

## WHOSE RIGHTS DID ISRAEL RECOGNIZE IN 1948?

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**In all but one of the instances in which “rights” appear in the Israeli declaration, they refer to a collective right, not an individual one.**

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*This is the sixth installment in the historian Martin Kramer’s series on how Israel’s declaration of independence came about, and what the text reveals about the country it brought into being. Previous installments can be seen [here](#).—The Editors*

Individual rights, one of the great legacies of the Enlightenment, lie at the very center of the American Declaration of Independence. The most famous passage is this one: “We hold these truths to be self-evident: that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness.” The list would later be elaborated more fully in the Bill of Rights, and similar expressions can also be traced through the French Declaration of the Rights of Man to the UN’s Universal Declaration of Human Rights.

Israel’s declaration of independence also speaks of rights. But while much in the declaration draws on the American model, there is a clear departure. As the jurist Elyakim Rubinstein has pointed out, in all but one of the numerous instances in which the words “right” and “rights” appear in the Israeli declaration, they refer to a *collective* right, not an individual one.

The mentions of collective rights include:

- “the right of the Jewish people to national rebirth in its own country.”



Tel Aviv residents celebrating on November 29, 1947 the UN decision to create a Jewish state. *AFP via Getty Images.*

- “the right of the Jewish people to rebuild its national home.”
- “the right [of Holocaust survivors] to a life of dignity, freedom, and honest toil in their national homeland.”
- “the right [of the Yishuv, the local Jewish community in pre-state Palestine] to be reckoned among the peoples who founded the United Nations.”
- “recognition by the United Nations of the right of the Jewish people to establish their state.”
- “the natural right of the Jewish people to be masters of their own fate, like all other nations, in their own sovereign state.”
- the establishment of the state “by virtue of our natural and historic right.”

In this respect, the declaration reveals its explicitly Zionist rationale and its blunt rejection of the logic behind the 18th- and 19th-century emancipation acts, themselves products of the Enlightenment, that granted the rights of citizenship to Jews in various European countries. In 1789, the Comte de Clermont-Tonnerre famously insisted to the National Assembly in Paris that the Jews be protected by Article 10 in France’s Declaration of Rights, according to which “no man ought to be molested because of his opinions, even his religious opinions.” But the count also insisted that while the Jews should be “granted everything as individuals,” they should continue to be “denied everything as a nation.”

A century and a half later, Europe failed to protect those individual rights of Jews—not only their right to practice their own religion but their right to life itself. By contrast, the Zionist view, as articulated by Theodor Herzl, was that the individual rights of Jews could be upheld only if the Jews collectively enjoyed rights as a nation, in their own country, in their own homeland, and in their own state. This is the bedrock of Zionism.

## **The principle of equality**

Still, alongside the declaration’s emphasis on Jewish collective rights, Israel’s founders also aspired to create a state that would respect the rights of others: in this case, the Arabs. Herzl, Chaim Weizmann, Ze’ev Jabotinsky, David Ben-Gurion: all championed the liberal ideal that Zionism did not negate those rights, individual and collective alike. Herzl put it this way in his 1896 manifesto *The Jewish State*: “if members of other faiths or of other nations reside among us, we will provide them with equal protection and rights under law.”

But as the conflict with the Arabs in Mandate Palestine intensified, so, too, did an apprehensive concern that the Arabs’ realization of *their* national rights could prevent the rise of a Jewish state. Today we are accustomed to seeing the Jews of Israel as a majority and the Arabs as a minority, but the founders inhabited a very different world in which the Jews were a decided minority in their own “national home.” It took much more courage for them to stand up for equality than it

takes today, when Jews are a solid majority in their state, and have been one for more than 70 years.

But stand up they did. Consider one example. In an earlier [installment](#) I mentioned the April 12, 1948 proto-declaration prepared by Zalman Rubashov (later Shazar, third president of Israel) on behalf of the Zionist Executive Council. The parts devoted to rights in that document would filter through into drafts of the actual declaration. This is what Rubashov had to say about rights and the Arabs:

The Jewish state that the people of Israel will establish in its homeland will be a state of justice and freedom, of equality of all its citizens, without distinction of religion, race, sex, and country of origin. . . . And to the Arabs of the Hebrew state and our neighbors surrounding us, our appeal is directed today—in fact, in days of the bloody battle imposed on us—for brotherhood, peace, and cooperation. We came in peace and for building peace we came here. Let us together build our state as equal citizens with equal rights and obligations, in belief in mutual respect and understanding of the needs of the other.

