

Introduction

Israel's Declaration of Independence: History and Political Theory

At four o'clock in the afternoon, we declared independence. The nation was jubilant – and again I mourn amidst the rejoicing.

—David Ben-Gurion's diary, May 14, 1948

On Friday, May 14, 1948, David Ben-Gurion presided over the declaration of an independent Jewish state. The proceedings were held at the inconspicuous Tel Aviv Museum on leafy Rothschild Boulevard, a two-story building believed to be less susceptible to Egyptian aerial bombardment than the larger and better outfitted Habimah Theatre down the street.

When at 4 pm Ben-Gurion rapped his gavel from a hastily erected stage in the museum's main hall, the attendees rose unprompted and sang *Hatikvah*, the anthem of the Zionist movement and its settlement in Palestine, the *Yishuv*. The exuberance was so great that the communal recitation began before the Jewish Philharmonic Orchestra, placed on the second story balcony in order to conserve floor space for dignitaries, was able to commence the musical accompaniment.¹ Its words – “To be a free people in our homeland, the land of Zion, Jerusalem” – must have never sounded more poignant to the generation that had turned the Jewish people's national hope into a state.

Amidst the rapture, Ben-Gurion declaimed soberly: “I will read to you the founding declaration.”² Standing in front of a portrait of Theodor Herzl hung between two floor-to-ceiling flags bearing the Star of David, Ben-Gurion

¹ Ze'ev Sharef, *Three Days*, trans. Julian Meltzer (London: W. H. Allen, 1962), p. 282.

² Protocols of the National Council, Afternoon meeting, May 14, 1948, p. 24. The minutes are available by request from the Israel State Archives.

declared the coming into being of a new state, a Jewish state, a state which some of those assembled were surprised to learn was called Israel.

The reading was followed by the recitation of *Shehecheyanu*, the Jewish blessing used to mark holidays and lifecycle events. It is a prayer of gratitude. The crowd responded resoundingly: "Amen."

Ben-Gurion then moved to consolidate the new government's political control: "By the power of the Declaration of Independence, published today, *Hey b'Iyar*, May 14, 1948, and according to which the provisional State Council and provisional government of Israel have been established, we hereby declare: the provisional National Council shall hold legislative authority." The government's first act: lifting the hated British restrictions on Jewish immigration.³

Members of the new government were next requested, in alphabetical order, to sign what appeared to onlookers to be the Declaration of Independence, but was in fact a blank piece of parchment. There had not been time in advance of the ceremony to write the "Declaration of the Establishment of the State of Israel," Israel's Declaration of Independence, onto a formal scroll. The text had been settled upon and approved by the leadership of the *Yishuv* only hours before.

Hatikvah was then performed again, this time with the orchestral arrangement. In the words of one onlooker, "it seemed as if the heavens had opened and were pouring out a song of joy on the rebirth of the nation The audience stood motionless, transfixed, listening to the melody coming from above."⁴ When the last notes of the melancholy anthem faded away, the meeting's Chairman, Ben-Gurion, concluded on a procedural note: "The State of Israel has arisen. The meeting is ended."⁵

The gravity of the events in the museum yielded to the ebullience of a street party on the boulevard outside. When the politicians, bureaucrats, journalists, writers, and rabbis left the museum, they were met by a throng of people celebrating the proclamation of the new state. The meeting was supposed to have been kept secret for reasons of safety. It was the worst kept secret in Tel Aviv. Revelers from outside flooded the hall and folk music blared from loudspeakers. On Rothschild Boulevard, dwellers of Tel Aviv, now for the first time Israelis, celebrated the achievement of statehood well into the night.⁶

³ Ibid., p. 26. ⁴ Ze'ev Sharef, *Three Days*, p. 287.

⁵ Protocols of the National Council, Afternoon meeting, May 14, 1948, p. 26.

⁶ See Moshe Gurari, "Havlei leidata shel megilat ha'atzmaut," ("The Birth Pangs of the Declaration of Independence,") *Davar*, May 11, 1973.

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David Ben-Gurion, for his part, had just become the leader of a state. He joined neither in the reveling nor in the prayers at a Sabbath service that would take place at Tel Aviv's Great Synagogue. He was preoccupied with other matters. While Israel's Jews celebrated their political independence, Ben-Gurion mustered only four terse points on the subject in his diary entries for May 14, 1948.

