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Amichai Magen

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# Israel and the Many Pathways of Diffusion

AMICHAH MAGEN

*This article explores the degree, conditions, and pathways by which instances of institutional change in Israel can be traced back to the EU, either through direct influence mechanisms or indirectly, through emulation. It examines the processes and mechanisms by which EU diffusion into the Israeli domestic system might occur, and identifies the main factors that facilitate and hamper receptivity to EU influence. While there is little evidence that deliberate EU influence mechanisms – manipulation of utility calculations, socialisation, or persuasion – have produced substantial impact, Israelis emerge as highly selective, sophisticated emulators of EU institutions – adapting and implementing EU standards in specific policy realms, typically as the result of two distinct mechanisms of emulation: competition and lesson-drawing. The article demonstrates the possibility of variable pathways of diffusion of EU rules, standards, and norms beyond Europe, and advances existing knowledge of the conditions and pathways of emulation – the least understood mechanism of diffusion.*

In the aftermath of the 2004–07 ‘big bang’ expansion of the EU, the Europeanisation/diffusion research agenda is evolving rapidly once again. One branch of inquiry – spurred by the enhanced interdependence created by enlargement with Europe’s volatile new peripheries – is asking whether the Union is adequately equipped ‘to promote a ring of well-governed countries to the east of the European Union and on the shores of the Mediterranean’ (European Council 2003) without conditionally extending the golden carrot of full membership to the new neighbours (Dimitrova and Dragneva 2009; Lavenex and Schimmelfennig 2009; Magen 2006). A second branch seeks new ways to theorise and evaluate the diffusion of European rules and norms – at both the macro state level and in specific policy realms – in contexts where EU engagement is less hierarchical and more diffuse (Börzel and Risse 2012; Lavenex and Schimmelfennig 2009; Magen and Morlino 2009). Finally, a third avenue of inquiry is asking whether the EU is perceived by the architects of supranational structures in other parts of the world as a model to be

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Correspondence Address: amichai.magen@gmail.com

emulated and, if so, whether one can legitimately speak of the ‘Europeanisation’ of regionalism in Africa, Asia, and Latin America (Börzel and Risse 2009; Jetschke 2009; Jetschke and Murray 2012), of international courts (Alter 2012; Lenz 2012), and even global institutions (Smith 2006).

The contributions to this special issue advance our state of knowledge across all three branches. This article addresses questions pertaining primarily to the second by exploring the degree, conditions, and pathways under which instances of institutional change in Israel can be traced back to the EU, either through direct influence mechanisms or indirectly, through emulation. The following part explains the term ‘institutional change’ in the Israeli context, and points to the variety of causal pathways for such change. I then examine the processes and mechanisms by which EU diffusion into the Israeli domestic system might occur, and identify the main domestic factors that facilitate and hamper receptivity to EU influence. I thus address key questions posed by this special issue: to what extent does the EU seek to diffuse its institutions, rules, and standards beyond Europe? What are the mechanisms of this diffusion, and what are its limits vis-à-vis a non-membership-eligible Middle Eastern country that is nonetheless economically advanced and democratic?

The third part of this article examines instances where institutional change in Israel can be traced back to the EU, exposing the existence of variable pathways of diffusion. While there is little evidence that direct EU influence mechanisms – manipulation of utility calculations, socialisation, or persuasion – have produced substantial impact, Israelis emerge as sophisticated emulators of EU institutions, adapting and implementing EU standards in carefully selected policy realms, typically as the result of two distinct mechanisms of emulation: competition and lesson-drawing (Börzel and Risse 2012). Based on examination of primary documents and interviews with Israeli and Commission officials, the article advances understanding of the conditions and pathways of emulation – the least understood mechanism of diffusion.

