

# The Pertinence of Israel's Declaration of Independence

COMMENTARY

By [Peter Berkowitz](#) - RCP Contributor  
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The outpouring of opposition in Israel to the sweeping judicial reforms advanced by Prime Minister Benjamin Netanyahu's coalition government springs from much more than disagreement about the details of the institutional mechanisms for appointing judges and the proper scope of judicial review in a rights-protecting democracy. The protests' breadth, intensity, and persistence – for the first time since the demonstrations began in January, police used [stun grenades and water cannons](#) last week against protesters who sought to block major Tel Aviv arteries – reflect a fear that the government endeavors to transform the basic structure of the Israeli regime.

The fear runs deep. According to a recent [poll](#), opponents of the government's judicial reforms – many of whom recognize the need to rein in the Israeli high court's expansive powers – encompass more than half the country. Week after week, tens of thousands of flag-waving citizens have taken to the streets to protest what they regard as the descent of Israeli democracy into dictatorship. Upstanding members of the community – including leading lawyers, doctors, and business executives – say that the question is not whether the country plunges into civil war but rather how the civil war into which the country has plunged will end. The economy has been hit by individuals withdrawing their savings from local banks to find safe financial havens abroad and from investors looking to relocate their operations outside of Israel. In addition, security has been jeopardized: As

of late February, more than 250 elite reservists in the special-operations division of military intelligence had [signed](#) an open letter – following similar statements from reserve [pilots](#), [tankists](#), [submariners](#), and other reserve military personnel – declaring their refusal to serve if the government enacts its judicial reform package.

Reform proponents focus on the need to curb high-court judicial activism. That has been a serious and longstanding problem. The Israeli Supreme Court's arrogation to itself in the 1990s of far-reaching authority to invalidate legislation and dictate policy contrary to majority preferences has generated enormous resentment on the right. It also has provoked incisive [criticism](#), including from such formidable center and left-leaning thinkers as the late Professor Rut Gavison.

Despite the need for reforms, opponents strenuously – even apocalyptically – reject the government's proposals because they are bound up in opponents' minds with crucial questions of religion and the state, citizenship, and the rule of law. Israelis in the center and on the left and not a few on the right see the judicial reforms as a Trojan horse intended to protect the large state subsidies received by ultra-Orthodox religious schools as well as to safeguard the ultra-Orthodox community's exemption from military service. The critics also view the reforms as empowering those religious nationalists bent on applying Israeli sovereignty to the entirety of the disputed territories in Judea and Samaria; that would incorporate around three million Palestinians into Israel, compromising the state's Jewish character, its democratic character, or both. And they regard the reforms as enmeshing Netanyahu in a conflict of interest. The shift of power from the courts to the prime-minister-led government would give the Knesset authority to nullify unfavorable rulings in the current criminal trial in which Netanyahu is fighting charges of bribery, fraud, and breach of trust.

Complicating matters further is that Israel lacks a written constitution under and through which the Jewish state's contending sectors could resolve their bitter disagreements. The nation's quasi-

constitutional [Basic Laws](#) are part of the problem, because they were passed by simple majorities and their status itself is at issue in the battle over the judiciary.

But Israel does have a founding document, and a highly pertinent one at that. At 4 PM on Friday, May 14, 1948, shortly before the arrival of Shabbat and eight hours before the midnight termination of the British Mandate, David Ben Gurion read aloud to a group of some 250 dignitaries gathered in the Tel Aviv Museum [The Declaration of the Establishment of the State of Israel](#).

The declaration was drafted amid military hostilities. Also subject to British rule, Palestinian Arabs shared the land with the Jewish inhabitants but in contrast to the Jews, they rejected the 1947 UN partition plan. Even as the Jews rejoiced in the streets in the late afternoon of May 14 at the birth of the first Jewish state in nearly 2000 years in the Jewish people's ancestral homeland, the Palestinian Arabs continued their attacks, and the surrounding Arab states prepared their armies to destroy the new country. With Jerusalem besieged and the very survival of Jewish life in the land of Israel at risk, it was all the more remarkable that Israel's founders provided in their Declaration the clearest and most authoritative statement of the principles to which the nation-state of the Jewish people would be dedicated.

In "Israel's Declaration of Independence: The History and Political Theory of the Nation's Founding Moment," Neil Rogachevsky and Dov Zigler perform a great service by clarifying the political significance of Israel's founding principles. The authors – Rogachevsky is a professor at the Straus Center of Yeshiva University and Zigler is chief international economist at Element Capital – examine the several major drafts of the declaration. They place the declaration in the immediate context of the debates in Palestine's Jewish community over whether to declare a sovereign state, how much weight to give to the borders set forth in the UN partition plan, and the proper recognition of the national and religious dimensions of the Jewish people. They review the declaration's legal legacy. Most significantly for the turmoil currently gripping the country, Rogachevsky and Zigler

consider the declaration in relation to the modern tradition of freedom, particularly natural rights, the rights all human beings share in virtue of their common humanity.

The authors emphasize a crucial change made by Ben Gurion who, at the last minute, took charge of editing the final draft. The penultimate draft asserted that Israel would grant (*ta'anik*) rights. However, Ben Gurion – who was nourished on socialism and who gave no evidence of having delved deeply into the writings of Locke, Jefferson, and Madison – rejected the notion that rights had their roots in the decisions of states: What a state had authority to grant, it also had authority to rescind.

Accordingly, in the key paragraph setting forth the rights that the Jewish state promised to secure, the Declaration uses the language of “based on,” “ensure,” and “guarantee”: “THE STATE OF ISRAEL will be open for Jewish immigration and for the Ingathering of the Exiles; it 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; it will ensure complete equality of 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.” Consistent with the U.S. Declaration of Independence, Israel’s Declaration of Independence is grounded in the conviction that basic rights inhere in individuals and that governments are duty-bound to protect them.

The document does not explicitly mention “democracy.” But it commits Israel to democratic institutions not only by insisting on the equality of rights for all citizens and the establishment of representative government but also by stressing that Arab inhabitants would enjoy “full and equal citizenship.”

The Israeli Declaration of Independence no more provides a constitution for Israel than does the U.S. Declaration of Independence furnish a constitution for America. Both documents, however, announced a universal standard. In 1859, as civil war loomed, Abraham Lincoln wrote in a [letter](#), “All honor to Jefferson — to the man who, in the concrete pressure of a struggle for national independence by a single people, had the coolness, forecast, and capacity to introduce into a merely revolutionary document, an abstract truth, applicable to all men and all times, and so to embalm it there, that to-day, and in all coming days, it shall be a rebuke and a stumbling-block to the very harbingers of re-appearing tyranny and oppression.” Something similar could be said about Ben Gurion’s rejection of the idea, as Israel faced a war of annihilation, that Israel would *grant* rights in favor of the affirmation that Israel would be based on, ensure, and guarantee basic rights and fundamental freedoms because they are inseparable from our humanity.

Perhaps reconsideration of the precious inheritance enshrined in Israel’s Declaration of Independence could assist both sides in assuaging the rage roiling the country. Bold and conciliatory, the nation’s founding document promises not merely a Jewish state, or a free state, or a democratic state, but that Israel will combine and reconcile its diverse elements to form a Jewish and free and democratic state.

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