- One P.M. at the National Council. We approved the text of the Declaration of Independence. At four o'clock in the afternoon, we declared independence.
- The nation was jubilant – and again I mourn amidst the rejoicing as I did on the 29th of November.
- At four o'clock in the afternoon, Jewish independence was announced and the state officially came into being. Our fate is in the hands of the defense forces.
- Immediately after the declaration ceremony, I returned to Headquarters and reviewed the worsening situation.

The next entry in his diary reads: "We decided to requisition rifles from agricultural settlements for the new brigade." His notes for May 14, 1948 end with an ominous question: "Will Tel-Aviv be bombed tonight?"⁷

ISRAEL'S DECLARATION OF INDEPENDENCE

"The Declaration of the Establishment of the State of Israel," the formal name of the text of Israel's Declaration of Independence, changed everything for the Jewish people. The act of a declaration of political independence represented a shift from statelessness to a state. From private life to public life. From being ruled to ruling. From a society and culture without a state to a state developing its society and culture. From a life fleeing politics to a life of politics.

David Ben-Gurion decisively broke with nearly two millennia of Jewish history when he read this sentence: "By virtue of our natural and historic right and on the strength of the resolution of the United Nations General Assembly, [We] hereby declare the establishment of a Jewish state in *Eretz-Israel*, to be known as the State of Israel."

⁷ Quoted in Tuvia Friling and S. Ilan Troen, "Proclaiming Independence: Five Days in May from Ben-Gurion's Diary," *Israel Studies*, Spring, 1998, 3, 1, pp. 170–194.

The relevance of Israel's Declaration of Independence was first and foremost political. It represented a rupture with the past and the opening of a new volume in Jewish history. But Israel's Declaration of Independence is also a text. The Declaration of the Establishment of the State of Israel that Ben-Gurion recited on May 14, 1948, not only asserted the fact of Israel's independence, but also elaborated the reasons why there ought to be an independent Jewish state in the land of Israel.

This book is a history of the composition of Israel's Declaration of Independence – and thus a political history of how Israel came to declare independence. For David Ben-Gurion's public reading of Israel's Declaration of Independence was itself a supreme political act, a political declaration of the independence of a new political entity. The history of the composition of the text of the Declaration therefore provides a unique window into Israel's path to independence.

Political history is generally thought of as the history of wars and decisions – with justification. No differently from most political history, the period of Israel's independence is largely studied through the prism of Israel's War of Independence, the 1948 War. This is likely because of the visible drama of the war: the question of whether or not Israel could survive its declaration of independence took precedence both at the time of independence and indeed since. The history and historiography of the war remains alive even to this day because the war itself cast such a grave and severe shadow over the events of 1948.

Texts and speeches are also acts and decisions. What the *Yishuv* would say to the world upon the end of the British Mandate constituted the weightiest decision that stood before its leadership as the moment of British departure from Palestine on May 15 approached. This book presents the history of the debates and choices that culminated in David Ben-Gurion reading Israel's Declaration of Independence on May 14, 1948.

The choices were momentous. When and how to create a government? How to navigate international politics? Would the *Yishuv* rely on the UN and international law to support independence? Or would it act on its own and thus risk that independence would run afoul of the very process of international diplomacy that had brought the *Yishuv* to the verge of statehood? Its leaders had to balance the needs of diplomacy with domestic considerations. Decisions that might help the state in the short term might hinder its long run development. What the leaders of the *Yishuv* would say and how they would say it would, they all knew, shape their nation's founding and carry consequences that could not be predicted. This book tells a part of this story.

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It does so not only by narrating these decisions, but also through the history of a text. Israel's Declaration of Independence was written over the course of roughly three weeks beginning in late April 1948. There are five major drafts that were produced along with a sixth political text delivered on April 12 delegating political authority to a leadership council headed by David Ben-Gurion. There are additional extant working drafts that show how these texts took shape. Further fragments and edits shed more light still. These texts, when properly pieced together, raise the pivotal political questions that confronted the leadership of the *Yishuv* as they hurtled toward the end of the British Mandate and the creation of the first Jewish state in more than 1,800 years.

Understanding the contents of Israel's Declaration and its drafts requires a journey beyond the texts themselves. The texts address long-forgotten political, legal, and diplomatic matters that were in fact at the center of controversy and the substance of decision at the time.