### **Institutional Change**

Institutional change constitutes legal, regulatory, or policy change that is either merely formal, or extends to include shifts in behaviour, discourse, or expectations of appropriate conduct. Within the overarching concept of institutional change, therefore, an important analytic distinction is drawn between ‘formal rule adoption’ – which entails *de jure* transposition of EU rules, standards, or regulatory models – and ‘rule internalisation’ – a process in which domestic elites become cognisant of EU rules and standards, and come to accept them as legitimate and desirable sources of law and practice. Rule internalisation may be manifested not only in actual behavioural change, but in the development of domestic discourse and expectations centred round EU modalities (Magen and Morlino 2009).

Europeanisation research has identified the phenomenon of decoupling, whereby formal institutional commitments undertaken by governments remain detached, in whole or in part, from behavioural practices and informal institutional understandings on the ground. Instances of decoupling of this type are expected particularly where formal institutions and rules are transposed into domestic systems under conditions of coercive legal imposition or accession conditionality (Börzel and Risse 2012). In such contexts, top-down, government-driven, large-scale formal rule adoption often precedes, with societal internalisation lagging significantly behind (Magen and Morlino 2009).

As one moves away from the EU and candidates, the causal pathway of diffusion may flow in a rather different, indeed opposite direction, with society and business driving government. This is broadly the pattern observed in the non-hierarchical, non-coercive context of EU–Israel interactions. EU-traceable institutional change in Israel, where it occurs, typically displays societal ‘push’ of political decision-makers to emulate Europe. Such emulation may, exceptionally, take the form of direct and complete transfer (copying), but more typically involves adaptation to local needs (lesson-drawing) (Dolowitz and Marsh 2000; Rose 1991). Significantly, diffusion may also assume other forms, such as Israeli requests that EU institutions formally recognise its existing standards as being equivalent to, and therefore in compliance with, EU rules, or voluntary reference to the Maastricht economic criteria as a means of legitimising domestic macro-economic policy.

Institutional change in the Israeli context, moreover, typically displays greater rule internalisation than formal adoption. Indeed, the conditions and pathways by which the latter occurs cannot be understood without the former, since institutional change traceable to the EU is largely derivative of earlier internalisation. Thus, the scope and duration of intra-Israel discourse and behaviour traceable to the EU tends to be greater than (and prior to) formal adoption of EU traceable institutions.

### **Structured Relations, Scope Conditions, and Mechanisms of Diffusion**

Israel was the third country with which the nascent European Economic Community (EEC) established diplomatic relations, after Greece and Turkey. Formal ties were established in 1959, followed by a first economic agreement in 1960 and the creation of a Free Trade Area (FTA) in 1975, under the aegis of the EEC’s Global Mediterranean Policy (GMP) (Kapeliuk 1993).

Setting a pattern that endures to this day, through the 1980s and 1990s relations between the EEC/EC and Israel developed in fits and spurts – intertwining with the liberalisation of the Israeli economy and progress in European integration, oscillating between highs and lows in Arab–Israeli peace negotiations (Aoun 2003).

A distinct low was precipitated by the Venice Declaration of June 1980 (European Council 1980). At Venice, the European Council went beyond previous statements on the Arab–Israeli conflict, calling explicitly for Palestinian self-determination, granting formal recognition to the Palestine Liberation Organization (PLO) and condemning Israeli settlements in the West Bank and Gaza. Israel denounced the statement as one-sided and rejected what it saw as European attempts to impose an unworkable solution that would severely compromise its security.

The end of the Cold War unleashed a set of processes in Europe and the Middle East which, inter alia, facilitated the enhancement of EC/EU–Israel ties. Empowered by the collapse of Soviet support for Arab regimes, and convinced that leaders in the region expected him to follow through on a promise to resolve the Arab–Israeli conflict in the aftermath of the Gulf War, US Secretary of State James Baker initiated regional peace talks that culminated in the launch of the Madrid Multilateral Framework in October 1991. Modelled loosely on the Conference on Security and Cooperation in Europe (CSCE), the new multilateral framework aimed to: ‘address functional issues on a region-wide basis . . . to foster broader human contact between Israelis and Arabs’ (Dassa Kaye 2001: xiii–xiv).

