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The question of how Israel should treat asylum-seekers from Africa has in recent years been one of considerable debate in the Israeli media, government, and public, and was also the focus of considerable attention internationally until the refugee crisis facing Europe (and somewhat earlier, Australia) took center stage. As we can see in Europe’s unfolding drama, how a given state views its own history and collective identity matters a great deal in determining how it will respond to migration and requests for asylum from large numbers of refugees.

In Israel, those who favor more leniency in the laws treating asylum-seekers and a greater role for the state in absorbing them employ a range of tactics: they point to Israel’s moral obligation as a state of refugees who were themselves earlier victims of persecution; they use arguments about the ethical obligations in Judaism to strangers in need and the universalism inherent in Zionism; and they contend that Israel has a legal obligation to abide by its ratification of the 1951 UN Refugee Convention. Those who favor more restrictive government policy toward refugees make arguments one is likely to hear among most opponents, in most places, of liberal refugee policies: there is a danger in greater leniency of creating precedents that only enable an ever larger and less worthy wave of asylum-seekers; greater leniency comes at a financial cost to the state (with arguments ranging from absorption costs, education, policing, and competition for jobs); and the demographic change caused by the acceptance of refugees threatens the cultural, religious, and societal fabric of the state.

Rotem Giladi, who teaches in the Law Faculty of the Hebrew University of Jerusalem, takes aim at several misconceptions which he believes pervade Israel’s current discourse on its “historical commitment” to international law protecting refugees. Giladi argues for a revision of what he considers the prevailing view: that Israel’s commitment to refugees and asylum seekers can be traced to its role in passing and ratifying the UN Refugee Convention, and that the Convention itself has “Jewish roots.” (747) Rather, Giladi suggests, those critics of Israel’s current refugee policies who look to a ‘Golden Age’ of Israeli commitment to the UN Refugee Convention are rewriting history.
Giladi suggests that there are two “irreconcilable historical traditions” that are used simultaneously with regard to Israel’s current obligations to refugees. On the one hand, moralists suggest that Israel has been committed to the protection of refugees since its early days because the lessons of the Holocaust led the new state to demand the protection of Jewish refugees according to the universal principles and internationalism then emerging. On the other hand, instrumentalists argue that because Israel used the UN Refugee Convention to advocate for the particular needs of Jewish refugees, but does not abide by its terms when faced with the current influx of non-Jewish refugees from Africa, the Israeli government employs a double-standard with regard to international law. According to Giladi, the problem with both moral and instrumental interpretations—besides the fact that they are mutually exclusive—is that Israel’s “historic commitment” to the protection of refugees under international law has no basis in fact.

The heart of Giladi’s article is an impressive survey of the delays, equivocating, and reservations of Israel’s Ministry for Foreign Affairs (MFA), before it finally submitted the UN Refugee Convention for ratification. Giladi convincingly demonstrates, using correspondence between the MFA and Jacob Robinson, Israel’s legal advisor to the UN mission in New York, the extent to which Robinson forced the government to ratify the Convention—three years after it passed at the UN—despite attitudes in the MFA ranging from reluctance to opposition. In fact, ratification only came when Robinson made clear that he would not participate as Israel’s representative at a UN conference on statelessness without it, and was done with little fanfare or even consultation of the Knesset. Furthermore, the Israeli government ratified the Convention with a number of officially noted reservations which, according to Giladi, “attest to the perfunctory, puny nature of Israel’s formal commitment to the Convention…. Whenever a tension between the Convention and Israeli law appeared, the solution was entering a reservation to the offending Convention clause. Ratification sought to adapt the Convention to Israeli law – not the other way around.” (755-6)

Giladi does not provide an explanation for the gap between collective memory in public discourse and the evidence of Israel’s reluctant acceptance of international law governing refugees (and only then at the insistence of an international advisor in the diaspora). Perhaps advocates of a lenient refugee policy today read what they believe should be Israel’s current commitment to the Convention back historically to when it must have been. It is also difficult to know from Giladi’s source base whether the misconceptions about Israel’s “historical commitment” to the UN Convention on Refugees extends beyond the halls of Knesset, NGOs, the newspaper Haaretz, and a few historians to the broader Israeli public. But Giladi does provide fascinating insight into the gap between Robinson’s commitment to the Convention and the lack thereof by the MFA. Robinson pushed adamantly for ratification because he believed the Convention reinforced the identity of Israel as the place of Jewish asylum, and extended legal protection for Israel to intervene on Jews’ behalf, not only in any country, but to seek asylum in any country. Yet as far as Israeli diplomats and government officials were concerned, the very fact that the Convention gave Jews more options for asylum than just Israel put it at odds with the state’s ideology. This was even a greater concern than whether Israel’s ratification could give Palestinian Arab claims as refugees the leverage of international law, which could be dealt with in an official reservation. Furthermore, there was a question to those Israeli officials involved in the matter—and Giladi suggests few paid any attention— as to whether the Convention was even necessary given Israel’s legal commitment in the Law of Return to granting citizenship to all Jews wherever they might come from. In essence, Robinson saw Israel as playing the leading role in protecting Jews, even those who did not want to move to Israel, and the Israeli government was concerned with matters of state and refugee absorption, seeing immigration to Israel as the only solution to the problem of Jewish refugees and displaced people.
Giladi’s article is a valuable contribution to Israeli legal history and the growing field of interest in post-war Jewish internationalism. What Giladi brings to light are the tensions inherent in Israel’s status as a nation state, a state of refugees, a state with contending national aspirations over the same land as another group, and a state that, at least to the critics of government policy today, needs to balance those tensions against a commitment to certain universal principles which are enshrined in international law in the early years of the state’s history. For an academic article in a history journal, Giladi’s essay makes an argument strikingly relevant to contemporary Israeli legal debates: the factors that should guide Israel’s policies toward refugees and asylum-seekers today should be justified by its *current* commitment to international law, not a claim to its role in the creation of that law. In sum, Israel’s early government did not see its state as a refugee-state based on Jewish and universal values, but rather as the state of refuge for the Jews.

Simon Rabinovitch teaches modern Jewish and European history at Boston University and is Senior Editor at Marginalia. His most recent book is *Jewish Rights, National Rites: Nationalism and Autonomy in Late Imperial and Revolutionary Russia* (Stanford University Press, 2014) and he is currently at work on a global study of Jewish collective rights.

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