These are raised in the minutes of the meetings of the leadership of the *Yishuv* who debated three of the drafts of Israel's Declaration of Independence. These debates are interspersed amidst discussion of the other decisive political events of May 1948 – war, diplomacy, and much else – from which the draft texts of Israel's Declaration of Independence cannot be separated. There is a further mix of memos and letters from 1948 and oral histories compiled afterwards that illuminate the events of the spring of 1948.

When the drafts of Israel's Declaration and indeed its final text are read in light of these documents and this history, they come to life and present a view of the issues on the minds of the leaders of the *Yishuv* at the moment of independence. In this way, a study of the composition of the Declaration of Independence becomes a study of decision-making and statesmanship at the moment of the founding of Israel.

The Declaration of Independence is also a political text containing political ideas. This book is a study of those ideas. The first draft of Israel's Declaration of Independence drew on the American Declaration of Independence and the Hebrew Bible for its arguments and even its language. The intermediate drafts relied on completely different sources, arguments, and considerations: Labor Zionist ideology, the *Yishuv*'s obligations under UN Resolution 181, and the diplomatic pressures its leaders felt. The final text said of the Jewish people: "Here they wrote the Book of Books." It declared the independence of the Jewish state on the basis of the Jewish people's "natural and historic right."

This book traces this intellectual journey and unpacks its meaning. It explains the origins of Israel's Declaration of Independence, the ideas and

circumstances that gave birth to it and which animate it, the choices which were made in compiling it, and the meaning and merits of those choices – as well as their alternatives. If the creation of a sovereign Jewish state changed everything for the Jewish people, then the text which announced, explained, and justified that change offers a view not only of the past, but also of the trajectory onto which it cast the Jewish people.

Through these texts and debates, studied in this book in-depth, we see the first leaders of Israel grappling with both practical and abstract questions of politics. The history of the drafting of Israel's Declaration of Independence is thus the story of the heart of Israel's founding. It is the story of the ideas at the root of the founding of the state.

THE FACT OF THE FOUNDING VERSUS THE REASONS FOR FOUNDING: STUDYING ISRAEL'S DECLARATION OF INDEPENDENCE

The goal of independence was fundamentally met by The Declaration of the Establishment of the State of Israel. Sovereignty presented an immediate and obvious rupture in *deed* from the Jewish past. It formed a culmination of the *Yishuv*'s practical project, Zionism's ideological aim, and Judaism's national striving.

Independence had an immediate impact on material developments. Britain relinquished sovereignty over its protectorate Palestine and a new sovereignty, the sovereignty of Israel, was established. The official language of the land switched from English to Hebrew and Arabic, its laws from those of Britain to those of the new state of Israel. Even its currency changed from the old British-administered currency to a new national currency in 1952. Its armed forces were no longer those of the British military but rather its own. Hundreds of thousands of Jews immigrated to the new state in under a year, many from displaced persons camps in Europe or as exiles from the Arab countries now at war with the new state.

These changes were contested. There was a war which lasted ten months following Israel's independence. The state of Israel stands today with a population of nearly nine million people living in a country called Israel where before there were two million people living under British rule. A new territory was etched into the world map, its contours still changing to this day. This element of rupture and break with the past was not enacted by the precise substance of the words of Israel's Declaration of Independence but by its simple fact – by Israel's declaration of independence. This rupture was plain for all to see on May 14, 1948.

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The mere fact of the creation of a state, however, omits the substance of the question of the founding of a new state. Yes, a state was born. But what would be its nature: its aimed for conduct, its government, the principles of its government, its laws? How would the state conceive of its citizens' rights? To what aims would the state aspire?

This book presents a study of the drafting and composition of Israel's Declaration of Independence. It does so not only to recount the composition of Israel's Declaration of Independence but also with an aim to excavating and illuminating the ideas that lie at its heart.

The Declaration of the Establishment of the State of Israel is structured with a straightforward internal logic. It begins with history: *Eretz-Israel* was "the birthplace of the Jewish people." Zionism transformed their hope for "restoration" into a political agenda of migration "in masses." And diplomatic statements starting with the Balfour Declaration of 1917 conferred international legitimacy on the Jewish "national home," culminating in UN Resolution 181 in November 1947.⁸

The Declaration also explains the need for Jewish independence – *why* the state is being declared. There are material justifications: to "make the deserts bloom" with "cities and towns" thus bringing "the blessings of progress to all the country's inhabitants." The tragedy of Jewish history is raised, including the Holocaust and the Jews' self-evident need "to be masters of their own fate." And the text raises a spiritual rationale: in the land of Israel the Jews "created cultural values" of "universal" meaning by giving "to the world the Eternal Book of Books."