Seeking to add its own distinct regional initiative – and buoyed by the new foreign policy impetus provided by the Treaty on European Union (1992) and the dramatic breakthroughs in Israeli–Palestinian and Israeli–Jordanian peace negotiations in 1994–95 – the EU launched the Euro-Mediterranean Partnership (Barcelona Process) in November 1995 (see van Hüllen 2012). In Barcelona the EU-15 and 12 Mediterranean Partnership Countries (MPCs), including Israel, contracted to promote a common area of peace and stability built around three baskets of cooperation: economic, political, and cultural. Barcelona was undergirded by a new generation of individual agreements between the EU and each of the MPCs – the Euro-Med Association Agreements (EMAAAs) (Hakura 1997). The EU and Israel signed an EMAA in November 1995 and the Agreement came into force in June 2000. At the core of the EMAA is an FTA in industrial goods, commitments to liberalisation of trade in agricultural goods, free movement of services and capital, as well as legal bases for potential cooperation across a broad range of policies. The EMAA also created enhanced infrastructure for EU–Israel institutional ties at political and bureaucratic levels. It provided for periodic ministerial-level meetings to take place at an Association Committee, as well as for joint sub-committees to be formed by mutual agreement as mechanisms for gradual implementation of the EMAA (Hirsch 1996).

The entry into force of the EU–Israel EMAA constituted a significant milestone in an evolving process of enhancement of structured relations by which diffusion of EU standards into the Israeli domestic system could occur. Four additional dimensions are salient, and help shed light on scope conditions, possible diffusion mechanisms, their potency and limitations.

*Frustrated Hopes of Upgraded Relations*

In the case of candidates and potential candidates the availability of a credible accession prospect is a necessary, though not sufficient, condition for large-scale, EU-induced institutional change (Schimmelfennig 2005). Foremost among constraints on the active Europeanisation of Israel is the complete lack of a membership perspective, on account of the country's geopolitical position. Despite the fact that EU policy chiefs have kept the exact parameters of membership eligibility deliberately fuzzy, and that several European and Israeli leaders have called for Israel to be admitted to the Union, in reality mainstream European and Israeli policy discourses assume that the country does not fulfil the threshold 'Europeanness' criteria for membership eligibility, leaving aside the question of Israeli interest in full membership.

Hence the most powerful diffusion mechanisms for deliberate influence are absent from the EU–Israeli context. Patterns of EU–Israel interaction, accordingly, typically follow 'soft' socialisation and emulation modes of potential influence, rather than coercive legal authority or potent conditionality (Börzel and Risse 2012; Lavenex and Schimmelfennig 2009). Both Israeli and, to a lesser extent, Commission officials acknowledge this reality, and assert the general equality of the relationship.<sup>1</sup>

That general equality is partially borne by Israel's strategic partnership with the US and OECD membership. Broad equality in the distribution of material and ideational resources between the two is also grounded in Israel's effective statehood, democracy, advanced market economy, and technological–military prowess (OECD 2009; Senor and Singer 2009). Israel generally ranks on a par with the EU average on leading political and socio-economic indicators, representing a distinct outlier among Southern European Neighbourhood countries (SENCs). Lack of democracy and weak statehood are thus not barriers to Israeli acceptance of EU rules, while costs of adaptation are – with the vital exception of the Palestinian question – comparatively lower than those of SENCs (Magen 2006; van Hüllen 2012).

Economic power relations also suggest relatively modest capacity for direct EU influence. The Union is Israel's largest source of imports (36 per cent in 2009) and absorbs roughly a third of its exports, a portion on par with the US

TABLE 1  
POLITICAL INDICATORS

Country/Region	Freedom House (2010)	Corruption Perception Index (TI) (2010)
Israel	1/2 (Free)	6.1
EU Average	1/2 (Free)	6.17
SENC Average <sup>1</sup>	6/5 (Not Free)	3.52

<sup>1</sup>South European Neighbourhood Countries: Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, Syria, Tunisia.

