.[101] These concerns existed when other minority rights were formally protected by law (religious freedom, burial regulations, marriage and divorce recognition, etc.). An explanation provided in the literature for this unique exception is that languages are 'identity markers,' and even more specifically, cultural-identity markers.[102] We consider the Court refraining from recognizing Arabic as a symbol of Arab-Israeli culture as an attempt (futile, in our view) to avoid formally attributing status to this group's specific culture as an integral part of Israeli culture as a whole.

Language is not only a way of communication. It certainly connects us to others in the groups to which we belong, but it is also a symbol of cultural groups and a vehicle for shaping cul-

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[101] Meital Pinto, *Who is Afraid of Language Rights in Israel?*, THE MULTICULTURAL CHALLENGE IN ISRAEL 26, 26–51 (Avi Sagi & Ohad Nachtomy eds. 2009).

[102] *Id.* at 32–33.

ture.[103] Languages frequently partake in cultural rituals. This is true not only when used for prayer, but every form of information dissemination relies on understanding the culture of the people involved.[104] Cultures also rely on language for their existence and coherence. Storytelling and metaphors, common practices of culture, rely on language to reflect culture.[105]

Therefore, the dispute over the status of Arabic in Israel is a cultural dispute too, not only a legal one. As such, its symbolic dimension is prime. Attending only to the material aspects of it, even to its relational dimension, cannot resolve it. Cultural conflicts are saturated with symbols the same way that culture is symbolic. Like the fish in the water in which it swims, it is difficult to recognize its effect on us until it is threatened. In its decades-long (or centuries? Or millennial?) history of disputes between Arab speakers and Hebrew speakers, any threat is perceived as imminent, and a threat to a prominent identity-marker, as any threat to our identity, is palpable. For any resolution to succeed, it is crucial to analyze what this threat symbolizes, both to the minority group who wishes to be officially recognized and the majority group who wishes to sustain its supreme status over the minority.

The law is limited in addressing these issues for three main reasons. *First*, by its nature, the law reflects the culture of the prominent group in society.[106] The elusive nature of culture makes it difficult for members of a cultural group to characterize their cultural symbols, all the more so when required to distinguish other groups.[107] *Second*, despite the law's ability to direct behaviors, it is a blunt instrument that encourages desired acts through rewards

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103 Ayelet Harel-Shalev, *The Status of Minority Languages in Deeply Divided Societies: Urdu in India and Arabic in Israel—a comparative perspective*, ISRAEL STUDIES FORUM 28-29 (2006); Rebecca Kook, *Towards the Rehabilitation of 'Nation Building' and the Reconstruction of Nations*, ETHNIC CHALLENGES TO THE MODERN NATION STATE 42, 49 (Shlomo Ben-Ami, Yoav Peled & Alberto Spektorowski eds. 1999).

104 The authors recently edited an interdisciplinary volume, requiring collaborations of scholars from various academic fields (LAW AND. . . - THE INTERFACES OF LAW WITH OTHER DISCIPLINES, Mohammed S. Wattad, Yossi Korazim-Körösy & Yael Efron, eds (in press, Nevo, 2022) (Hebrew)). The mediation over citation styles, the order of authors' names in the title, and use of terms was endless. . . Any student of law who first laid eyes on a court decision could probably identify with the horror of understanding that this is a whole new language that needs to be acquired.

105 LEBARON & PILLAY, *supra* note 18, at 121–24.

106 Ellen Wiles, *Headscarves, Human Rights, and Harmonious Multicultural Society: Implications of the French Ban for Interpretations of Equality*, 41 LAW & SOC'Y REV. 699, 714 (2007) (Legislators and lawyers, who tend to come from the most dominant social groups, will be prone to develop and interpret the law to further their own groups' interests).

