

Argonauts of the Eastern Mediterranean: Legal Transplants and Signaling

*Assaf Likhovski**

This Article tells the story of two legal cooperation projects established by the Israeli Ministry of Justice in the 1950s and 1960s. The Article argues that the history of these projects can suggest a new way of understanding the process of legal transplantation. Much of the literature on legal transplants focuses on the legal norms transplanted. This Article seeks to shift the focus of the debate from a discussion of the legal norms transplanted to a discussion of the social acts involved in the process of transplantation. The Article argues that while transplantation may be motivated by practical considerations, such as the desire to obtain foreign norms which are deemed superior to local law, it is sometimes also a process of signaling. The two legal cooperation projects discussed in the Article, it is argued, were, to a certain extent, signaling devices used to communicate to Israel's potential allies the fact that Israel was part of the civilized world,

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and thus a partner worthy of its cooperation, and also the fact that Israel was a state stable and strong enough to survive in the hostile environment into which it was born.

INTRODUCTION

In recent decades there has been a growing interest in legal transplantation. Much of the literature on transplants has focused on a debate between, on the one hand, scholars who are convinced that transplantations prove the autonomy of law and, on the other hand, scholars who argue that law is embedded in society and that therefore legal institutions and norms transferred from one system to another can only survive if there is a fit between them and the social and economic conditions in the society into which they are transplanted.¹

The debate over the autonomy of law is not the only debate about the phenomenon of transplantation. Other discussions of the subject use the social scientific literature on the diffusion of technological, cultural and administrative ideas to gain a better understanding of the process of legal transplantation;² discuss the relationship between transplantation and economic growth or the factors leading to successful transplants;³ argue that the phenomenon of legal transplants might be understood as a result of a competition in which both local and foreign legal solutions battle each other, and those which are most efficient are adopted by the legal system;⁴ or tie the discussion of transplantation to a broader debate about the convergence or divergence of law.⁵

Some of the literature on transplants discusses the motivations of the

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- 1 See generally ALAN WATSON, *LEGAL TRANSPLANTS: AN APPROACH TO COMPARATIVE LAW* (2d ed. 1993); David Nelken, *Toward a Sociology of Legal Adaptation*, in *ADAPTING LEGAL CULTURES* 7 (David Nelken ed., 2001); Michele Graziadei, *Transplants and Receptions*, in *THE OXFORD HANDBOOK OF COMPARATIVE LAW* 441 (Mathias Reimann & Reinhard Zimmerman eds., 2006).
 - 2 See William Twining, *Diffusion of Law: A Global Perspective*, 49 *J. LEGAL PLURALISM* 1 (2004); William Twining, *Social Science and Diffusion of Law*, 32 *J.L. & SOC'Y* 203 (2005).
 - 3 See, e.g., Daniel Berkowitz, Katharina Pistor & Jean-Francois Richard, *The Transplant Effect*, 51 *AM. J. COMP. L.* 163 (2003); Inga Markowitz, *Exporting Law Reform: But Will It Travel?*, 37 *CORNELL INT'L L.J.* 95 (2004).
 - 4 Ugo Mattei, *Efficiency in Legal Transplants: An Essay in Comparative Law and Economics*, 14 *INT'L REV. L. & ECON.* 3 (1994).
 - 5 See, e.g., JEFFERY N. GORDON & MARK J. ROE, *CONVERGENCE AND PERSISTENCE IN CORPORATE GOVERNANCE* (2004).

actors involved in the process. For example, some scholars have argued that South American elites use foreign borrowings of "state expertise" or "technologies of governance" of various sorts (law or economics) in order to bolster their social and political status in their home countries.⁶ Others have suggested that there are different types of transplants, distinguished by the motivation that underlies the act of transplantation: "cost-saving transplants," in which the main motivation for transplantation is the desire to save the legislator or judge the time and effort involved in seeking a solution to a novel legal problem; "externally-dictated transplants," in which a legal norm or institution is imposed by an external force; "entrepreneurial transplants," in which a local individual or body is interested in importing foreign norms or institutions in order to gain political or economic benefits from the link to the foreign legal materials; and "legitimacy-generating transplants," in which the prestige of a foreign norm or institution is used by locals as a way of supporting a legal solution that would have been chosen anyway.⁷

In this Article, I too seek to shift the focus of the discussion of transplantation away from questions having to do with the relation of transplants to the society in which they are embedded, to the *social acts* involved in importing legal norms. I too believe that one of the keys to understanding the process of transplantation is prestige. However, in my Article I analyze not just the prestige associated with the *donors* of legal norms, but also with the *donees*. My argument is that while the interest in using foreign norms is often motivated by practical considerations, such as the desire to obtain norms which are deemed superior to local law, it is sometimes partly a process of signaling by *both* the donor and the donee. Legal norms are sometimes imported and exported not only because of their intrinsic worthiness, but also because the process of transplantation is conducive to sending various types of signals to various types of audiences.

In this Article, I analyze two legal cooperation projects established by

6 YVES DEZALAY & BRYANT G. GARTH, *THE INTERNATIONALIZATION OF PALACE WARS: LAWYERS, ECONOMISTS AND THE CONTEST TO TRANSFORM LATIN AMERICAN STATES* (2002).

7 Jonathan M. Miller, *A Typology of Legal Transplants: Using Sociology, Legal History and Argentine Examples to Explain the Transplant Process*, 51 AM. J. COMP. L. 839 (2002). On the role of prestige, see also Ugo Mattei, *Why the Wind Changed: Intellectual Leadership in Western Law*, 42 AM. J. COMP. L. 195 (1994); P.G. Monateri, *The Weak Law: Contaminations and Legal Cultures*, 13 TRANSNAT'L L. & CONTEMP. PROBS. 575 (2003); Binyamin Blum, *Doctrines Without Borders: The "New" Israeli Exclusionary Rule and the Dangers of Legal Transplants*, 60 STAN. L. REV. 2131, 2162 (2008).

the Israeli Ministry of Justice in the 1950s and 1960s: an Israel-Harvard legal-cooperation program established in the 1950s, and an Israeli legal-aid project to Africa established in the 1960s. I argue that one of the roles of both the Israel-Harvard program and the Israel-Africa project was to communicate the fact that Israel was part of the "civilized world," and was thus a partner worthy of its cooperation. An additional reason for the existence of these programs was that they were used to send a costly signal (costly because it demanded the investment of scarce financial and human resources in law reform and legal cooperation) that Israel was a society which was stable and strong enough to survive in the hostile environment into which it was born.

The Article has three parts. Part I contains a general discussion of the literature on signaling and its application to the phenomenon of legal transplantation. Part II provides an overview of the history of the Harvard-Israel Program of the 1950s, and also contains a description of the Israel-Africa legal-aid project of the 1960s. Part III analyzes the signaling aspects of these two projects.

I. LEGAL TRANSPLANTS AS SIGNALS

In his 1922 book *Argonauts of the Western Pacific*, anthropologist Bronislaw Malinowski described the Kula Ring, an intertribal, circular form of exchange which connects a large number of communities in Melanesia. Two objects are exchanged in the Kula ring — long necklaces of red shell, and bracelets of white shell. These objects move between the islands of Melanesia in opposite directions — necklaces travel clockwise, bracelets counterclockwise. The men engaged in the Kula trade hold the goods for a limited period of time and then exchange them with lifelong partners in other communities.⁸ Kula objects are essentially useless. Some are worn only on very special occasions, and the rest are never used at all. Just like crown jewels in Western countries, they are not possessed for their practical value. Instead, they are ceremonial objects valued because they are, says Malinowski, a sign of the "importance and glory" of their owners.⁹ Kula objects, and more generally the Kula trade itself, thus serve as signaling devices.¹⁰

8 BRONISLAW MALINOWSKI, *ARGONAUTS OF THE WESTERN PACIFIC* 85-86, 92, 95 (1922).

9 *Id.* at 88-89.

10 See Janet T. Landa, *The Enigma of the Kula Ring: Gift-Exchanges and Primitive Law and Order*, 3 *INT'L REV. L. & ECON.* 137, 152-56 (1983).

While certain details of the Kula may be unique, its general features — especially the link between social status, gift-exchange, and foreign travel and trade — seem universal. Thus, while at first glance there is little similarity between Melanesian Kula traders and modern legal scholars, in fact the social process of legal transplantation bears some similarity to the Melanesian Kula trade. Legal norms, I believe, are not merely utilitarian objects, imported or exported in order to influence social reality. Sometimes they may also be ceremonial objects that individuals and states exchange in order to gain friends and ward off enemies. The social processes involved in the project of transplantation, like the Kula trade, can thus be seen as an elaborate ritual of conspicuous consumption whose role is to send signals about the status of various types of collective and individual norm consumers and producers.

The phenomenon of legal transplantation, viewed this way, is a product of the problem of information asymmetry. One way to solve this problem is by using signals.¹¹ Signals are used to convey unobservable qualities to potential partners and enemies. A subgroup of signals are costly signals. Costly signals are a result of the problem of mimicry. If a signal can be produced by those possessing the unobservable quality, but also by those that do not possess it, it will no longer serve as a reliable indicator of the inner quality. In order to prevent those that do not possess the signaled quality from mimicking it, the signal has to be costly; that is, there will be a link between the signal's cost and the quality it signifies in a way which would make the signal too costly to produce by deceivers.¹² This Article will discuss costless signals *as well as* costly ones.¹³

Costly signaling appears both in nature and in human societies. As biologist Amotz Zahavi has argued, this idea (in the form of "the handicap principle") can be used to explain a wide range of biological phenomena.¹⁴ Zahavi's most famous example of a handicap is the peacock's tail — a seemingly useless and wasteful body part whose cumbersome nature actually testifies to the inner qualities of the peacock sporting the tail, conveying the

11 See, e.g., A. MICHAEL SPENCE, MARKET SIGNALING: INFORMATIONAL TRANSFER IN HIRING AND RELATED SCREENING PROCESSES (1974).

12 See AMOTZ ZAHAVI & AVISHAG ZAHAVI, THE HANDICAP PRINCIPLE: A MISSING PIECE OF DARWIN'S PUZZLE, at xiv (1997).

13 On the difference between costly and costless signals, see, for example, Joseph Farrell & Matthew Rabin, *Cheap Talk*, 10 J. ECON. PERSP. 103 (1996).