(Commission 2010b). Yet even at times of political tension, the EU has been unwilling to risk diminishing Israeli access to the Single Market or undermining mutual investments. Flows of Foreign Direct Investment (FDI) between the two doubled from 2002 to 2008, reaching €41.3 billion in 2008. At the same time, with the financial crisis in Europe and broader shift in economic weight to the Far East, Israelis expect Western markets to become relatively less dominant over time, and are diversifying their trade. Whereas in 2009, for example, 33 per cent of Israeli exports were directed to the US, in 2010 the figure was reduced to 28 per cent. Exports to the EU rose slightly during the same period from 29 per cent to 31 per cent, but in the case of Asia jumped from 16 per cent in 2008/9 to a record high of 20 per cent in 2010. Export to Latin America also rose to 5.5 per cent in 2010, up from 4.5 per cent in 2008/9 (IEICA 2010). Israeli officials expect trade diversion to continue, even accelerate, over the coming decade, particularly towards China and India.

In contrast with other SENCs, Israel has, until very recently, not been the recipient of *any* direct EU financial or technical assistance. This is in contrast with substantial American military aid. Minor European funding has gone to support a handful of Israeli NGOs – as part of the EU Partnership for Peace and European Initiative for Democracy and Human Rights (EIDHR) – and individual Israeli experts have benefited indirectly from EU financial and technical measures to accompany (MEDA) programmes. It was only with the creation of the ENP financial instrument (ENPI), however, that small direct allocations were designated ‘to support activities for the implementation of the Action Plan priorities’ (European Commission 2007: 5). The 2007–10 Indicative Programme (IP) designated €8 million for this purpose, and the 2011–13 IP reduced that amount to a mere €6 million for the duration of the budgetary period.

Still, power relations between the EU and Israel are not entirely symmetrical, and the Union has sought to manipulate utility calculations in an attempt to promote Israeli acquiescence with its demands. In line with the standard mode of engagement pursued by the EU vis-à-vis its neighbours, manipulation of utility calculations concerning Israel has largely followed a ‘reinforcement by reward’ logic, whereby positive incentives are granted *ex post* in response to compliance, or withheld in its absence (Schimmelfennig *et al.* 2003: 496).<sup>2</sup>

Direct EU influence is curtailed not only by weak incentives and relatively even power relations, but by EU conditioning of enhanced ties to political

TABLE 2  
SOCIO-ECONOMIC INDICATORS

Country/Region	GDP (PPP) (CIA Factbook) (2010)	UNDP Human Development Index (HDI) (2010)
Israel	\$29,800	27 (very high human development)
EU Average	\$32,500	27.8 (very high human development)
SENC Average	\$10,677	89 (medium human development)

concessions carrying extremely high compliance costs for Israel – notably regarding withdrawal from the West Bank and Palestinian statehood. In December 1994 the Essen European Council stated that: ‘The European Council considers that Israel, on account of its high level of economic development, should enjoy special status in its relations with the EU’, but tacitly conditioned the granting of such status on Israeli concessions to its Arab neighbours (European Council 1994). The prospects offered by the ENP – of enhanced access to the Internal Market, inclusion in EU programmes and agencies, and an upgraded relationship in the form of European Neighbourhood Agreements (ENAs) – appealed to Israel as the possible realisation of the ‘Essen promise’. Yet, in practice, the linkage created by Essen between tangible progress in Israeli–Palestinian negotiations and EU consent to upgrade relations persists.

With the end of the Second Intifada in early 2004, and against the background of Israeli withdrawal from Gaza in 2005, the period 2004–08 saw significant progress in economic activity and political and security dialogue. Israel was among the first five ENP countries with which an Action Plan (AP) was negotiated in 2004. The AP was endorsed by the EU–Israel Association Council in April 2005 and was intended to last until December 2007, after which it was to be superseded by an upgraded AP, or new ENA.