Even as Rubashov spoke these words, the “bloody battle” was in full swing. Before it ended in 1949, 6,000 Jews, fully 1 percent of the Yishuv’s population, would die. The American Declaration of Independence refers to “the merciless Indian Savages whose known rule of warfare is an undistinguished destruction of all ages, sexes, and conditions.” It would have been easy to say something comparable about the Arabs.

After all, the declaration was made in the midst of a war in which the prospective Arab citizens had mobilized to undo the state’s coming into being, and had coordinated their armed rebellion with the invading and better-armed Arab states. In this kind of war, rights were bound to be compromised. Indeed, to prevail against its enemies, the Jewish state also had to impose emergency measures on its *Jewish* citizens, including by pushing all of the pre-state militias into a centralized army.

Yet in Rubashov’s text there is no demonization of the enemy, and his conciliatory tone is what prevailed in the actual declaration and probably directly inspired it. Still, even as subsequent drafters aspired to make the declaration a catalogue of liberal principles, at times they did hedge their language, knowing full well that the war would open a gap between professed principles and state policy. And the war would also produce a deliberate omission.

## **Democracy, dropped**

If you ask the average Israeli today, or even the average Zionist, how Israel’s declaration of independence defines the state, he or she will probable answer thus: according to the declaration, Israel was established as a Jewish and democratic state. Here, for example, is Abe Foxman, former head of the Anti-Defamation League, in a letter to the *New York Times* from 2015:

Defining exactly what a Jewish state means is an age-old issue in Israel. But Israelis have understood since the creation of Israel in 1948, as embodied in the declaration of independence, that Israel is a Jewish and democratic state.

In fact, however, the declaration of independence does not contain the word “democracy” or the word “democratic.” And this wasn’t just a careless oversight on the part of the drafters, who in several earlier versions had explicitly described the state as “democratic.” It was Zvi Berenson, the most liberal of the drafters, who first introduced the term; the Jewish state, he wrote, would be “Jewish, free, independent, and democratic.” In later drafts, “democratic” would be moved to another place. But then finally, in Moshe Shertok’s penultimate draft, “democratic” disappeared.

Why? We don’t know for certain. Yoram Shachar, Israel’s foremost expert on the drafting, speculates that Shertok removed the term because it had already been decided that, in the Jewish state, matters of personal status would be governed by Jewish law, and this might be considered undemocratic. But that seems a very unlikely reason to strike “democracy,” a term that refers explicitly to *political* rights in the public sphere.

In the public sphere, however, is exactly where the new state would indeed have had a problem.

According to the UN resolution of November 1947, the Jewish state was to hold elections for a “Constituent Assembly” two months after the May 14, 1948 departure of the British, in a vote “which shall be conducted on democratic lines.” The assembly would then proceed to “draft a democratic constitution” and to establish “a legislative body elected by universal suffrage and by secret ballot on the basis of proportional representation.”

The problem was this: in April and early May 1948, no one could be sure what the ethnic composition of the Jewish state would be. According to the UN partition plan, the Jews, in the territory allotted to them, were to enjoy only the narrowest of majorities, 55 percent (for an estimated 498,000 Jews and 407,000 Arabs). Of course, after independence, the state would go on to admit some hundreds of thousands of Jewish refugees. But that would take some years to be fully realized.

By May 14 several hundred thousand Arabs had fled from areas under Jewish control, diminishing their percentage in those areas. But what if the Israeli army were to capture more territory than the UN had allotted to the Jewish state, including territory allotted to the Arab state? Who could tell how many Arabs would remain there, or whether the state of Israel might choose, or be compelled, to admit Arabs who had fled from the Jewish side and now wished to return?