14 ZAHAVI & ZAHAVI, *supra* note 12. For a critique of some of the more radical arguments made in this book, see Andrew Pomiankowski & Yoh Iwasa, *Handicap Signaling: Loud and True?*, 52 EVOLUTION 928 (1998).

message (to potential mates) that the genes of the peacock sporting the tail are of superior quality. It is as if the peacock were saying, "if I can carry this tail and still survive, my genes must be very good indeed."

The handicap principle has been used mostly in order to explain animal behavior, but some, including Zahavi, have used it to explain various human activities, for example, the potlatch ceremony practiced by Native American tribes and other varieties of conspicuous consumption that are seemingly wasteful, but are actually used as signals to convey a message about the wealth and power of their owners to potential mates and/or potential enemies.¹⁵

The attempt to explain conspicuous consumption and other types of seemingly irrational non-utilitarian human behavior, such as gift-giving, goes back to the early 20th century works of Thorstein Veblen and Marcel Mauss.¹⁶ Recently, a new body of anthropological scholarship has begun to use the handicap principle to analyze conspicuous consumption, as well as other forms of seemingly wasteful human behavior such as altruism, religion, and monumental architecture. Thus, for example, it has been argued that the resources wasted on building Mayan pyramids were actually not wasted, because these pyramids were used as signals to convey the strength and political power of their builders.¹⁷ Obviously, when one realizes that monumental architecture can serve as a (costly) signal, other activities favored

15 See, e.g., ZAHAVI & ZAHAVI, *supra* note 12, at 226-27; see also JOHN MAYNARD SMITH & DAVID HARPER, *ANIMAL SIGNALS* (2003) (discussing the theory).

16 THORSTEIN VEBLEN, *THE THEORY OF THE LEISURE CLASS: AN ECONOMIC STUDY OF INSTITUTIONS* (1908); MARCEL MAUSS, *THE GIFT: FORMS AND FUNCTIONS OF EXCHANGE IN ARCHAIC SOCIETIES* (Ian Cunnison trans., Free Press 1954) (1925). For a more recent discussion of the economy of waste, see 1 GEORGES BATAILLE, *THE ACCURSED SHARE: AN ESSAY ON GENERAL ECONOMY* (Robert Hurley trans., Zone 1991) (1967).

17 See, e.g., James L. Boone, *Status Signaling, Social Power, and Lineage Survival*, in *HIERARCHIES IN ACTION: CUI BONO?* 84 (Michael W. Diehl ed., 2000); see also R. Bliege Bird & E.A. Smith, *Signaling Theory, Strategic Interaction, and Symbolic Capital*, 46 *CURRENT ANTHROPOLOGY* 221 (2005). On architecture, see Fraser D. Neiman, *Conspicuous Consumption as Wasteful Advertising: A Darwinian Perspective on Spatial Patterns in Classic Maya Terminal Monument Dates*, in *REDISCOVERING DARWIN: EVOLUTIONARY THEORY AND ARCHEOLOGICAL EXPLANATION* 267 (C. Michael Burton & Geoffrey Clark eds., 1997). For a critique, see E.F. Aranyosi, *Wasteful Advertising and Variance Reduction: Darwinian Models for the Significance of Nonutilitarian Architecture*, 18 *J. ANTHROPOLOGICAL ARCHAEOLOGY* 356 (1999). On religious behavior, see Richard Sosis, *Why Aren't We All Hutterites: Costly Signaling Theory and Religious Behaviour*, 14 *HUM. NATURE* 91 (2002); Richard Sosis, *Religious Behavior, Badges and Bans: Signaling Theory and the Evolution of Religion*, in 1 *WHERE GOD AND SCIENCE MEET: HOW BRAIN*

by political rulers, for example, projects of codification, may be (at least partly) explained by the same logic.

Given the widespread interest in signaling theory, it is not surprising that its influence can also be found in legal scholarship.¹⁸ One important example of the use of signaling theory by lawyers can be found in Eric Posner's attempt to explain norm adherence as a costly signal of an individual's willingness to cooperate over the long term.¹⁹ Posner's approach to norm adherence as a signaling device has been used to explain the adoption of various kinds of international and foreign norms: for example, the adoption of the Basle Accord in Japan; the adoption of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards in Indonesia; or the compliance of various states with international human rights conventions.²⁰ The adoption of international and foreign norms, it has thus been argued by David Nelken, can be seen as a token that states use to show their willingness to cooperate to potential international mates.²¹

While providing a framework for understanding some cases of legal signaling, one should note that the unobservable quality that most of the legal literature on signaling is interested in is the individual's or country's willingness to cooperate. This, obviously, is a very important kind of quality, but not the only one which individuals or countries might want to signal. The anthropological literature on signaling in human societies discusses other kinds of internal characteristics that can be conveyed by signals — for example, social and political power. Indeed, even if we focus only on one

AND EVOLUTIONARY STUDIES ALTER OUR UNDERSTANDING OF RELIGION 61 (Patrick McNamara ed., 2006).

- 18 See, e.g., DOUGLAS G. BAIRD, ROBERT H. GERTNER & RANDAL C. PICKER, *GAME THEORY AND THE LAW* 122-58 (1994). For a recent example of the application of the theory to corporate law, see, for example, Edward M. Iacobucci, *Toward a Signaling Explanation of the Private Choice of Corporate Law*, 6 *AM. L. & ECON. REV.* 319 (2004).
- 19 ERIC A. POSNER, *LAW AND SOCIAL NORMS* 5 (2000).
- 20 Charles K. Whitehead, *What's Your Sign? International Norms, Signals and Compliance*, 27 *MICH. J. INT'L L.* 695, 713, 715 (2006); Daniel Berkowitz, Johannes Moenius & Katharina Pistor, *Legal Institutions and International Trade Flows*, 26 *MICH. J. INT'L L.* 163, 177-78 (2004); David H. Moore, *A Signaling Theory of Human Rights Compliance*, 97 *NW. U. L. REV.* 879 (2003). See also Eric A. Feldman, *The Culture of Legal Change: A Case Study of Tobacco Control in 21st Century Japan*, 27 *MICH. J. INT'L L.* 743 (2006) (arguing that tobacco-control laws were adopted in Japan as a signal of Japan's conformity with Western values and, more generally, of Japan's "civilized" nature).
- 21 David Nelken, *Signaling Conformity: Changing Norms in Japan and China*, 27 *MICH. J. INT'L L.* 933, 963 (2006).

type of signaling behavior — adherence to social norms — one can think of adherence to these norms as signaling not just a willingness to cooperate, but also other hidden attributes of the signaler, for example, spiritual strength or inner resolve. Thus, the (unobservable) strength of religious belief may be signaled by performing observable acts such as praying or fasting. Signaling an individual's willingness to cooperate is an important means of communication with potential friends, but signaling in human society, just as in nature, is used to communicate not just with friends, but also with potential enemies.

It is easy to see how foreign law, like foreign armbands or necklaces, can serve as a costly signal of both a willingness to cooperate (sent to potential mates) as well as a signal of power (sent to potential enemies as well as potential mates). Let us examine, for example, one type of foreign norm exchange — norms exchanged in the context of law and development programs of the type that was common in the 1960s, where there was an active norm-donor (for example, the U.S.) as well as norm-receivers (African or Latin American countries).

The donor of foreign norms (the U.S.) acquired prestige and signaled its power by sending a costly signal — wasting money on giving the gift of legal aid to foreign countries, a gift which did not have any direct practical use.²² The receivers of foreign norms (in Latin America and Africa) signaled their power in two ways — *first*, they sent a non-costly signal of their power by showing their affiliation with the donor ("don't mess with me because I have a big brother"), and *second*, they sent a costly signal of their power by wasting financial and/or human resources on luxuries such as law reform (which can be, in some sense, analogous to similar forms of conspicuous consumption like monumental public buildings).

Of course, the use of foreign law is not limited to collective bodies such as states or academic institutions. Foreign law can also be imported by individuals — practicing lawyers, judges and legal scholars — and used by them to signal their professional fitness. The lawyer citing a foreign case or textbook, which is obviously a more time-consuming affair than citing local law, may be using the legal equivalents of the peacock tail, implicitly saying, "I am such a good lawyer that I can waste my time and energy on

22 Of course, one can think of ways in which legal aid can have some practical benefit to the donor — for example, by creating commercial laws which lower transaction costs and increase the flow of trade between the donor and donee. However, this motive cannot explain legal-aid programs dealing with noncommercial areas of law (such as human rights), nor does it apply to legal-aid programs in which the donor is not the state, but a not-for-profit institution like Harvard University.

citing foreign sources." While the use of foreign norms by individuals is a fascinating topic, in this Article I will devote most of my attention to the use of foreign norms by states and sub-state collective bodies such as the Israeli Ministry of Justice or Harvard University.

My discussion of foreign norms as signals is focused on the use of such norms as signal sent to foreign friends and foes. But signals are not exchanged merely across state borders. States may use foreign law to signal internally — to individuals and groups within the borders of the state. Just as monumental buildings can be used to signal a dictator's strength to his potential rivals within the state (for example, the massive building projects of Nicolae Ceaușescu), so law reform projects and the foreign norms imported in the process can be used as signals to internal groups about the power of the ruling elite. The use of foreign norms may also be explained not as a process of communication to either a foreign or a local audience. One can also see it as a process of self-construction.²³ Again, this Article will not focus on these aspects of the process.

One final point which should be addressed before I move to the specific case studies has to do with the mixture of practical and signaling goals. It might be argued that once the project of transplantation has some non-signaling, practical benefits, which outweigh its cost, it can no longer serve as a costly signal, because then such a project would be undertaken regardless of the underlying information that the project is supposed to convey, and thus observers of the project would not be able to tell whether the project is indeed a costly signal of some hidden inner quality or not.

However, costly signals are often accompanied by practical benefits whose relationship to the cost of the signal is hard to measure. Take, for example, the possession of an SUV. An SUV often serves as a costly signal of its owner's wealth, because only a wealthy person can waste money on a large gasoline-consuming car. However, such cars can also have practical benefits. The owner of an SUV may buy it in order to signal her wealth, *but also* because she is an avid outdoors person, and an SUV can negotiate difficult terrain better than an ordinary car. Because observers cannot accurately measure the specific tastes of a given SUV owner and the value of the specific practical benefits that she gets from owning such a car, the possession of an SUV can serve as a costly signal, despite the fact that it also has practical benefits. Similarly, a law reform project which relies on foreign law can serve as a costly signal of the existence of human and financial resources that a state can waste, *despite* the fact that such law

23 See, e.g., ASSAF LIKHOVSKI, LAW AND IDENTITY IN MANDATE PALESTINE (2006).

reform projects may also have (hard-to-measure) practical benefits to the state or to the specific actors who initiated the project.