107 LEBARON & PILLAY, *supra* note 18, at 14.

and discourages others by punishment.[108] Law is limited when neither rewards nor punishments are suited to address the interests of the conflicting parties.[109] In all cases described above, no Arab speaker sought to reward anyone for using Arabic, nor did a Hebrew speaker wish to punish the use of Arabic. Legal tools cannot address the mere need to be acknowledged. *Third*, the law relies on language for its operation and requires accurate wording. However, symbols are not restricted to words.

On the contrary, much more can be conveyed using symbols than direct speech. In the title of this paper, Justice Karra's metaphor is a clear example of a pictorial vision used to convey meaning. Its peculiarity proves that he had much more to say than what a court decision could ever convey.

The reasons we find it hard to articulate symbolic conflicts are twofold. *First*, with each person holding multiple cultural identities (race, gender, age, professional background, socioeconomic class, religious affiliations, etc.), and with each culture constantly adapting to changes, it is impossible to offer a definitive description of a culture. If you will excuse the pun, we do not share a common language to articulate our symbols in words accurately. As a result, one's understanding of a symbol may very well differ from another's.[110] *Second*, cultural symbols reflect identities. Questioning the legitimacy of identities could be perceived as a threat to their mere existence. These perceived threats could be dangerous, and they are hazardous to the coherence of society and the delicate fabric of a shared existence of cultures.[111]

Zooming further out, we suggest regarding the conflict on Arabic as part of an ongoing cultural conflict between Arabs and Jews in Israel.[112] It may even be described as a fraction of an even broader dispute between Israel and its Arab neighbors.[113] An in-

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108 Victor E. Schwartz & Phil Goldberg, *Carrots and Sticks: Placing Rewards as Well as Punishment in Regulatory and Tort Law*, 51 HARV. J. ON LEGIS. 315, 316 (2014).

109 Menkel-Meadow, *supra* note 74, at 24–27.

110 Owen Frazer & Richard Friedli, *Approaching Religion in Conflict Transformation: Concepts, Cases and Practical Implications* 15 CSS MEDIATION RES. (2015) ("Statements that may make sense in one system will be viewed as irrational or illogical in another.").

111 JANE S. DOCHERTY, LEARNING LESSONS FROM WACO: WHEN THE PARTIES BRING THEIR GODS TO THE NEGOTIATION TABLE (2001).

112 *See* Meital Pinto, *The Impact of the Basic Law: Israel as the Nation State of the Jewish People on the Status of the Arabic Language in Israel*, 30 MINN. J. INT'L L. 1 (2020) (For a detailed reasoning for this claim and explaining to role of language as an identity-marker).

113 STEPHEN COHEN, *Intractability and the Israeli-Palestinian Conflict,* 343-56 GRASPING THE NETTLE: ANALYZING CASES OF INTRACTABLE CONFLICT (Chester A. Crocker, Fen Osler Hampson & Pamela R. Aall eds., 2005).

tractable conflict is not defined by its length but by its damage. Deeply entrenched in history, the Jewish-Arab conflict in Israel carries mutual suspicion and trauma memories. As such, the conflict fits well into the description of intractable conflicts as having "an extensive past, a turbulent present, and a murky future."[114] We find this a helpful definition both in explaining the conflict's symbolic nature and the limits of the law in addressing it efficiently. Intractable conflicts usually contain a significant symbolic element, which often blocks material and relational efforts from resolving the conflict.[115]

C. *Arabic and the Theory on Symbolic Conflict Resolution in Practice*

The above analysis should not discourage thinking that the future of the conflict is bound to escalate from a mere court petition into a regional war. Intractable conflicts are stubborn to change but are never static. Their plasticity allows for thoughtful interventions to make a difference in the lives of conflict-affected societies. Furthermore, theorists agree that intractability is in the eye of the beholder in the sense that one party may regard a conflict as intractable while another does not.[116] Theories on intractable conflicts do not propose a point in time or a degree of destruction necessary to define a conflict as intractable. Instead, they suggest viewing intractability as a continuum.[117] Having said that, we urge our readers to adopt an optimistic view by which the decisions discussed here were merely honest attempts to resolve a conflict, which all parties are thirsty for its resolution. The means chosen, we argue, were simply insufficient.