Indeed, the state is declared in light of these arguments: "By virtue of our natural and historic right and on the strength of the resolution of the United Nations General assembly, [We] hereby declare the establishment of a Jewish State in *Eretz-Israel*, to be known as the State of Israel."

And finally, the Declaration describes the new state's characteristics and aspirations.⁹ "The ingathering of the exiles" gets pride of place. Pluralism is emphasized: Israel will "foster the development of the country for the benefit of all its inhabitants." The "basis" of the state is defined in liberal-democratic terms: "freedom, justice, and peace as envisaged by the prophets of Israel." The state will "ensure complete equality" of

⁸ The official English translation of Israel's Declaration of Independence is available at www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Declaration+of+Establishment+of+State+of+Israel.htm. We will consider lacunae in the translation later in the book.

⁹ See Chapter 8 for a detailed analysis of the formal account of the parts of the Declaration as developed in Israeli jurisprudence and legal scholarship.

“social and political rights” to “all its inhabitants irrespective of religion, race or sex”; it will “guarantee freedom of religion, conscience, language, education and culture”; it “will safeguard the Holy Places of all religions”; and “it will be faithful to the principles of the Charter of the United Nations.”

The Declaration concludes with an oath. The signatories place their trust in “*Tzur Yisrael*,” a term from Jewish liturgy translated as “Rock of Israel” and always used to refer to God, but which, not being one of the Bible’s explicit names for God, could be viewed by a nonbeliever as an earnest invocation of the state or the Jewish people as well.

What does the text mean by “Jewish state”? What is “complete equality”? What are political rights? What are social rights? How far do these extend? How will the state balance the obligations of religion with the demands of civic life? How will it ensure complete equality while being a Jewish state? Such questions, raised by the Declaration of Independence of Israel, have been at the heart of defining controversies in Israel since its founding in 1948. They are first-order questions that demand first-order reflection if they are to be addressed.

The Declaration of Independence of Israel is important because it is the only document in Israel’s entire founding period that attempts to address foundationally these foundational questions. It is the purpose of this book to consider and evaluate how the Declaration addresses these questions by unearthing and evaluating the ideas that made their way into its text – and those that were excluded. It analyzes the drafts and the final text. It is a map. It shows the path that was taken – and those which were not.

A study of the Declaration of Independence of Israel is a study of the spirit of the laws of Israel, a journey to the heart of the principles of the state of Israel as they were considered at the founding of Israel. It is a tour of the principles.

The Declaration of Independence is amongst the vital texts of Israeli life today and a case can even be made for it as *the* vital text. It is the basis for many of Israel’s most recent Basic Laws – Israel’s constitutional laws. “Basic Law: Human Dignity and Liberty” (1992), “Basic Law: Freedom of Occupation” (1994), and the recently passed “Jewish State Law” (2018) all draw on The Declaration.

This is for good reason. The Declaration is cited in Israeli jurisprudence as a source of “principled guidance” in interpreting other laws and rights. Moshe Smoira, the first president of Israel’s Supreme Court, wrote in the case of *Ziv v. The Tel Aviv Administrator (Gubernik)* in 1948 that the Declaration expresses “the nation’s vision and its basic credo.” In 1958,

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in the case of *Kol Ha'am Ltd. v. The Interior Minister*, Supreme Court Justice Agranat added to Smoira's claim, writing that "if the Declaration reflects the vision and basic credo of the nation, then, it is incumbent upon us to carefully examine its contents when we come to interpret and lend meaning to the state's laws."¹⁰

Justice Aharon Barak, in an essay published in 1998 while he was President of the Supreme Court, argued that the Declaration is an essential source for Israel's "fundamentals" accompanying Israel's piecemeal constitution of Basic Laws:

There is currently a full realization of the existence of a formal constitution in Israel. These are the eleven "basic laws" of Israel The judge learns about fundamental values from the basic documents, such as the constitution itself. From our constitution, we learn that values of the State of Israel are those of a Jewish and democratic state; that the constitution's fundamental rights are founded upon the recognition of human value, and of the sanctity of human life and liberty. From the Declaration of Independence, we learn that Israel was to be founded on fundamentals of liberty, peace, and justice, and was to grant full equality of social and political rights to all of its citizens.¹¹

This assessment makes the vital point: Israel's Declaration is a source of the country's principles.