The 2005 AP outlined a broad basis for enhanced cooperation between the parties, setting out priorities with relatively high specificity, albeit in largely non-committal language and as a political document with no binding legal effect. Both European and Israeli officials stress that the final text of the AP was the subject of intense negotiation, with Commission officials pressing for Israeli commitments to align its legislation with the *Acquis Communautaire* in a range of policy fields, and the Israelis resisting such commitments in most instances. Reflecting broad power symmetry between the parties, the AP also contained EU commitments to issues advanced by Israel – the combating of anti-Semitism, prevention of financing for terrorist groups, and efforts to curtail Iran’s nuclear ambitions.

Amity at this juncture was aided by improved political relations, as Israel facilitated greater European involvement in the Middle East peace process by agreeing to the deployment of the EU Border Assistance Mission (EUBAM) at the Rafah Crossing, cooperating the EU provision of training assistance to Palestinian police through EU Police Mission in the Palestinian Territories (EUPOL COPPS) and the bolstering of the UN Interim Force in Lebanon (UNIFIL) with European troops in the aftermath of the August 2006 Lebanon War (Gross 2008). Despite Israeli objections, however, the 2005 AP concluded that: ‘enhanced political dialogue and cooperation will be based on shared values, including issues such as facilitating efforts to resolve the Middle East conflict’ (European Commission 2005).

Under the German presidency in 2007 the EU–Israel Association Council established a reflection group tasked with formulating an upgraded AP, and



the contours of a possible ENA. The document which summed up the negotiations in June 2008 reiterated that: 'The process of developing closer EU–Israel partnership needs to be, and to be seen, in the context of the broad range of our common interests and objectives, which notably include the resolution of the Israeli–Palestinian conflict through the implementation of the two-state solution' (EU–Israel Association Council 2008). Similarly, the 2009 Commission communication on the implementation of the ENP stated that: 'Any review of bilateral EU–Israel relations, including in the context of the ENP Action Plan, must take into account the persisting Arab–Israeli conflict' (European Commission 2009a: 4). With progress in Israeli–Palestinian negotiations proving elusive, the prospect of enhanced relations remains stalled, and the 2005 AP has since been extended on an ad hoc basis every six months.

### *The OECD Alternative*

Where the EU is regarded by a third state as 'the only game in town' – the sole or primary aspiration group to which it compares itself and whose acceptance it seeks – the EU's influence capacity is greatly enhanced (Checkel 2001: 563; Johnson 2001: 499). Conversely, where the EU becomes only one among two or more desirable peer groups, influence is diminished. The veracity of this insight is supported by the experience of Israel's accession to the Organisation for Economic Co-operation and Development (OECD) – a process formally begun in May 2007 and completed in July 2010.

The opening of an OECD membership horizon both shifted Israeli bureaucratic attention towards a new aspiration group and produced a palpable reduction in domestic pressure to associate more closely with the EU. Indeed, the OECD is today viewed by Israeli officialdom as perhaps a superior association group for four main reasons. First, the club includes all major Western powers with which Israel seeks affinity – leading EU states, the US, Canada, and Japan. Second, as an economic organisation, the OECD does not deploy overt political conditionality. Costs of association with the OECD are thus lower for Israel. Third, OECD standards – notably regarding environmental and labour issues – are viewed by powerful economic interests in the country as being looser (therefore easier to comply with) while still constituting prestigious international standards. Finally, the legitimacy and fairness of the OECD are enhanced in Israel's eyes by virtue of its full membership in the organisation (Franck 1995). In practice, since its accession to the OECD, public discourse in Israel routinely refers to it as Israel's desired group of association and source for legitimate emulation.

### *Under the Radar: Enhancing Horizontal Networks*

Diffusion of EU standards can conceivably occur at the less politicised level of academic, regulatory, and professional networks. Normative and

communicative rationality theories of social action posit that socialisation, persuasion, and transfer of social and scientific knowledge are enhanced in thick institutional environments, where epistemic communities interact intensively (Johnson 2001; Risse 2003). By this rationale, the ‘influence density’ of EU–Israel linkages at the bureaucratic and technical levels would be enhanced by regular, prolonged, and intense interaction, high legitimacy of the influence-seeking actor, and supporting financial and technical assistance (Freyburg 2011; Freyburg *et al.* 2011).