Having sketched the theoretical framework of this Article, I shall now discuss the two specific case studies used to illustrate my arguments. The rest of the Article will therefore be devoted to describing these two case studies, and to their analysis using a (costly and non-costly) signaling framework.

II. AMERICA/ISRAEL/AFRICA

A. America

In the summer of 1951, Uri Yadin, the Director of the Legal Planning Department of the Israeli Ministry of Justice, embarked on a three-month voyage to Europe and the United States. His goal was to study legislative planning techniques, in order to use them in drafting legislation for the newborn state of Israel, seeking in the process to establish a connection between the Israeli Ministry of Justice and "the big world."²⁴

Yadin traveled to the United States, France, the Netherlands, the UK and Italy, visiting universities and related institutions and meeting with leading law professors, many of them, like him, refugees from Germany, including Max Rheinstein, Arthur Nussbaum, Hans Kelsen and Albert Ehrenzweig.²⁵ In early June, Yadin met the newly appointed Associate Dean of Harvard Law School, David Cavers (responsible for the international legal

24 Letter from Yadin to Marx (Feb. 14, 1951) (G/5732/16, ISA); Uri Yadin, *Dokh 'al Nesi'a le-Hul ba-Hodashim May-Yuli 1951* [Report on a Trip Abroad in May-July 1951] (Aug. 22, 1951) (G/5732/16, ISA).

25 Letter from Yadin to Minister of Justice and Attorney General (June 16, 1951) (G/5732/16, ISA); Uri Yadin, *Dokh 'al Nesi'a le-Hul ba-Hodashim May-Yuli 1951* [Report on a Trip Abroad in May-July 1951] (Aug. 22, 1951) (G/5732/16, ISA). Yadin also visited Germany, but "because of political reasons," he avoided contacting Ernst Rabel, "still considered by all" as the greatest living comparative lawyer. *Id.* at 4. On the global network of German émigré scholars who shaped the legal education systems of countries as diverse as Korea and Turkey in the mid-twentieth century, see generally LAURA FERMI, *ILLUSTRIOUS IMMIGRANTS: THE INTELLECTUAL MIGRATION FROM EUROPE 1930-41*, at 345-46 (2d ed. 1971); MAURICE R. DAVIE, *REFUGEES IN AMERICA* 287-99 (1947); HELEN SILVING, *MEMOIRS* (1988) (on Korea); ARNOLD REISMAN, *TURKEY'S MODERNIZATION: REFUGEES FROM NAZISM AND ATATÜRK'S VISION* (2006) (on Turkey). On the influence of German refugee scholars on mid 20th century Anglo-American law, see generally DER EINFLUSS DEUTSCHER EMIGRANTEN AUF DIE RECHTSENTWICKLUNG IN DEN USA UND IN DEUTSCHLAND (Marcus Lutter et al. eds., 1993); JURISTS UPROOTED: GERMAN-SPEAKING ÉMIGRÉ

studies program at Harvard), as well as a number of other faculty members. Yadin's initial idea was to send drafts of Israeli laws to interested lawyers and legal scholars in the United States in order to get their comments on these drafts. However, the academics he met with at Harvard thought that a better way to proceed would be to establish a center with which Yadin and the Israeli Ministry of Justice could keep in regular contact. Following the meeting, Harvard proposed the establishment of a three-year "Harvard Research Project in Aid of the Development of Israeli Law."²⁶ The project would employ a full-time Hebrew-speaking director and also one or two young Israeli lawyers who would be sent to Harvard each year by the Israeli Ministry of Justice. The Ministry would thus gain access to Harvard's large comparative law collection, while Harvard would gain "opportunities for comparative legal research of great scientific value and practical utility."²⁷

Israelis, explained an early description of the project, written in late 1951, "do not wish to copy other countries' laws . . . but they do want to know what those other laws are [and] what are their good and bad points." Since Israel did not have adequate facilities or experts, Harvard was to supply both, gaining in the process "an unparalleled opportunity to advance comparative legal science."²⁸ The program was one of the first American law and development projects,²⁹ and was Harvard's first joint program with a foreign government, and Harvard's first program in a foreign language.³⁰

While the American connection was a bit odd, given the continental

LAWYERS IN TWENTIETH-CENTURY BRITAIN (Jack Beatson & Reinhard Zimmermann eds., 2004).

26 The name was later changed, at the request of the Israeli Ministry of Justice, to the "Harvard Law School-Israel Cooperative Research for Israel's Legal Development." See Report from Zadok (Dec. 12, 1951) (G/5732/17, ISA).

27 Letter from Cavers to Yadin (June 12, 1951) (G/5732/16, ISA); Letter from Yadin to Minister of Justice and Attorney General (June 16, 1951) (G/5732/16, ISA); David F. Cavers, *Joseph Laufer: Some Memories*, 28 BUFF. L. REV. 439, 441 (1979).

28 The Harvard Law School Research in Aid of Israel's Legal Development: Statement (Dec. 3, 1951) (G/5732/16, ISA); Letter from Griswold to Monosson (Nov. 19, 1951) (G/5732/16, ISA).

29 Law and development is usually seen as a movement of the 1960s, and conventional histories of the movement do not mention the Harvard-Israel Program. See, e.g., JAMES A. GARDNER, *LEGAL IMPERIALISM: AMERICAN LAWYERS AND FOREIGN AID IN LATIN AMERICA* 35-36, 39, 329 (1980); D.M. Trubek, *Law and Development*, in 12 INTERNATIONAL ENCYCLOPEDIA OF THE SOCIAL AND BEHAVIORAL SCIENCES 8443 (2001). Law and development programs were not the only way in which American law was exported in the 1960s. See, e.g., MARY L. DUDZIAK, *EXPORTING AMERICAN DREAMS: THURGOOD MARSHALL'S AFRICAN JOURNEY* (2008).

30 Letter from Griswold to Rosen (Dec. 21, 1954) (G/5732/18, ISA).

European background of many leading Israeli lawyers and the formal links between Israel's new legal system and English law, it was, in fact, not exceptional. There was a long history of American technical assistance to the Jewish community in Palestine, and also a long history of involvement of American jurists, such as Brandeis and Frankfurter, in the affairs of the Jewish community in pre-state Palestine.³¹

A German-born Jewish-American comparative lawyer, Joseph Laufer, was chosen to be the program's first director. Laufer was the perfect man for the job, having been trained in both German and American law. The fact that Laufer spoke English, German, French, Yiddish, Hebrew, Spanish, Portuguese, Italian and some Russian also made him an ideal candidate.³² A benefactor was also found — Fred Monosson — the owner of a Boston coat manufacturing business, who established a "National Committee" to recruit additional donors for the program.³³

During the 1950s the program worked on four major code-like draft Israeli laws: a Succession Bill, an Evidence Bill, a Family Law Bill, and a Companies Bill. The program also dealt with a wide range of other legislative topics, including a general part of a criminal code, a law of contractual damages, a survey of costs in civil litigation, and a draft code of legal ethics, as well as other topics ranging from constitutional law to hunting to the growing and marketing of vegetables.³⁴ In addition to commenting on legislative drafts, the program provided research and advice on a multitude of minor questions, such as the liability of the State of Israel to joint owners of

31 On American experts and Zionism in pre-1948 Palestine, see, for example, S. Ilan Troen, *American Experts in the Design of Zionist Society: The Report of Elwood Mead and Robert Nathan*, in *ENVISIONING ISRAEL: THE CHANGING IDEALS AND IMAGES OF NORTH AMERICAN JEWS* 193 (Allon Gal ed., 1996); Nahum Karlinski, *California Dreaming: Adapting the 'California Model' to the Jewish Citrus Industry in Palestine, 1917-1939*, 5 *ISR. STUD.* 24 (2000). On American experts in 1950s Israel, see, for example, Michal Frenkel & Yehouda Shenhav, *From Americanization to Colonization: The Diffusion of Productivity Models Revisited*, 24 *ORG. STUD.* 1537 (2003); Assaf Likhovski, *Tax Compliance and Modernity*, 32 *LAW & SOC. INQUIRY* 665 (2007).

32 On Laufer, see Biographical Statement of Joseph Laufer (June 21, 1951) (G/5732/16, ISA). See also *A Tribute to Joseph Laufer*, 28 *BUFF. L. REV.* 437 (1979).

33 Letter from Berman to Monosson (Oct. 17, 1951) (G/5732/16, ISA).

34 Norman Abrams, *The Harvard-Brandeis Cooperative Research for Israel's Legal Development: Its Operation and Methods*, in *REPORT ON CURRENT RESEARCH ON THE MIDDLE EAST* (1958) (G/5732/22, ISA); see also *Inventory of Research Topics as of September 1, 1954* (G/5732/19, ISA); *Draft Brochure 1958* (G/5732/21, ISA); Norman Bentwich, *The Legal System of Israel*, 13 *INT'L & COMP. L.Q.* 236, 249 (1964).

Israeli bonds.³⁵ A translation project of Israeli Supreme Court opinions was also started by the program.³⁶

Legal research and translations were not the only declared goals of the program. An additional goal was "to provide . . . a small but carefully selected group of Israeli judges and legal officials with an opportunity to establish direct contact with American legal thought and institutions."³⁷ The program thus provided a convenient location where Israeli jurists such as Supreme Court Justice Yoel Sussman or Attorney General Haim Cohn (and, of course, Yadin himself) could undertake short-term research projects.³⁸ Other, more junior, Ministry of Justice officials were sent to Harvard for six-month periods. As a condition of participating in the program, those officials were required to serve in the legislation department of the Ministry of Justice for a period of two years after their return to Israel.³⁹

One major aspect of the work done by the program was organizing international symposia on draft Israeli laws. The first symposium, held at the Israeli consulate in New York in late 1952, was devoted to a draft of the Israeli Law of Succession.⁴⁰ A second symposium, on a draft Evidence Code, was held in October 1953 at NYU. A third symposium, on the draft Family Code, was held in Chicago in 1957.⁴¹ It included both American and European participants, the Europeans coming from Poland, Switzerland, England, Belgium and Sweden.⁴² A final symposium, on the Companies Bill, was held in 1958 in Luxemburg.⁴³

Though the program was American, Laufer's continental background, as well as the background of many of the Ministry of Justice officials who participated in the program, assured that attention would also be paid to non-common-law systems. For example, a memorandum on the recovery of

35 Letter from Laufer to Henig (July 10, 1953) (G/5732/18, ISA); *see also* Joseph Laufer, *Co-Operation Between Harvard and Israel in the Field of Legislative Drafting*, 41 A.B.A. J. 969, 970 (1955).