In short, there could be no certainty that the Jewish state would end up with a solid Jewish majority; perhaps it would, perhaps not. Also, for how long could elections be put off in a democracy? All in all, it was better to hedge, lest a commitment to “democracy” undermine the entire purpose for which Zionism had been established: namely, self-determination for the Jews in their own state.

And yet a paradox remains. In the so-called “Appeals” section of the declaration, we read this:

We appeal—in the very midst of the onslaught launched against us now for months—to the Arab inhabitants of the State of Israel to preserve peace and participate in the upbuilding of the State on the basis of full and equal citizenship and due representation in all its provisional and permanent institutions.

Ben-Gurion himself, at the last minute, turned “full citizenship” into “full and equal citizenship.” So even as “democracy” went out, “equality” went in, practically tying the score. What was Ben-Gurion thinking? Did he already know, from the outcome of the war to this point, that the state would have its decisive Jewish majority, so that there would be no risk in having Arabs represented in it “fully” and “equally”? Was this, then, just another instance of Ben-Gurion’s uncanny ability to see farther than anyone else, all the way to the kind of Israel that would emerge from the war?

In this case, we only have the edit, not its rationale, so we can’t say for certain. But we can surmise. Ben-Gurion did indeed hold a vision of Arabs and Jews living side by side in perfect equality, with one proviso: the Jews would form a majority, the Arabs a minority. With that one condition met, the Arabs would be entitled to the full panoply of individual rights enjoyed by Jews, in addition to collective rights as a national minority. By mid-May 1948, that is the reality he saw looming.

It has been said that Israel isn’t so much a Jewish and democratic state as a Jewish state that happens to be democratic. If so, then it happens to be democratic because, by the beginning of 1949, when Israel held its first elections, it was clear that Jews would constitute 85 percent of the electorate. Hundreds of thousands of prospective Arab citizens of the state had fled as refugees and would not be coming back. By then, however, it was too late to put “democratic” back into the declaration of independence.

Tellingly, the guidelines of Israel’s first elected government included a section, titled “Freedom, Equality, and Democracy,” which described the state’s system of government as “democratic” and “republican.” In addition to repeating and expanding rights mentioned in the declaration, the guidelines specified that “in all state institutions, municipalities, and other elected bodies, full and equal electoral rights will be maintained, without regard to sex, religion, race, or nationality.” By now, clearly, it was possible to stipulate not just full and equal rights but full and equal *electoral* rights—again because the Jews finally had their decisive majority.

Hence the paradox: Israel owes its development along solidly democratic lines, as a state in which Jews and Arabs do enjoy full and equal political rights, to the dislocations of the war in 1948. Wars don’t usually foster democracy in post-colonial states. Israel may be the world’s only exception.

The Israeli declaration even went beyond recognizing only the political rights of Arabs. After Ben-Gurion finalized his draft and presented it for discussion to the People’s Council, one word was added to his draft statement that the state would “guarantee freedom of religion, conscience, education, and culture.” The word was “language,” proposed by one member on the grounds that its omission

could be interpreted to mean that Arabic will not be of equal status to Hebrew, and we have assumed as a basis that in our state both languages will have equal status. Not just in schools, but in courts, they can speak Arabic.

To this Ben-Gurion made an interesting response: “No one opposes freedom of language. . . . But the language of the state is Hebrew. This doesn’t deny to other inhabitants the right to use their language in every place.” But Shertok, too, thought that freedom of language should go in, and so it did, as the sole change made in the declaration during the two hours before Ben-Gurion announced it.

## **A nod to the UN?**

The listing of rights in Israel’s declaration of independence may strike some readers as not only familiar but as somehow a little *too* familiar. Israel, says the declaration, “will ensure complete equality of social and political rights to all its inhabitants irrespective of religion, race, or sex.” Familiar, indeed: this is an apparent crib of the UN Charter, which binds member states to show “respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”

Elsewhere, the same suspicion may be aroused by the lists of various “guarantees.” Israel, one reads, “will foster the development of the country for the benefit of all its inhabitants; it will be based on freedom, justice, and peace as envisaged by the prophets of Israel,” and “it will guarantee freedom of religion, conscience, language, education, and culture.” This almost sounds plagiarized from the 1947 UN partition plan for Palestine, which required that the Jewish and Arab states

guarantee to all persons equal and non-discriminatory rights in civil, political, economic, and religious matters and the enjoyment of human rights and fundamental freedoms, including freedom of religion, language, speech and publication, education, assembly, and association.