Resolution is not always a necessary or desired outcome for intractable conflicts, even more so when rooted in cultural differences. Conflict resolution theories differentiate between the different strategies used to intervene in conflicts based on the nature of the conflict. Disputes that are generally short-term, which revolve around few and specific issues and parties, are more readily settled

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114 PETER T. COLEMAN, *Intractable Conflict*, THE HANDBOOK OF CONFLICT RESOL. 431 (Morton Deutch, Peter T. Coleman & Eric C. Marcus eds., 1st ed. 2000).

115 *Id.* at 537–38.

116 LEBARON & PILLAY, *supra* note 18, at 13 (explaining how the very definition of conflict is challenging because of our cultural ways of seeing).

117 COLEMAN, *supra* note 110.

by adjudication (may it be in courts or privately, by arbitration) or negotiation (may it be direct or assisted by the mediator), since they can be resolved relatively quickly, even without dealing with the underlying causes of the dispute.[118] Of course, as we claimed earlier, ignoring the undercurrents of a dispute may cause them to spur similar conflicts later on.[119] The conflict persists no matter what the court decision might be and even what law is passed.

Tending to the underlying causes of conflict is easier said than done. The more embedded the differences between the conflicted parties are in how society is structured, the more difficult it is to foster significant change. Therefore, it is not feasible to "resolve" such conflicts. Being a symbolic conflict about cultural identities, we believe that the conflict about Arabic in Israel is of such nature. We ask to adopt a different approach to its intervention, relying on the founding theorist of intractable conflicts, Morton Deutsch, who focused on sorting intervention processes by their nature on a continuum between constructive or destructive.[120] Although we are careful to label the Court decision as destructive, we have established that it overlooked fundamental values and needs which distanced it from the 'constructive' end of the continuum.

For dealing with profoundly rooted worldview differences and threats to identities, the more current literature on intractable conflicts advocates for the pursuit of conflict *transformation*, rather than conflict *resolution*, as the most constructive end of the continuum. Transforming does not entail eliminating the conflict but instead ensures that destructive consequences of a conflict are modified so that self-images, relationships, and social structures improve instead of being harmed by it.[121] A successful transformation is manifested by each group gaining a relatively accurate understanding of the other, despite differing or even irreconcilable interests, values, and needs.[122]

But how can such an understanding take place in a cultural conflict if culture is so difficult to identify, grasp and articulate? How is understanding possible if its object, culture, is constantly changing and adapting to various contexts? How can we under-

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118 John Burton & Frank Dukes, Conflict: Practices in Management, Settlement & Resolution 83–87 (1990).

119 *Id.* at 5.

120 Morton Deutsch, The Resolution of Conflict: Constructive and Destructive Processes (1973).

121 John Paul Lederach, Preparing for Peace: Conflict Transformation Across Cultures 18 (1995).

122 *Id.* at 17.

stand the other's culture when, like fish in water, it is difficult to identify it even for ourselves? The Russian idiom "everyone looks at the world from the belltower of his own village" refers to how different experiences cause differences in perceptions. We tend to select, from among our experiences, different data in part because we are interested in different things.[123]

Transforming a cultural conflict requires overcoming the challenges of deciphering the symbolic domain and understanding its undercurrents of cultural meaning-making systems. Cultural fluency is one of the necessary capacities for doing so. Cultural fluency "is our readiness to anticipate, internalize, express and help shape the process of meaning-making."[124] A judge may be culturally fluent, but the courts as institutes do not operate this way. Court decisions offer rational analysis of an existing legal framework rather than an anticipatory view of future relationships. Even if they are conscious of embedded meaning-making processes, their own or the parties', they often refrain from expressing their deep cultural assumptions for the sake of their perceived neutrality.[125]