36 Letter from Laufer to Cohn (May 25, 1955) (G/5732/20, ISA).

37 Letter from Cavers to Goldmann (Feb. 25, 1954) (G/5732/19, ISA).

38 Letter from Attorney General to Laufer (June 1, 1953) (G/5732/18, ISA); Letter from Laufer to Yadin (Aug. 6, 1953) (G/5732/18, ISA); Letter from Cavers to Goldmann (Feb. 25, 1954) (G/5732/19, ISA); Draft Brochure 1958 (G/5732/21, ISA).

39 Memo to the Legal Service Officials (Nov. 15, 1953) (G/5732/19, ISA).

40 Invitation (Oct. 10, 1952) (G/5732/17, ISA).

41 Letter from Laufer to Yadin (May 16, 1957) (G/5732/20, ISA); Draft Brochure 1958 (G/5732/21, ISA).

42 Memorandum (Sep. 24, 1957) (G/5732/21, ISA).

43 Abrams, *supra* note 34.

litigation costs, written by the program, discussed the law on this matter in England, the U.S. and a number of other common law jurisdictions, but it also analyzed the law in Germany and the USSR.⁴⁴

The program began as a limited three-year endeavor. When initial funding dried up in late 1955, the Israeli Attorney General, Haim Cohn, contacted the Israeli consul in New York, Esther Herlitz, asking her to intervene. While the interest of the Ministry of Justice in the project was "purely professional," said Cohn, "one cannot ignore the role that this institute plays . . . from a general public relations [*hasbara*] point of view." Israeli prestige, he added, would suffer if the program were to be shut down for lack of funding.⁴⁵ Herlitz managed to obtain a pledge from Abram Sacher, the President of Brandeis University, to contribute the sum of \$100,000 to the program for an additional period of three years. "Sacher," Herlitz reported, "is interested [in the program] because of its link to Harvard," and also because Brandeis University "is celebrating the 100th birthday of Louis Brandeis."⁴⁶ As a result of the contribution from Brandeis, the official name of the program was changed to "Harvard-Brandeis Cooperative Research on Israel's Legal Development."

Despite the newfound source of funding, Laufer decided to leave the program in the summer of 1957, having obtained a teaching position at the University of Buffalo.⁴⁷ He was replaced by Norman Abrams. Abrams, a recent graduate of the University of Chicago, knew Hebrew, but, as an American, was less familiar with continental law.⁴⁸ This lacuna was made up for by two research associates affiliated with the program, Dr. Julius Sichel, a former German attorney, and Salo Engel, a professor at the University of Tennessee, who had been trained in Frankfurt, and was fluent in English, French, German, Spanish and Hebrew.⁴⁹

By 1958, it became clear that the actual impact of the program on Israeli law was quite limited. In an article published during the last year in which the program existed, Abrams noted these meager results, pointing

44 Memorandum on Costs (n.d.) (G/5733/1, ISA).

45 Letter from Laufer to Cohn (May 25, 1955) (G/5732/20, ISA); Letter from Cohn to Herlitz (Dec. 30, 1955) (G/5732/20, ISA).

46 Letter from Herlitz to Cohn (Feb. 2, 1956) (G/5732/20, ISA).

47 Letter from Laufer to Yadin (May 16, 1957) (G/5732/21, ISA).

48 Letter from Laufer to Yadin (May 28, 1957) (G/5732/21, ISA).

49 Letter from Abrams to Cohn (Nov. 12, 1957) (G/5732/21, ISA); Draft Brochure 1958 (G/5732/21, ISA). Another researcher working for the program, also coming from the German legal world, was Helen Silving (a cousin of Justice Yoel Sussman of the Israeli Supreme Court). See SILVING, *supra* note 25, at 377, 389-90, 400.

out that only few bills with which the program was involved were actually enacted. The Succession Bill, which was the first major project undertaken by the program in 1952, reached its first reading in the Knesset only in 1958 (it was finally enacted in 1965).⁵⁰ Small sections of the Evidence Bill, dealing with the testimonies of experts, public officials and minors, were also enacted, as well as a law dealing with the regulation of personal names, and the enforcement of foreign judgments.⁵¹ The Family Code and the Companies Code, to which massive amounts of energy and attention were devoted, were not enacted.

These results led Abrams to declare that "the full value of the program is not to be measured by the number of pieces of legislation enacted nor by the number of articles published. The purpose of the Program has been to bring comparative legal research to bear in the preparation of proposed legislation, and to derive insights into the function and potential of law from such an inquiry . . . the benefits of this type of cooperative effort have been apparent to all who have participated in the Program both at Harvard and Israel . . . if there has been any one lesson which has been derived thus far from the work of the Program, it is that the laws of all countries of the world have a great deal in common and that many of the problems faced by legislators today can be usefully solved by extensive research into the laws of other systems."⁵²

By the end of the 1950s, both Harvard and the Israeli Ministry of Justice were keen to change the nature of the program. In May 1958 Uri Yadin presented the Faculty of Law of the Hebrew University with a proposal for the establishment of an Institute for Legislative Research and Comparative Law, which would take over much of the work done by the Harvard program (the institute later became the Harry Sacher Institute for Legislative Research and Comparative Law). This institute would conduct research in Israeli legislation and in comparative law, and would work together with the Ministry of Justice, "taking into consideration the legislative needs of the state" and "directing its activities to the practical goals of developing the country."⁵³ In addition, a special emphasis would be placed, at least in theory, on inductive research (i.e., empirical fieldwork), on Jewish law, and

50 Letter from Yadin to Abrams (June 19, 1958) (G/5732/22, ISA).

51 Abrams, *supra* note 34.

52 *Id.*

53 Protocol of the Hebrew University Faculty of Law Meeting (May 21, 1958) (File 257, HUA); Ha-Makhon le-Hakika ule-Mishpat Mashve: Hatsa'a Rishona le-Kavey Yesod [The Institute for Legislation and Comparative Law: First Proposal for Basic Principals] (June 20, 1958) (File 257, HUA).

on studies of "the economic, sociological and demographic aspect of law and legislation."⁵⁴

In August 1958, a meeting of officials from Harvard, the Israeli Ministry of Justice and the Hebrew University was held at the Israeli Ministry of Justice. At that meeting it was decided that it was time to introduce changes in the program: Harvard's connection with Israel would be with the Hebrew University of Jerusalem instead of the Ministry of Justice; the program would turn into a "joint" and "mutual exchange [program] between the two universities rather than [one that had] the nature of a service for Israel" — each university sending research personnel to the other to conduct comparative legal research there; and the activities of the program would become part of the activities of the Institute for Legislation and Comparative Law which was being established by the Hebrew University.⁵⁵

Yadin, who became a full professor at the Hebrew University (while maintaining his Ministry of Justice post), was appointed as the executive director of the new institute.⁵⁶ The Ministry of Justice supported the Institute in the 1960s, providing an annual allowance of 1,000 Israeli Pounds, but this assistance was only given grudgingly. By 1967, when the Institute was facing closure, the Dean of the Hebrew University Faculty of Law had to beg the Ministry to continue funding the Institute.⁵⁷ While the connection

54 Ha-Universita ha-Ivrit: Ha-Faculta le-Mishpatim [The Hebrew University: The Faculty of Law] (June 20, 1958) (File 257, HUA) (protocol of the committee to amend the proposal for an institute for legislation and comparative law).

55 Summary of the meeting held in the Attorney General's Office at Jerusalem (Aug. 22, 1958) (G/5732/22, ISA); Letter from Yadin to Laufer (Nov. 30, 1958) (G/5732/24, ISA); Standing Committee of the Hebrew University Meetings (Jan. 16, 1959, Feb. 27, 1959) (File 196, HUA); Letter from Acting Dean Hall to Dean Levontin (May 15, 1959) (File 196, HUA). One model which perhaps influenced the new institute was that of the Kaiser Wilhelm Institute for Foreign and International Law in Berlin, which is now the Max Planck Institute for Comparative and International Private Law in Hamburg. *See generally* David S. Clark, *The Influence of Ernst Rabel on American Law*, in *DER EINFLUSS DEUTSCHER EMIGRANTEN AUF DIE RECHTSENTWICKLUNG IN DEN USA UND IN DEUTSCHLAND*, *supra* note 25, at 107, 113. *See also* Ernst Rabel, *On Institutes for Comparative Law*, 47 *COLUM. L. REV.* 227 (1947).

56 Letter from Laufer to Yadin (Oct. 26, 1958) (G/5732/24, ISA); Letter from Yadin to Laufer (Nov. 30, 1958) (G/5732/24, ISA); Letter from Yadin to de Sola Canizares (Mar. 16, 1959) (G/5732/24, ISA).

57 Letter from Yadin to Director-General of the Ministry of Justice (Mar. 18, 1965) (G-1/8001, ISA); Letter from Shapira to Ministry of Justice Comptroller (Mar. 14, 1966) (G-1/8001, ISA); Letter from Ginossar to Minister of Justice (Jan. 6, 1967) (G-1/8001, ISA); Letter from Kokia to Ginossar (May 16, 1967) (G-1/8001, ISA); Letter from Ginossar to Kokia (May 29, 1967) (G-1/8001, ISA).

between the Ministry of Justice and Harvard waned in the 1960s, the Ministry continued to be involved in international cooperation, but this time on the giving side — in a project of legal aid to Africa.