This striking correlation between the way rights and guarantees are checked off in the Israeli declaration and the way they are prescribed in relevant UN documents has provoked the conjecture that they were included precisely in order to ingratiate Israel with the world body and grease the path to its acceptance and recognition there. Assaf Inbari, an Israeli author and public intellectual, makes the strongest case for such a conclusion:

The most-quoted, most-extolled paragraph in the Declaration of Independence (the thirteenth paragraph), which has won near-constitutional status in Israeli discourse, is nothing more than a submissive, almost-word-for-word repetition of the UN demand for the protection of equal rights and basic freedoms. . . . The only significant difference between the [two] . . . is the poetic addition of the phrase “as envisaged by the prophets of Israel,” [which] has succeeded in deluding generations of Israelis into

thinking that the paragraph . . . expresses the original, distinctive vision of the state of Israel as a Jewish and democratic state even though the vision outlined in this paragraph is . . . the exact same vision outlined in the UN decision.

Inbari concludes that this “obvious layer” in the declaration is “merely a diplomatic tactic intended for Western, liberal ears, and designed to win the hearts of the nations.” That is certainly possible; in our previous installment, I quoted Ben-Gurion as emphasizing that one of the purposes of the declaration was to satisfy the UN—as he put it, it was a form of public diplomacy, or *hasbarah*. For while it is true that the Jewish state already had a license from the UN to exist, it would still need to apply for formal admission to the body and only thereafter could it be regarded as a full-fledged member of the family of nations.

It is also true that, in practice, by no means did all of the UN’s existing members themselves display a scrupulous regard for individual or minority rights. As I showed in another [essay](#) in *Mosaic*, the most steadfast supporter of Israel at the UN at the time was Stalin’s Soviet Union. But experience had taught Zionist leaders that they would be held to a higher standard, both by Western democracies and by world Jewry.

And here Ben-Gurion made another critical change to Shertok’s draft. To the latter’s assertion that the state of Israel “will grant complete equality of social and political rights to all its inhabitants irrespective of religion or race,” Ben-Gurion said no, the state will not “grant” those rights to its inhabitants, it will “ensure” them. The reason: “They are entitled to them.”

This is a radical difference, introducing the concept of unalienable rights that exist independently of whether the state “grants” them or not. Just when one might think that the founders didn’t much care about individual rights (let alone unalienable ones à la the American Declaration), and only mentioned them to mollify the UN, along came Ben-Gurion to make one think again.

I’ll return to this theme momentarily, but for now I add only that while Shertok’s draft specified equal rights irrespective of religion and race, it differed from the UN Charter in omitting the phrase “irrespective of sex.” Ben-Gurion added that, too.

## **Restoring the holy places**

If the declaration’s discussion of rights can often sound like an echo of a UN document, not so the treatment of another topic: the rights to the Holy Places. In its promise that the state will “safeguard the Holy Places of all religions,” the declaration dissented from the demand of the UN’s 1947 resolution, which spoke not just of safeguards but also of “existing rights.” The UN plan read as follows:

Insofar as Holy Places are concerned, the liberty of access, visit, and transit shall be guaranteed, in conformity with existing rights. . . . Freedom of worship shall be



guaranteed in conformity with existing rights, subject to the maintenance of public order and decorum.

It's not hard to imagine why the founders didn't want to commit themselves to the maintenance of "existing rights." The reason was that the Jews had very few of them. Indeed, it was in the name of other people's "existing rights"—also known as the status quo—that Jews had been subjected to severe restrictions even at the Western Wall.

This wasn't an operative issue in 1948, when the "Old City" of Jerusalem lay outside the prospective Jewish state and so did Hebron, the site of the Cave of the Patriarchs and (after Jerusalem) the second holiest city in Judaism. But as we have seen, the declaration makes no mention either of the Jewish holiness of the land or of any particular site. In fact, it makes no mention of Jerusalem. Doing so would have provoked the international community, which, precisely because of the presence in Jerusalem of the Holy Places, had reserved the city for its own administration.