Navigating cultural conflicts require skills and capacities that do not fit well in the legal system. Applying them takes time (possibly decades).[126] Interventions require creativity in introducing symbolic tools, such as metaphors, storytelling, and rituals[127] that are foreign to the legal domain. Suppose the transformation of the intractable cultural conflict between Arabs and Jews in Israel is desired. In that case, binary, oppositional presentations of facts are not helpful because they leave out important information and simplify complexity.[128] Human or emotional equities cannot be sharply divided into two opposing sides.[129] Conflict transformation requires a comprehensive set of lenses for describing how conflict

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123 ROGER FISHER, ELIZABETH KOPELMAN & ANDREA KUPFER SCHNEIDER, BEYOND MACHIAVELLI: TOOLS FOR COPING WITH CONFLICT 32 (1996).

124 Tatsushi (Tats) Arai, *A Journey Toward Cultural Fluency*, CONFLICT ACROSS CULTURE: A UNIQUE EXPERIENCE OF BRIDGING DIFFERENCES 57, 58 (2006).

125 BERNARD MAYER, THE DYNAMICS OF CONFLICT: A GUIDE TO ENGAGEMENT AND INTERVENTION 286-287 (2d ed., 2012) (discussing the paradox of neutrality versus empathy in third-party assisted process).

126 JOHN PAUL LEDERACH, BUILDING PEACE: SUSTAINABLE RECONCILIATION IN DIVIDED SOCIETIES 87 (1998).

127 MICHELLE LEBARON & VENASHRY PILLAY, *Capacities and Skills for Intercultural Conflict Resolution*, CONFLICT ACROSS CULTURE: A UNIQUE EXPERIENCE OF BRIDGING DIFFERENCES 111, 121–28 (2006).

128 Menkel-Meadow, *supra* note 74, at 6.

129 *Id.* at 7.

emerges, evolves, and changes personal, relational, structural, and cultural dimensions and developing creative responses through nonviolent mechanisms.[130]

Several past attempts to avoid escalation and destruction of social, cultural, and symbolic conflicts around the world have resulted in constructive outcomes. These experiences, such as India's independence from Great Britain, U.S. women's suffrage, and the overturn of an authoritarian regime in former Czechoslovakia, were all social conflicts that drew inspiration from non-violent social movements, conducted in accord with judicial proceedings and resulted in mutual benefits.[131] Tracking the processes that led to their success in mitigating destructive outcomes is beyond the scope of this paper, so we suffice with highlighting the commonalities and the literature that analyzes some practical tools. Deutsch,[132] Coleman,[133] Lederarch,[134] and Rothman[135] are a few prominent examples of scholars who offer process analysis of successful conflict transformations. They all address the need for a candid acknowledgement of the symbolic dimension of conflicts.

For a sustainable transformation, culture should be regarded both as the root of the conflict and a resource for transformation.[136] Engagement in symbolic dimensions of cultural conflicts is most helpful when expressive capacities reflect the participants' culture: the metaphors, stories, and rituals resonate with their identities.[137] Furthermore, when languages are at the core of the conflict, expressive arts and non-lingual communication can circumvent many obstacles to understanding; alleviate suspicion and threat; celebrate the unique and highlight the unifying.[138] These expressive practices are at the heart of the symbolic dimension of the conflict because they increase agency in culturally appropriate ways, foster multimodal understanding of the 'other' and promote social change.[139] This is very distant from the expected role of courts.

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130 Lederarch, *supra* note 126, at 83.

131 Kriesberg, *supra* note 70, at 1–2.

132 Deutsch, *supra* note 120.

133 Coleman, *supra* note 110.

134 Lederach, *supra* note 126.

135 Jay Rothman, From Identity-Based Conflict to Identity-Based Cooperation (2012).

136 Lederach, *supra* note 126, at 93–94.

137 LeBaron & Pillay, *supra* note 127, at 121–28.

138 Michelle LeBaron & Janis Sarra, Changing Our Worlds: Arts as Transformative Practice 45–46 (2018).

139 *Id.* at 1–21.