B. Africa

Israeli assistance to African countries was an important feature of Israel's foreign relations in the late 1950s and the 1960s. Israeli agricultural experts, health specialists, educationalists and many other types of experts provided assistance to African countries through the Center for International Cooperation at the Israeli Ministry of Foreign Affairs.⁵⁸

The idea was raised already in the late 1950s, of connecting the Harvard program in some way to Africa. During 1958 an International Lawyers Convention was held in Israel, and at this convention a suggestion was made that a Harvard summer institute be established in Israel. It was suggested that such an institute would "attract many participants from various countries in this part of the world, including Africa." It was not impossible, it was further suggested, that "the success of this institute could serve for propaganda purposes [which would benefit] the State of Israel among the countries of our region."⁵⁹

There was also some indirect transmission of knowledge from the Harvard program to Africa. For example, in 1954 Laufer was contacted by René David, the Secretary General of the International Committee of Comparative Law. David had been commissioned to draft a civil code and a code of civil procedure for Ethiopia, and he wanted to utilize the work done by the Harvard program in the drafting of the new code, especially the work on the Israeli draft Law of Evidence.⁶⁰

However, it was only in the mid-1960s that the idea of direct Israeli legal aid to Africa was put into practice.⁶¹ In 1964 the Israeli Embassy in

58 See Natanel Lorch, *Learning Through Travel in Israel*, 36 J. EDUC. SOC. 379 (1963); MORDECHAI E. KREININ, *ISRAEL AND AFRICA: A STUDY IN TECHNICAL COOPERATION* (1965); *THIRTY YEARS OF ISRAEL'S INTERNATIONAL TECHNICAL ASSISTANCE & COOPERATION* (Hanan S. Aynor & Shimon Avimor eds., 1990); ZVI EFRAT, *THE ISRAELI PROJECT: BUILDING AND ARCHITECTURE 1948-1973*, at 607-30 (2004); Israel Diplomatic Network: Mashav Center for International Cooperation, <http://mashav.mfa.gov.il> (last visited Aug. 24, 2008).

59 Letter from Teichman to Mazar (May 11, 1959) (File 196, HUA).

60 Letter from David to Yadin (June 30, 1954) (G/5732/19, ISA).

61 It was at this time that Africa also became the focus of American law and development programs. See GARDNER, *supra* note 29, at 40, 43.

Switzerland informed the Ministry of Foreign Affairs that fourteen Congolese trainees were receiving practical training in courts in the French-speaking part of Switzerland.⁶² Shabtai Rosen, the legal adviser of the Ministry of Foreign Affairs, sent a letter to the Director-General of the Ministry of Justice about this Swiss-Congolese training program, and as a result the Ministry drafted a plan for an eight-month training course on legal administration for African lawyers. The course included lectures on law and administration topics, as well as a four-month practical training program with Israeli courts, the Ministry of Justice, and other quasi-legal bodies such as the population registry.⁶³

The course itself took place in late 1965 and early 1966. It included both theoretical lectures on jurisprudence and surveys of different branches of law, but also practical lectures on topics such as archive management and budgetary planning.⁶⁴ The program was designed for "senior workers in the legal service in English-speaking African countries," but in fact the actual trainees turned out to be low-ranking magistrates, court registrars and court clerks. They came from Uganda, Liberia, Malawi, Nigeria and Kenya.⁶⁵

Like Americans in the 1950s, the Israelis running the Africa program in the mid-1960s tended to emphasize the benefits that they themselves gained from the experience. The director of the program, Yoram Dinstein, explained that "international cooperation is, of course, a two-way street, and participants in the course were not always on the receiving end of legal know-how." The African trainees met Israeli students and lawyers to discuss the application of English law in Africa and Israel, "and to air together world-wide ideas for legal reform" in meetings which turned out to be "a sort of seminar in comparative law."⁶⁶

The course in legal administration was not the only example of Israeli

62 Letter from Efrat to Western Europe Department (Feb. 26, 1964) (G/5751/20, ISA).

63 Letter from Department for International Cooperation to Israeli Embassies in African Countries (Jan. 10, 1965) (G/5751/20, ISA); Ha-Mishtatfim ba-Kurs [Participants in the Course] (n.d.) (G/5751/20, ISA); Syllabus of a Course in Legal Administration (n.d.) (G/5751/20, ISA); Yoram Dinstein, *Legal Aid to Developing Countries*, 1 ISR. L. REV. 632 (1966).

64 Syllabus of a Course in Legal Administration (n.d.) (G/5751/20, ISA); Misrad ha-Mishpatim: Tokhnit Hishtalmut be-Administratsiya le-Mishpatanim Afrika'im [The Ministry of Justice: Continuing Education Program in Administration for African Lawyers] (n.d.) (G/5751/20, ISA).

65 Department for International Cooperation to Israeli Embassies in African Countries (Jan. 10, 1965) (G/5751/20, ISA); Ha-Mishtatfim ba-Kurs [Participants in the Course] (n.d.) (G/5751/20, ISA); Syllabus of a Course in Legal Administration (n.d.) (G/5751/20, ISA); Dinstein, *supra* note 63.

66 Dinstein, *supra* note 63, at 635.

legal assistance to African countries during the same period. For example, Israel sent tax experts to African countries such as Ghana. The expert to Ghana was sent in 1964 for a period of fifteen months. When he arrived he discovered to his surprise that the Ghanaian Income Tax Commissioner and his assistants did not seem to have a concrete set of issues that required his assistance, and furthermore, this legal adviser came to realize, "they do not know of any problems requiring correction." Nevertheless, the adviser soon went about discovering problems in the Ghanaian tax system on his own, and then suggesting remedies for them.⁶⁷ Israeli assistance in legislative drafting was also sought by Kenya, and (indirectly) by Liberia.⁶⁸

African countries were not the only places where Israeli assistance was sought. For example, in 1963 the Ministry of Justice received a request from the Juridical Council in Thailand, requesting assistance with the reform of the Thai Codes of Civil and Criminal Procedure.⁶⁹

III. SIGNALS IN THE ISRAELI CASE

In what way are the stories told in the previous Part related to signaling? There were many actors involved in both the Harvard and African programs, and these actors were motivated by a large number of reasons. Many of the actors involved may have had only practical, non-signaling, motivations. Thus, it seems reasonable to assume that some individual and institutional Israeli actors involved in the Harvard program were indeed interested in using Harvard's vast resources to obtain knowledge of foreign norms that might be used for law reform in Israel.⁷⁰ Perhaps they were also hoping that the prestige associated with Harvard's name would facilitate the process of legislation in the Knesset.⁷¹ Another motivation, which probably animated

67 Letter from Hadar to Supervisor of Foreign Activities, Department for International Cooperation (Sept. 30, 1965) (Ministry of Foreign Affairs 1/1925, ISA). *See also* Meir Lahav, *Agaf Mas Hakhmasa be-Ghana [The Income Tax Department in Ghana]*, 2 RIV'ON YISRA'ELI LE-MISIM [ISRAELI TAX Q.] 372 (1967).

68 Letter from Radai to Kokia (Aug. 6, 1968) (G/5751/17, ISA); Letter from Fischman to Laufer (Mar. 1, 1957) (File 4-7, HLS); Letter from Landis to Laufer (May 8, 1957) (File 4-7, HLS).

69 Letter from Sangoudhai to Ramati (Oct. 15, 1963) (G-1/8001, ISA).

70 *See, e.g.*, Letter from Cohn to Glass (Nov. 11, 1954) (File 11-19, HLS).

71 On the use of foreign law to lend authority to local law, see WATSON, *supra* note 1, at 99. It should be noted, however, that while the program's involvement in the preparation of the Israel Succession Law was briefly mentioned by the Minister of

some of the American actors involved, was to use the Harvard program as a way of helping to promote "Western democratic ideals in Israel."⁷²

Similarly, Israeli aid to Africa in the 1960s generally, and Israeli legal aid specifically, were also motivated by many factors. Apart from genuine humanitarian concerns, one reason for the existence of Israeli aid projects to Africa in the 1960s was that they provided employment opportunities for surplus experts, who had been left unemployed when major Israeli development projects of the 1950s (such as the National Water Carrier Project) were completed.⁷³ One could perhaps also argue that some of the projects were a marketing method designed to expose African countries to Israeli products, which would later be sold commercially. While the legal-aid program may not have been motivated by similar factors, it may have been seen as useful by some Israelis as a sort of laboratory of comparative law.⁷⁴ The African legal-aid program may also have been the result of the bureaucratic logic of organizations. Thus, the fact that Israeli lawyers became involved in an aid program to Africa may be partly attributed to the fact that they were simply trying to imitate Israeli agricultural experts or Israeli engineers who were heavily involved in African aid programs at the time.⁷⁵

However, my interest in this Article is to analyze the stories told so far from a signaling perspective (accepting the fact that the signaling aspects of the two programs I discuss are not the only, and perhaps not even the major, reason for their existence). In what ways were the Harvard Program in the 1950s (and the African legal-administration course in the 1960s) a signaling device? Obviously, we would not expect to find in the sources an explicit discussion of the signaling motives of the actors. In addition, each of the actors in the stories I have told used the process of legal exchange to convey multiple messages. Despite these obstacles, however, it is possible to find some hints of the signaling aspects of the activities carried out by the Israelis in the 1950s and 1960s.

Justice in the first reading of the law in the Knesset in 1958, this fact did not seem to play any role in the subsequent debate. See DK (1958) 2104.

72 Letter from Fishman to Rosenberg (Nov. 12, 1953) (File 1-1, HLS).

73 See Shimon Amir, *Mashav: Meni'im, Sikuyim, u-Migbalot* [*Mashav: Motives, Prospects, and Limitations*], 15 BIT'ON MISRAD HA-HUTZ [MINISTRY OF FOREIGN AFFAIRS PERIODICAL] 5 (1993).

74 See Dinstein, *supra* note 63, at 635.

75 Organizational theory would see this as a case of isomorphic pressure. See generally P.J. DiMaggio & W. Powell, *The Iron Cage Revisited: Institutional Isomorphism and Collective Rationality in Organizational Fields*, 48 AM. SOC. REV. 147 (1983).