But what we do see in the Israeli declaration is the seed of later Israeli policy in Jerusalem after its capture of the Old City in the Six-Day War of June 1967. From that point onward Israel would safeguard the holy places in accord with "existing rights" (absent a clear Jewish interest to the contrary) but would also improve conditions of specifically Jewish access to specifically Jewish holy places in the Jewish state. The results are obvious both at the Western Wall and at Hebron's Cave of the Patriarchs, where Jewish access has been restored and expanded.

The wording of the declaration also made possible a future basic law titled "Jerusalem, Capital of Israel." Alongside "safeguarding" the holy places, it establishes the principle of "freedom of access to the members of the different religions to the places sacred to them or their feelings." Sites from which Jews had been excluded for centuries now became accessible to them, including the Temple Mount.

## **The Jewish right of return**

We may conclude this installment by highlighting a right that, according to the founders, was and is possessed by every Jew everywhere. The declaration, in its section on principles, announces that "the State of Israel will be open for Jewish immigration and for the Ingathering of the Exiles." It also affirms what the Holocaust had once again demonstrated—namely, the need for a state that "would open the gates of the homeland wide to every Jew."

Ultimately, this is the one wholly unique right affirmed by the declaration of independence, and in 1950 legislated in the Law of Return. All of the other rights enumerated in Israel's declaration can be found in the constitutions and laws of other democracies. But the right of the Jews to "return" has no parallel. True, some other states have repatriation laws, but no other repatriation law reaches as far back as two millennia in confirming this right.



Thus, the first act of the new state was to abolish the British legislation of 1939 that had closed the gates of the country to Jews desperate for refuge. The first shipload of immigrants who had been denied entry by the British disembarked on the evening of the declaration. Since then, millions more Jews, including myself, have exercised their right of return.

As is well known, the law has also given rise to all sorts of controversies. The two most prominent: (1) who exactly is a Jew? and (2) isn't this a form of discrimination that privileges Jews over others?

The first issue is indeed complex. The declaration issues no guidance, and neither does the language of the law specify who is a Jew for its purposes. When the gates opened on May 14, 1948, they were opened to all who had been persecuted as Jews. Who else would come to a state about to be invaded by enemies bent on its destruction? Over time, however, the who-is-a-Jew issue became embroiled in the struggle between secular and religious authority in Israel—a later development that deserves separate analysis.

The second issue, by contrast, is a matter of broad Israeli Jewish consensus: Jews, whatever the definition, possess a fundamental and inalienable right to live in their homeland. This is the meaning of the Jewish state. Note the priorities in the declaration's key announcement: "We hereby declare the establishment of a Jewish state in Eretz-Israel, to be known as the State of Israel." The founders did not first establish a state called Israel and then define it as Jewish. They established a Jewish state, which they proceeded to call Israel.

The Jewish character of the state is therefore fundamental and prior to any other characteristic. And it is the Jewish character of the state that, by assuring its Jewish majority, makes possible its democracy. Not only is there no contradiction between the Jewish and democratic character of the state. The latter depends on the former.

Moreover, while it is true that the declaration places emphasis on the *collective* right of the Jewish people to a state, the same right can be construed also as an individual right. At one point in the meeting of the People's Administration only hours before the declaration was proclaimed, Shertok responded to a question with this statement: "Not only the right of the Jewish people must be mentioned. The right of the Jewish individual, as an individual, to his personal honor demands that he have a state." There is an allusion to this in the passage of the declaration stipulating that survivors of the Holocaust have the "right to a life of dignity."

Although we tend to think of honor and dignity as things that accrue to us by virtue of our achievements, the authors of the declaration lived in a world where Jews had been stripped of both honor and dignity simply by being made stateless—that is, people of nowhere. But neither did Zionism invent the "right to personal honor" or the "right to a life of dignity." These are no different from the "unalienable rights" of "life, liberty, and the pursuit of happiness" in the American Declaration of Independence. The argument of Zionism was that Jews could not secure these individual rights without a state of their own. What Zionism did not claim, but what is arguably true, is that the existence of the Jewish state has also imparted honor and dignity to Jews elsewhere and everywhere.