The NSL formally acknowledged the presence of Arabic in Israel. But this legal fact carries the heavyweight of years of bloody history, hopeful collaborations, disappointing disillusions, and further aspirations for a better future. The sound and sight of Arabic in the public sphere and formal institutions in Israel holds symbolic meanings for Arabs and Jews alike. The meaning varies based on the cultural infrastructures of each community, each family, and each person. The Court decision is only another layer in the geology of the Arab-Jewish conflict in Israel. It resolves nothing. It cannot.

V. Conclusion

Imagine that the Court's decision was utterly the opposite—that Arabic holds official status in Israel—would this resolve the protracted conflict between Arabs and Jews in Israel? Most likely not. The language symbolizes a much deeper-rooted conflict, a cultural one, which cannot be resolved legally. It is questionable whether it can ever be truly resolved at its core. For the sake of peace and shared existence, we offer to aspire for its transformation rather than its resolution. Transforming intractable conflicts take not only time but also a different approach. Limiting its scope to legal institutes could not yield a sustainable outcome.

We suggest thinking of the conflict over the formal status of Arabic in Israel from another angle, not only as legal but also as a symbolic one. The majority decision hinted at this direction by refraining from discussing the insult directly to Arabic-speakers while leaving Justice Karra to employ an indirect metaphor to express this insult. It is also evident from the decision that an underlying cultural assumption about the superiority of Hebrew in Israel stirred the decision to its final destination. Such undercurrents of cultures are rarely expressed directly. The threat to the delicate fabric of relationships, not only in Israel as a fractured society but perhaps even in the Court itself, calls for cautious expression. Israeli society's threats to identities and core values are saturated in traumatic memories that most try to avoid awakening.

With that said, our argument does not intend to exclude the legal system from the process of conflict transformation. On the contrary, law plays a crucial part in restructuring social contexts on

other levels of the conflict.[140] The law actively participates in facilitating social change and transforming social structures. Courts' decisions weave themselves into collective memories and shape histories, thus promoting transformation in conflicted societies. This is true both generally and specifically regarding language disputes. Under many regimes, the official granting status to a language by a State is a demonstration of its acknowledgment of certain groups' belonging to the State as a collective.[141] Often, such recognition serves as a peace-making solution.

Legal processes should be regarded as a wider field rather than mere adversarial adjudication.[142] New kinds of justice, peace, and respect for living together with significant differences are required to meet the ever-increasing complexities of our culturally plural society. Our "House of Justice"[143] must deliver a more comprehensive treatment to the conflicts surrounding us. Process pluralism delivers more attention to the variety of different values and needs of parties by offering a broader range of possibilities for engagement and decision-making.[144] Aspirations for peace and justice, choice and self-determination, care and responsibility for others, recognition of the harms of the past with hopes for reconciliation in the future require a more comprehensive toolset. Traditional practices such as *Sulha*, more modern processes such as *truth and reconciliation committees*, and current innovative methods, such as *consensus-building* processes, should all be regarded as "floors" of the same House of Justice.[145] This pluralistic approach could benefit the dispute over the status of Arabic in Israel and all symbolic conflicts that characterize multicultural societies.

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140 Sherene Razack, *Using Law for Social Change: Historical Perspectives*, 17 QUEEN's L.J. 31 (1992).

141 Pinto, *supra* note 112, at 31–33.

142 MARTHA NUSSBAUM, THE FRAGILITY OF GOODNESS 45 (1986) ("An honest effort to do justice to all aspects of a hard case, seeing and feeling it in all its conflicting many-sidedness, could enrich future deliberative efforts.").

143 Menkel-Meadow, *supra* note 84, at 554. When Menkel-Meadow offered this term, she did not refer to the literal translation from Hebrew of Israel's highest court: High Court of Justice. We found the metaphor very fitting to our argument.

144 *Id.* at 555.

145 *See id.* at 570 (for a map of several forms of processes that could comprise a 'House of Justice').