**A. The State of Israel: Signaling Willingness
to Cooperate, Stability and Strength**

Both the Harvard program and the Israeli legal-aid efforts in Africa were not very successful. Thus, of the four major acts of legislation which the Harvard program was involved in, only one — the Succession Bill — was ultimately enacted (although specific parts of the other three acts were also enacted). As early as 1955 there were, therefore, signs that the program was not producing the expected results, and that the Golden Fleece of a better law was not to be found at Harvard. Indeed, if at all, it was to be found rather closer to home. Thus, in a letter to Attorney General Haim Cohn, an Israeli trainee working for the program discussed one specific draft — the general part of a criminal code — noting that the existing Israeli Criminal Code was better than the average American criminal code, and that, in fact, the drafters of the American Model Penal Code used the Cypriot Criminal Code (on which the Israeli code was based) in order to reach desirable solutions.⁷⁶

One could regard this as a failure and try to explain why it occurred. However, one can also redefine the notion of success. The Harvard program (as well as the Israel-Africa legal-aid project) did have direct practical goals. But these goals were accompanied by indirect, second-order signaling motivations (both costly and non-costly). Both the Harvard program and the Africa project were not just practical enterprises, but also, to a certain extent, signaling devices used to convey various messages to various types of audiences. Israel was willing to spend financial and human resources on legal reform in the 1950s (the Harvard program) and on legal aid in the 1960s (the Africa program) because, apart from any practical value that the programs may have had, these programs were useful as signaling devices. Thus, the Israeli government used the Harvard program to convey the message that Israel was a civilized and progressive country (with which the West could cooperate), and that Israel was also a strong and stable country which was here to stay (which, again, meant that it was a partner worthy of cooperation), as evidenced by the fact that Israel could afford to invest money and personnel in long-term legal reforms, despite its evident economic and security problems.

Signaling Israel's civilized and progressive nature was one of the goals of the Harvard program from its very inception. Thus, when Uri Yadin described the goals of the 1951 trip which led to the establishment of the

⁷⁶ Letter from Glass to Cohn (Feb. 4, 1955) (G/5732/20, ISA).

program, he stated that one of them was the creation of foreign contacts, and that these contacts "might raise our cultural prestige [*Le-harim et karnenu ha-tarbuti*]" abroad.⁷⁷ In another report sent by Yadin following his 1951 trip, he emphasized the aura of normality that negotiations regarding the program bestowed on Israelis, proudly writing that "all my inquiries are made not on a Jewish, let alone Zionist basis, but merely on a political basis. I do not appear here as a Jew but an Israeli. This is a new and encouraging feeling. We have been granted the position of a foreign country, the position of a *normal people*."⁷⁸

In a speech given by another Ministry of Justice official, Haim Zadok, at a 1951 fundraising event, he described the Harvard program as "but another manifestation of the ever-growing ties of friendship that exist between this great republic [the U.S.] and the new-born State of Israel." He noted that "the present project of cooperation in legal research will . . . for some time necessarily be a one-sided affair," but was quick to add that "I hope that the day is not far off when under this project, we shall be able to make our modest contribution to the totality of legal research carried on by [Harvard]." The Harvard program will have a "lasting value in having guided the destinies [sic] of Israel to be a truly democratic state," and also, "perhaps, in being a stimulating example to other countries of the Middle East."⁷⁹ As mentioned above, in early 1956, when the program was facing closure, Haim Cohn turned to the Israeli consul in New York, Esther Herlitz, asking for her help. One of the reasons that Cohn gave for the continuation of the program was that "one cannot ignore the role that this institute plays . . . from a general public relations [*hasbara*] point of view," adding that Israeli prestige would suffer if the program were to be shut down for lack of funding.⁸⁰

The Israeli association with Harvard was something that Israeli officials were very proud of. For example, in 1958 the Israeli government organized an International Lawyers Convention in Israel as part of the 10th anniversary of Israel's independence. The purpose of the convention was "to promote the prestige of the state of Israel [*le-harim et keren ha-medina*] by publicizing

77 Uri Yadin, *Dokh 'al Nesi'a le-Hul ba-Hodashim May-Yuli 1951* [Report on a Trip Abroad in May-July 1951] 4 (Aug. 22, 1951) (G/5732/16, ISA).

78 Yadin, *Dokh Beynaim 'al Nesi'a le-Khul* [Intermediate Report on a Trip Abroad] (May 12, 1951) (G/5732/17, ISA).

79 Speech by Haim Zadok (Nov. 6, 1951) (G/5732/17, ISA).

80 Letter from Cohn to Herlitz (Dec. 30, 1955) (G/5732/20, ISA).

its achievements in legislation, judicial law making and legal research,"⁸¹ and Pinhas Rosen, the Minister of Justice, added in his opening address to the participants that its purpose was "to demonstrate to our guests and tourists the high standard of the law in Israel and its exalted place in our society." In this context Rosen mentioned the Harvard program, whose work had resulted, he said, in great publicity for Israeli legislative endeavors, and he therefore began his address with an extended description of the Harvard program and an encomium to Associate Dean Cavers, who was a guest of honor of that convention.⁸²

The desire to show that Israel was a civilized country also appeared time and again in articles written by Uri Yadin in the 1950s, in which one can see the use of law as a signal of the progressive and modern nature of Israel. For example, Yadin referred in one of his articles to the enactment of the Women's Equal Rights Law of 1951, and explained that "by enacting this law, Israel has . . . firmly taken its stand in the family of progressive nations."⁸³

The program was used not merely to convey the message that Israel was a civilized country, and therefore a partner worthy of Western countries' cooperation, but also as evidence of Israel's stability and strength. The very existence of the program constituted one aspect of this "strength and stability" message: The fact that Harvard's first legal cooperation program was with Israel may have been seen by Israelis as evidence that the fledgling state had powerful friends abroad.

However, strength was also signaled by the fact that Israel was able and willing to invest financial and human resources in a long-term legal reform project. Like other post-colonial countries, Israel could have retained the laws it inherited from the period of British rule. It could also have received wholesale the laws of another Western country (as Japan did in the 19th century, or Turkey in 1926). The fact that Israelis decided to engage in the luxury of a protracted (and ultimately rather ineffective) legal reform may, at first glance, seem to be a bit irrational. However, it seems less

81 Report of Preparatory Committee of the Jewish Jurists Conference (July 21, 1955) (Ministry of Foreign Affairs 1829/4, ISA).

82 Pinhas Rosen, *Opening Ceremony*, in INTERNATIONAL LAWYERS CONVENTION IN ISRAEL 1958, at 1, 2-3 (1959). Zerah Warhaftig, a member of the Knesset, mockingly said a few months after the convention that the Israeli lawyers present there "danced around the honorable guests, the English lawyers, and promised them that they were good students of English law . . ." See DK (1958/9) 231.

83 Uri Yadin, *The Proposed Law of Succession for Israel*, 2 AM. J. COMP. L. 143, 150 (1953).

irrational if one takes into account the fact that the mere existence of the program signaled to outside, and perhaps also to local, observers (lawyers, politicians, businessmen) the belief of Israel's elite in the country's strength and its long-term stability and viability.

The period in which the program was conceived was one of an austerity regime in Israel. Despite, or perhaps because of the limited resources of the Israeli state at the time, the early 1950s were a period in which Israel embarked on a series of ambitious monumental public building projects, including the building of a large National Conventions Center in Jerusalem, as well as the construction of a vast new campus for the Hebrew University in Givat Ram in Western Jerusalem.⁸⁴

The Harvard program was the legal equivalent of these large building projects, and here too the enterprise stood in a complex relationship to the austerity regime, serving as proof that, despite this regime, the state, in the long term, would be capable of overcoming present challenges. Ministry of Justice officials thus diligently noted the existence of the austerity regime as a temporary matter when they described the program. Haim Zadok said in 1951 that "there is, perhaps, an element of the symbolic in the fact that one of the leading lawyers of Israel, Dr. Dov Yosef [who served for a short period of time as Minister of Justice] should at this period of trial and error in the history of our country, head both the Ministry [of] Commerce and Industry, which is continuously wrestling with our supply difficulties, and the Ministry of Justice, which is charged with responsibility for our legislative program. Of the two tasks, the task of keeping the country supplied with the minimum necessities of life is, of course, the more immediately pressing one. But I am convinced that in the not too distant future our present shortages will be no more than a memory of the past, while the legislative work [carried out by the Harvard Program] . . . will have a lasting value in having guided the destinies [sic] of Israel to be a truly democratic state, dedicated to the precepts of freedom and the rule of law, and, perhaps, in being a stimulating example to other countries of the Middle East."⁸⁵

The use of the program to signal strength was also evident in the concern

84 On the National Convention Center (*Binyene ha-Uma*), see Kobi Cohen-Hattab, *Bniyat ha-Zehut ha-Leumit bi-Yerushalayim ha-Ma'aravit ba-'Asor ha-Rishon le-Medinat Yisrael* [*The Construction of National Identity in West Jerusalem in the State of Israel's First Decade*], 72 ZION 189 (2007). On the Hebrew University Givat Ram Campus, see DAVID KROYANKER, KIRYAT EDMOND Y. SAFRA GIVAT RAM: TIKHNUN VE-ADRIKHALUT 1953-2002 [THE EDMOND Y. SAFRA CAMPUS AT GIVAT RAM: DESIGN AND ARCHITECTURE 1953-2002] 27, 34, 74-75 (2002).

85 Speech by Haim Zadok (Nov. 6, 1951) (G/5732/17, ISA).

Israeli officials voiced once they learned of the plans to establish a similar program in Lebanon. In December 1955, an article published in the Lebanese newspaper *L'Orient* informed its readers that three "eminent professors from New York" had visited Beirut seeking to establish an institute for the comparative study of American and Lebanese law. The Director-General of the Israeli Ministry of Justice sent the article to Laufer, complaining bitterly that "while we are reluctantly compelled to wind-up our project . . . our neighbors are active in establishing their own."⁸⁶

In the minds of Israeli leaders, too, Israeli law generally was associated with Israeli security. This association is evident in a letter sent by David Ben Gurion, the Prime Minister, to the delegates of the 1958 International Lawyers Convention, saying that Israel was a "free and democratic island in the midst of a stormy sea of internal and external unrest and upheaval,"⁸⁷ and adding that it was "surrounded by countries which are incessantly the scene of armed dictatorship, bloodshed and violent revolution . . . [while Israel itself is] the only stable and tranquil island in this stormy and tempestuous sea founded on law and justice . . ."⁸⁸ One might add that even today some Israeli lawyers and judges argue that Israeli law is a "strategic asset" of Israel.⁸⁹

The concern with demonstrating Israel's strength to other countries in the region was also evident in the second phase of the story told in this Article, in which Israel became an exporter of legal knowledge. Thus, the president of the Harvard Club of Israel suggested in 1959 that the establishment of a Harvard summer institute in Israel would enhance Israeli prestige in the region: "It is not impossible," he asserted, that "the success of this institute could serve for propaganda purposes [which would benefit] the State of Israel among the countries of our region."⁹⁰

86 Letter from Kokia to Laufer (Feb. 3, 1956) (G/5732/20, ISA). *See also* Memo from Laufer to Katz (Apr. 23, 1956) (File 3-11, HLS).