Despite its manifest importance, the Declaration, and moreover its prior drafts, have surprisingly not received the attention they deserve. There is the scholarly unearthing of the documents in the 1990s and 2000s by Yoram Shachar and the valuable essays he composed to situate it. There is copious legal writing, jurisprudence, and some scholarship, concerning the doctrines of the use of the Declaration in the courts. And there have been the beginnings of textual interpretation, mainly in recent years.¹² However the Declaration has not been studied against the

¹⁰ Quoted in Elyakim Rubinstein, "The Declaration of Independence as a Basic Document of the State of Israel," *Israel Studies*, 3, 1 1998, pp. 195–210.

¹¹ Aharon Barak, "The Role of The Supreme Court in a Democracy," *Israel Studies*, 3, 2 10, 2, 2009 1998, pp. 6–29.

¹² Essential sources include: Benjamin Aksin, "Ha'khraza al ka'mat ha'medina," (Declaration of the Founding of the State) in *Sefer ha'yovel l'Pinchas Rosen*, ed. Haim Cohen, 1962; Aharon Barak, "Megilat ha'Atzmaut ve'haKnesset k'reshut mechonenet," ("The Declaration of Independence and the Knesset as a Constituent Authority,"), *Hukim*, 11, 2018; Martin Kramer, "The May 1948 Vote That Made the State of Israel," *Mosaic*, April 2, 2018; and Elyakim Rubinstein, "The Declaration of Independence as a Basic Document of the State of Israel," 195–210. Yoram Shachar's writings are of particular importance, particularly: "Jefferson Goes East: The American Origins of the Israeli Declaration of Independence," *Theoretical Inquiries in Law*, 10, 2, 2009; "Ha'teyotot ha'mukdamot shel hakhrazat ha'atzmaut," ("The Early Drafts of the

backdrop of political science or political philosophy – the necessary context for understanding its thought.

This book is organized in accordance with the history of the drafting of Israel's Declaration of Independence. It tells the story of Israel's political independence through the window opened by the drafts of the text that ultimately announced its independence.

But it also examines the Declaration and its drafts in light of political thought. The significant drafts of Israel's Declaration produced in the weeks leading up to Israeli independence are of course historically important insofar as they shed light on the moments of decision at the founding of the state. Yet they also do much more. These early drafts represent an attempt to justify the state in theoretical terms – to articulate the purpose of the state. Each of them, in often strikingly different ways, attempts to address first-order questions about the meaning of the state. Within the drafts and the debates surrounding them, we find ideas about rights, duties, liberty, equality, theology, labor, international law, nationhood, religion, *realpolitik* and idealism, war and peace.

To be fully grasped, these texts need to be studied in light not only of the context of Tel Aviv in the spring of 1948, or even within the context of Zionist writing and thought, but especially in light of the essentials of political thought. They are works of political ideas that must be examined for their political ideas. When seen through the prism of political thought, Israel's Declaration and its drafts present a uniquely revealing portrait of the Israeli mind at the founding of the state of Israel. They offer the starkest portrait of the kind of state the founders of Israel thought they were founding.

The study of the political theory of Israel's Declaration, its drafts, the debates surrounding them, and its final text is thus vital for two reasons. First: the debates over the text of the Declaration of Independence lie at the root of the most important political matters contested today in the here and now. The definition of a "Jewish and democratic state," the balance between the natural inherent civil rights of the citizen and the political and security needs of the collective, the interaction between Israel's Jewish and secular character, the question of Israel's borders –

Declaration of Independence," *Iyunei Mishpat* (November, 2002); Eliav Liebllich and Yoram Shachar, "Cosmopolitanism at a Crossroads: Hersch Lauterpacht and the Israeli Declaration of Independence," *British Yearbook of International Law*, 84, 1, 2014; and Israel Dov Alboim, ed., *The Declaration of Independence with an Israeli Talmudic Commentary* (Rishon LeZion: Yedioth Aharanoth, 2019).