The socialisation and persuasion capacity of the EU on Israel has historically been weak, but has strengthened in certain respects over the past several years. Prior to 2000, political and bureaucratic dialogue between the EC/EU and Israel was sporadic and under-institutionalised. The entry into force of the Association Agreement in 2000 established a ministerial-level Association Council and a senior bureaucratic Association Committee, which convene on an annual basis. Moreover, 10 sub-committees have since been established to assist in implementing the EMAA and, subsequently, AP priorities. These address a broad range of policies – including trade, industry, and services; economic and fiscal affairs; research and innovation; transport; energy; environment; customs and excise; migration; judicial and police cooperation; agriculture and fishery. While the 2010 Commission report on the implementation of the ENP cites ‘a wide range of contacts maintained at all levels’ (Commission 2010a: 2), in reality the freezing of negotiations over an upgraded relationship in June 2008 and the souring of the diplomatic mood over the Gaza war in December that year, mean that since early 2009 only a few meetings of the sub-committees have actually taken place. According to Israeli officials, the sense is that the two sides are ‘meeting for the sake of meeting’.

Interaction has intensified over the past several years primarily through the gradual inclusion of Israel into EU programmes and agencies and the launch of EU twinning projects in Israel. Israel became the first non-member state to join the Union’s Research and Development (R&D) programme, entering the 4th R&D Framework in 1996, and becoming fully associated in all subsequent frameworks. Under the 5th and 6th frameworks, for example, Israeli universities, research institutes, and companies participated in over 1200 projects, attaining evaluations on a par with France and the UK (ISERD 2010).

Gradual inclusion in additional programmes and agencies has taken place recently within the Euro-Med framework (Freyburg *et al.* 2011) and, to a far lesser extent, those traditionally restricted to EU member and European Economic Area (EEA) states. Israel has joined numerous Euro-Med programmes including: Euromed Police II; Euromed Migration I and II; investment programmes (ANIMA Investment Network, FEMISE and FEMIP); MEDSTAT III; renewable and alternative energy programmes (MED-ENEC I and II, MED-ENIP, as well as MEDA Water, Satellite Navigation – GNSS II), civil society and education (TEMPUS IV, Erasmus

Mundus, and EuroMed Youth IV, 2010–13). Israel has expressed a keen interest in joining a range of programmes and agencies open to member and EEA states – notably ESA, EUROJUST, EUROPOL, CIP, Hercule, MEDIA 2013, and Youth in Action – but progress in this area has been slow. A protocol on the general principles governing Israel’s participation in EU programmes was signed by the Association Council in 2008, but is yet to be ratified by the European Parliament. At this time, Israel remains excluded from most EU programmes and agencies, limiting potential for socialisation and persuasion.

The extension of TAIEX and Twinning instruments to ENP countries also creates new conduits for potential diffusion through socialisation and persuasion (Freyburg *et al.* 2011). In 2009 Israeli civil servants, technical experts, academics, and students participated in 465 TAIEX seminars and training missions, in a range of subjects including agriculture, energy, environmental conservation, and transportation. Over the same period 11 TAIEX events took place in Israel itself (European Commission 2009b). Resident Twinning Advisors (RTAs) have begun to be placed within Israeli government ministries and regulatory institutions, starting in June 2009. Such placements typically last for 12 to 18 months, with RTAs enjoying unencumbered access to local decision-makers. While the status of RTAs is formally that of advisors, in practice twinning projects in Israel are approved and funded by the EU only where an Israeli partner institution asks for the project and provides assurances of its intention to adopt the RTAs recommendations. Three twinning projects have commenced in Israel from late 2009 to mid-2011 – one on strengthening data protection, a second on equal employment rights, and a third on approximation of Israeli cellular telephony with Single Market standards. Further twinning programmes are envisaged in the areas of education, environmental protection, and transport.<sup>3</sup>

### *Broader Societal Relations*

Three distinguishable approaches exist in Israeli public discourse concerning Europe: fringe ‘antagonist’ and ‘ideological-supportive’ attitudes, and a dominant ‘pragmatic’ approach (Harpaz and Shamis 2010).