87 Rosen, *supra* note 82, at 1.

88 David Ben Gurion's Letter, *in* INTERNATIONAL LAWYERS CONVENTION IN ISRAEL 1958, *supra* note 82, at 6.

89 For example, in a recent article defending the Israeli Supreme Court, Israeli professor Mordechai Kremnitzer wrote that had the critique of the Supreme Court been popular in the 1950s (as it is now), "Israel would have been deprived of one of its greatest strategic assets, a judicially-created bill of rights." *See* Mordecai Kremnitzer, *Ma she-Tov le-America* [What's Good for America], HAARETZ MAG., Jan. 4, 2008, at 18. *See also* HCJ 428/86 Barzilai v. Gov't of Israel [1986] IsrSC 40(3) 505, 622; HCJ 2056/04 Beit Sourik Village Council v. Gov't of Israel [2004] IsrSC 58(5) 807, 861 ("there is no security without law [and] the rule of law is one of the components of [Israel's] national security.").

90 Letter from Teichman to Mazar (May 11, 1959) (File 196, HUA).

The African legal aid course held in Israel in the 1960s was also meant to signal Israel's stability and power, by showing that Israel was willing to invest scarce financial resources in projects of no direct benefit to Israelis. Yoram Dinstein, the academic director of the program, emphasized this aspect in an article in English, in which he described the program and in which he noted that Israel had undertaken the project "despite its limited resources."⁹¹

B. Other Actors

Other actors involved with the Harvard program may also have used it as a signaling device. Fred Monosson, the main donor to the program in its early years, saw his association with the program as a way of enhancing his own status. In a letter to Dean Erwin Griswold he said that he was "very proud to be associated (as an ordinary layman) with such a great institution as Harvard college, men like yourself and the State of Israel."⁹² In a thank-you note written to Haim Cohn, the Director-General of the Ministry of Justice, following a reception held during Monosson's visit to Israel in 1952, Monosson mentioned the "great and distinguished men of learning, and of justice" that he had met in Israel and asked "what greater honor could one expect when one is but a graduate of a College of hard knocks?"⁹³ In another letter, he said that "I feel it is an honor for a man who never went to college to be associated with two great institutions such as the Ministry of Justice in Israel and the great school of Harvard in the United States."⁹⁴

Why was Harvard interested in the program? One reason was that it enabled Harvard to put comparative law scholarship into practice. The program was seen as an opportunity for "applied" research in comparative law, one which would be "intensely practical" because of its connection with "living law" and not merely "an academic concern." It would thus benefit not just Israeli legislative drafters, but also American ones.⁹⁵ In a 1956 article describing the International Legal Studies program, Milton Katz, the director of the program, stressed that it "affords an opportunity to examine the interaction of varied legal systems in an intensely practical context."⁹⁶ But the Harvard program (as

91 Dinstein, *supra* note 63, at 632, 633, 635.

92 Letter from Monosson to Griswold (Nov. 24, 1951) (G/5732/16, ISA).

93 Letter from Monosson to Cohn (Dec. 8, 1952) (G/5732/17, ISA).

94 Letter from Monosson to Cohn (Apr. 9, 1954) (G/5732/19, ISA).

95 Laufer, *supra* note 35, at 971.

96 Milton Katz, *International Legal Studies: A New Vista for the Legal Profession*, 42 A.B.A. J. 53, 92 (1956).

well as the Israeli-African legal-aid project) can also be seen as gift exchange rituals between collective bodies and individuals.⁹⁷ Indeed, the Harvard and Africa programs were not the only devices for gift-exchange involving Israeli Ministry of Justice officials, and one can find them involved in other processes of gift-exchange in Mexico and Europe.⁹⁸

The Melanesian Kula ring, mentioned at the beginning of this Article, was a system used to create friends and allies in foreign and hostile places to which travel was difficult and dangerous. This was also the case with the modern Argonauts of the Israeli Ministry of Justice. The Harvard program allowed Israelis to travel abroad at a time of very strict restrictions on foreign travel.⁹⁹ It can be seen as a way in which some Israeli officials sought to retain their ability to travel abroad, both for its practical value and perhaps also because travel abroad was an important status symbol in Israeli society (then, as now).¹⁰⁰ This, of course, is not something particularly Israeli. Foreign connections, we academics know, like the shell armbands and necklaces of Melanesia, are sometimes status symbols which are coveted not so much for their intrinsic inner worth, but for the message that they convey about the inner worth of their holders.

C. "The Bible and Blackstone"? Jewish Law as a Wrong Signal

As mentioned above, one of the purposes of the Harvard program was to show that Israel was a part of the "civilized world." This desire to use the program to signal Israel's progressiveness can also be illustrated by analyzing the battle waged by some Jewish law scholars who wanted to become involved with the program, and the efforts by the Ministry of Justice officials to prevent such involvement.

In late 1951 information about the Harvard program appeared in two newspapers, the *Jerusalem Post* and the *New York Times*. Following these newspaper reports, the Israeli Chief Rabbi, Isaac Herzog, wrote a letter to the

⁹⁷ Letter from Cavers to Cohn (Nov. 27, 1958) (G/5732/22, ISA).

⁹⁸ Letter from Laufer to Sussman (Nov. 6, 1953) (File 8-6, HLS); Letter from Cohn to Pozo (July 21, 1958) (G/5732/24, ISA); Letter from Cohn to Garrido (July 21, 1958) (G/5732/22, ISA); Letter from Yadin to de Sola Canizares (Mar. 16, 1959) (G/5732/24, ISA); Letter from De Sola Canizares to Yadin (May 8, 1959) (G/5732/24, ISA); Letter from Kokia to Yadin (June 5, 1959) (G/5732/24, ISA).

⁹⁹ See Orit Rozin, *Wandering Jews in a Jewish Homeland: Israel and the Right to Travel Abroad 1948-1961* (2008) (unpublished manuscript, on file with the author). See also Letter from Sussman to Laufer (Apr. 24, 1953) (File 8-6, HLS).

¹⁰⁰ On travel abroad as a status symbol, see Rozin, *supra* note 99.

Minister of Justice, Dov Yosef. In his letter, Herzog told Yosef about a project of codification of Jewish law that was being carried out by the Harry Fischel Institute in Jerusalem, and asked whether the Harvard program could be linked in some way to that project.¹⁰¹ The Minister of Justice quickly replied that the arrangement with Harvard was meant to provide the Ministry with scholars familiar with secular laws. "It would besmirch our honor," Yosef said "if we were to ask for [Harvard's] services in codifying Jewish law. It must be assumed that the Jewish people have enough learned scholars in Jewish law, and that we do not need the assistance of the staff of a non-Jewish college."¹⁰²

In 1954 a Yeshiva University Professor, Samuel Mirsky, contacted Laufer and inquired whether Yeshiva University might become involved in the program.¹⁰³ Mirsky's suggestion was to form a group of researchers who would render to the State of Israel services in Jewish law similar to the ones rendered by the Harvard project in American and comparative law. Yadin rejected the offer because it would have meant that the Ministry of Justice would obtain from Yeshiva University in New York "what we should rather obtain . . . in Jerusalem." Yadin suggested that Mirsky should cooperate with Harvard without direct (or official) ties with the Ministry of Justice.¹⁰⁴ Mirsky was keen to create a "Yeshiva University Institute for Israel's Legal Development" associated with the Harvard program, based on a formal agreement between the two research projects, periodic meetings between the staffs of the two institutions, and common publications.¹⁰⁵ At this point, Laufer decided that he was opposed to any formal ties with Mirsky's proposed institution.¹⁰⁶ Yadin agreed. Mirsky's proposals, he said, were "too far-reaching." They would involve the Ministry "in a kind of responsibility and publicity (if not more) which we wish by all means to avoid." He therefore suggested backing out of the whole thing.¹⁰⁷ Since the Harvard people were also against this cooperative venture, Laufer decided to call it off.¹⁰⁸

101 Letter from Herzog to Yosef (Jan. 3, 1951) (G/5732/17, ISA).

102 Letter from Yosef to Herzog (Jan. 11, 1951) (G/5732/17, ISA).

103 Letter from Laufer to Yadin (Mar. 16, 1954) (G/5732/19, ISA). *See also* Letter from Shear-Yashuv Cohen to Laufer (July 29, 1953) (File 8-3, HLS).

104 Letter from Yadin to Laufer (Mar. 24, 1954) (G/5732/19, ISA).

105 Alon, Conference with Prof. Mirsky (June 14, 1954) (G/5732/19, ISA).

106 Letter from Laufer to Yadin (June 22, 1954) (G/5732/19, ISA).

107 Letter from Yadin to Laufer (July 6, 1954) (G/5732/19, ISA).

108 Letter from Laufer to Yadin (July 19, 1954) (G/5732/19, ISA). This may not have been a wise decision. When the Ministry of Justice finally published the Family Law Bill in 1956, the newspaper of the National Religious Party complained that it was based on the laws of "progressive" countries such as Egypt and China but not on Jewish law. *See Misrad ha-Mishpatim Mevases Hatsa'at Hok be-'Inyene*

The attempt to distance Israeli law from Jewish law was also evident in the first lecture delivered at the 1958 International Lawyers Convention. Haim Cohn, the Attorney General, gave a speech on "the spirit of Israeli law," which was actually devoted to analyzing the links between Israeli and Jewish law. Cohn explained to the foreign delegates that when there is a conflict between Jewish law and "the needs and ethics of a free and progressive society," Jewish law would have to give way, and that "the adoption of Jewish law as the national law of Israel would not . . . be the proper answer to the challenge which the establishment of the State holds for the creative lawyer. That challenge we try to meet by taking the best and the just wherever we find it."¹⁰⁹

The flip side of the attempt to distance Israeli law from Jewish law was an attempt to use the Harvard program (and, more generally, Israeli law as well) to signal the affinity between Israeli and Western law. As Anglo-Israeli legal scholar Norman Bentwich observed in 1964, "there is general recognition of the benefit of maintaining the tie which links the Israel[i] system with [common-law nations which comprise] one third of the human race. Israel has important economic and social relations with many of those countries, and they would be weakened if she abandoned the common source of law," concluding that "the Bible and Blackstone; on this rock shall they build who work for an enduring friendship between England, America and Israel."¹¹⁰

Indeed, Americans *did* tend to see Israelis as similar to them. For example, in a thank-you letter written by Cavers to Cohn in 1958, he told Cohn how impressed he had been when he visited Israel by the "sight of men building a modern nation, using modern technology and science . . . building despite adverse physical conditions, difficult human materials, and a ring of hostile neighbors." "I think," Cavers continued, that "the Yankee in the early days of the American nation had something of the spirit of the Israelis today. They too had to build a nation. Though their problems were different, they tackled them with much of the pride, self-reliance, and zest for overcoming obstacles that I see in Israel." Now, he sadly added, "we [Americans] have become much too preoccupied with our individual affairs"¹¹¹

Mishpaha 'al Hoke Mitsrayim ve-Sin [The Ministry of Justice Bases a Family Law Bill on the Laws of Egypt and China], HA-TSOFE, May 23, 1956, at 1.

109 Haim Cohn, *The Spirit of Israel Law*, in INTERNATIONAL LAWYERS CONVENTION IN ISRAEL 1958, *supra* note 82, at 13, 21, 22.

110 Bentwich, *supra* note 34, at 254, 255.

111 Letter from Cavers to Cohn (Nov. 27, 1958) (G/5732/22, ISA).

D. Borrowing as a Signal of Strength?

The process of transplantation is often seen as an expression of weakness. A nation that mimics the laws of another nation is usually seen as being at a lower stage of cultural development. This legal form of the "Anxiety of Influence" bothered the Israelis of the 1950s, and they came up with ingenious solutions in order to turn the process from an expression of their weakness to a signal of their strength.¹¹²

A major concern of Israelis in the 1950s was the eclectic and heterogeneous nature of Israeli law, which at the time was based on a mixture of Islamic, French and English norms and institutions.¹¹³ As Norman Bentwich said in 1964, "many expected that the legal system . . . of Israel would be Mosaic . . . [but in fact it is] a mosaic, a pattern made up of many legal pebbles."¹¹⁴ Laufer described Israeli law in 1955 as a legal system which is "both complex and inadequate," as "multifarious," and as one which "oddly combine[s] European with Mohammedan traditions." It is a law, he said, which "has remained the law of a static, agricultural society, unsuited to the values, mores and aspirations of most of [Israel's] citizens." Israel needed a law which would be "responsive to the needs of a young society which is bent on developing its human, economic and cultural resources by democratic processes in the best tradition of the West," one which is modern and progressive.¹¹⁵ Another contemporary commentator talked about Israeli law as displaying "a degree of multiple influences rarely encountered in any other legal system. It is an extremely heterogeneous system" which contains elements "having no organic affinity or connection."¹¹⁶ It is a law, said Yadin, which is "strangely patterned and drawn from most different and divergent sources."¹¹⁷

However, instead of replacing the eclectic legal system that Israel inherited from the Mandatory period with a unified system taken wholesale from

112 On mimicry and influence, see, for example, HOMI K. BHABHA, *Of Mimicry and Man: The Ambivalence of Colonial Discourse*, in *THE LOCATION OF CULTURE* 85 (1994); HAROLD BLOOM, *THE ANXIETY OF INFLUENCE: A THEORY OF POETRY* (2d ed. 1997).

113 See generally LIKHOVSKI, *supra* note 23.

114 Bentwich, *supra* note 34, at 236.

115 Laufer, *supra* note 35, at 970; Yadin, *supra* note 83, at 143, 146. On Israel as a "progressive" country, see also DORIS LANKIN, *ISRAEL TODAY* NO. 19: *THE LEGAL SYSTEM* 19 (1964).

116 David M. Sassoon, *The Israel Legal System*, 16 *AM. J. COMP. L.* 405 (1968).

117 Uri Yadin, *Sources and Tendencies of Israel Law*, 99 *U. PA. L. REV.* 561, 564 (1951).

another country, Israelis chose to replace one eclectic system with another, availing themselves of "the most advanced [legal] thought and best [legal] experience wherever it may be found."¹¹⁸ The rejection of the idea of receiving a single foreign legal system was partly a result of the common-law tradition, which favors piecemeal legal reform.¹¹⁹ But it was also the result of an Israeli superiority complex. As Benjamin Akzin, the Dean of the Hebrew University Faculty of Law explained, a wholesale reception of foreign law requires a self-denying ability and a "spirit of humility" that is not found in Israel. The rejection of reception was the result of "a certain intellectual pride which does not take kindly to the idea that the ancient Jewish people, so steeped in a rich juristic tradition of its own, should give up any claim to original thinking and should simply copy the legal institutions of another nation." Instead, the chosen solution involved "laboriously comparing texts and solutions, picking and choosing, and occasionally adding altogether new elements."¹²⁰

One attempt to reconcile the eclecticism of the system with the desire for originality can be found in an article by Shalev Ginossar of the Hebrew University, who said that it would be misleading to describe Israel's legal system as "an amorphous agglomerate of heterogeneous elements," because such a description may "equally fit many other legal systems which have gained general admiration for their originality and coherence." The originality of a system, he argued, resides in the manner in which the legislator combines materials taken from different systems. Israeli law, he continued, is "free from the bias of narrow-minded nationalism" and open to contributions from any other nation, but without accepting them indiscriminately.¹²¹

Indeed, some contemporary commentators explained the piecemeal nature of the new Israeli legislation as a reflection of the very nature of Israeli society. Time and again, commentators emphasized the analogy between the heterogeneity of Israeli law and that of Israeli society. For example, Benjamin Akzin explained that Israel is characterized by the "extreme complexity" of both its society and its law.¹²² This complexity, as well as "the need to wait till the planned large-scale influx of Jewish immigrants will have been accomplished and the state will have settled more firmly its fundamental character and purposes," was given as a reason for the postponement of the

118 Laufer, *supra* note 35, at 970.

119 *Id.* at 970; Benjamin Akzin, *Codification in a New State: A Case Study of Israel*, 5 AM. J. COMP. L. 44, 53, 56 (1956).

120 Akzin, *supra* note 119, at 44, 53, 66-67.

121 S. Ginossar, *Israel Law: Components and Trends*, 1 ISR. L. REV. 380 (1966).

122 Akzin, *supra* note 119.

enactment of a constitution, as well as the postponement of a general legal reform.¹²³ Uri Yadin reasoned that Israeli law is a reflection of the character of Israeli society, explaining that "if the essential object of the state of Israel is *kibbutz galuyot* — the ingathering of the dispersed — the very same object also forms the goal of Israeli law."¹²⁴ The process of the ingathering of the dispersed meant that legal change should be postponed. The ultimate goal of the process was the "integration of the various immigrants together with the Arab inhabitants of the country, into a homogenous, progressive nation." But Yadin also noted that the lack of homogeneity was a blessing, since each group of immigrants to Israel brought with it "the best which they acquire" from the countries from which they came,¹²⁵ and Israeli law could thus undergo a process of "renewal and modernization of the nation's own assets [Jewish law] and their improvement by the spiritual wealth of others." This double process, he said, could be described by the Hebrew saying, "the bringing of Japhet's splendor into the tent of Shem." Law would thus be "a continuation of the old Jewish law, amplified and enriched by the reception of whatever will prove suitable for Israel from among the ideas, models, and experience of other countries." This method of eclectic borrowing was described not as "an artificial method of election and compilation — as it might be if undertaken by others — but an organic outcome of . . . the particular fate [of the Jews]."¹²⁶

Other articles describing Israeli law contained more radical statements, one example being an article discussing Israel's legal system which claimed that "in civil rights and liberties, it is submitted that Israel is one of the most advanced democratic countries in the world."¹²⁷ In another article, describing criminal law reform, Haim Cohn mentioned the draft criminal code of Israel, and expressed the hope that "this Code will be one of the contributions, however modest and ineffectual they may seem to be, to the progress of mankind under the rule of law."¹²⁸ Cohn also wrote in another article that "far-reaching reforms have been introduced, many of them for the first time anywhere in the world," and that despite the pressing needs, the drafters of the law never forgot "the long-range needs of a young state ambitious to be one of the foremost torch-bearers of an enlightened and progressive world

123 *Id.* at 75; Yadin, *supra* note 117, at 566.

124 Yadin, *supra* note 117, at 562.

125 *Id.*; see also Yadin, *supra* note 83, at 146-47.

126 Yadin, *supra* note 117, at 570, 571; see also Daniel Jacobson, *The Legal System of Israel*, 40 A.B.A. J. 1071, 1072 (1954).

127 Louis A. Warsoff, *The Legal System of the State of Israel*, 2 N.Y. L.F. 379, 386 (1956).

128 Haim Cohn, *Criminal Law Reform in Israel*, 11 AM. U. L. REV. 1, 20 (1962).

community," explaining that Israelis are free to choose and select the best laws suited to "progress and justice."¹²⁹

CONCLUSION

The goal of this Article was to show that the process of legal transplantation is sometimes also a process of signaling, and that legal transplants can be used to convey messages about the willingness of norm-donors and norm-receivers to cooperate, as well as messages about the strength and stability of donors and receivers.

The signaling aspects of the two programs described in this Article were not the only, and perhaps not even the main, reason for their existence. Many individual and institutional actors were involved in establishing these programs, and a mixture of motivations — personal, economic, institutional and cultural — played a role in their creation. However, the fact that, unlike many other post-colonial countries, Israel embarked on a rather extensive project of legal reform (and later of legal aid to other developing countries) at a period of relative economic hardship may be, at least partly, explained by the signaling aspects of these two programs, apart from any practical value that they may have had.

Viewing transplantation from a signaling perspective can suggest novel questions about this phenomenon. For example, there seems to be a connection between increased geographical mobility, which brings strangers together, and an increased need for signals in order to assess the hidden abilities of these strangers.¹³⁰ If this is indeed the case, new (or revolutionary) states would probably need to resort more often to signaling than existing states, because new states have a stronger need to convey information about their hidden attributes, which are unknown to both potential friends and potential enemies. As states mature, one would predict, there will be a decline in the use of signaling, including the use of foreign law. This, perhaps, may have been one of the reasons why, by the 1960s, the Harvard program had outlived its initial usefulness for Israelis and was discontinued.

129 Haim Cohn, *An Introduction into the Law of Israel*, 5 N.Y. L.F. 1 (1959).

130 Bird & Smith, *supra* note 17, at 236-37.