The ‘antagonist’ approach, prevalent in conservative and religious circles, is generally suspicious of European motives and attempted influence. Emphasising differences in values and interests, adherents of this view decry ‘European hypocrisy’ in expressing affinity with Israel and concern for its security, while kowtowing to Arab oil interests and Moslem electoral pressures in Europe, undermining America in the international system, and harbouring deep-rooted cultural anti-Semitism (Joffe 2004). According to this view, post-national, post-modern Europe is in the midst of demographic and civilisational collapse. Emasculated by three generations of decadent powerlessness, Europe is incapable of mustering the resources necessary to save itself, let alone offer a model to be emulated by others (Steinberg 2004).

In sharp contrast, the ‘ideological-supportive’ approach – found primarily in academia and the liberal media – views Europe as Israel’s historical, cultural home, and therefore its natural group of association (Greissammer and Weiler 1988; Tovias and Magen 2005). According to this view, close integration with Europe – based on the Norwegian or Swiss model, for example – offers Israel broad international acceptability, reduced reliance on the US, rejection of ‘ruthless capitalism’ and a model for peaceful conflict resolution (Harpaz and Shamis 2010; Tovias 2007).

While the ‘antagonist’ and ‘ideological-supportive’ camps remain fringe opinions, the former has strengthened over the past decade. Still, the dominant approach prevailing in decision-making circles is a centrist, ‘pragmatic approach’ (Harpaz and Shamis 2010). Adherents of this interest-based, utility-maximising orientation – which include the powerful ministries of finance, trade, justice, and foreign affairs – tend to reject greater European involvement in domestic and regional political affairs, yet favour the enhancement of EU–Israel economic ties primarily as a means of gaining valuable market access. Proponents of the pragmatic approach, therefore, advocate a carefully calibrated enhancement of relations with the EU – including measured acceptance of EU rules – but only where ‘the price is right’ and no superior alternatives exist that would achieve equal or better economic gains, at lower political costs.

### **The Many Paths of Diffusion**

Against these structured relations, scope conditions, and limited influence mechanisms, EU institutions have typically diffused into the Israeli arena as a result of either sophisticated lesson-drawing in select fields or competitive adaptation to specific Single Market rules. These forms of emulation are commonly driven ‘bottom-up’ – by academic, business, or regulatory change agents that recognise the instrumental desirability of a given EU practice and pressure governmental actors to endorse it.

The emergence of domestic discourse centred around EU rules, moreover, tends to be both broader than and prior to formal institutional change. Variation between those policy areas where institutional change is observed and those where it is not is largely explained in terms of the existence of powerful domestic change agents, on one hand, and low adaptation costs (or expected net gains) on the other. Where expected net gains are absent or negative, and where there is a lack of a potent domestic change agent pushing for EU-derived institutional change, Israeli state actors typically eschew, and the EU is unable to induce, acceptance of EU rules.

The Israeli case is theoretically instructive also in demonstrating the many pathways that diffusion might take beyond Europe. The following are illustrative examinations of these conditions and pathways.

*From Broad Domestic Discourse to Selective Institutional Change*

Detailed, critical debate of different potential modalities for EU–Israel relations, including acceptance of the *Acquis Communautaire* in whole or in part, has been a feature of Israeli academic and policy discourse for decades. These epistemic communities critique existing arrangements (Dror and Pardo 2006; Hirsh 1996; Munin 2003); examine the desirability of the EEA, EU–Norwegian, and EU–Swiss templates as possible models for Israel (Sadeh 1999; Tovias 2003); and assess the ability of the EU to effect institutional change using different influence mechanisms (Harpaz 2006; Magen 2007).

Expert discussion of EU institutions and rules is facilitated by European–Israeli academic exchange, specialised academia–officialdom fora (such as the Israeli Association for the Study of European Integration) and has entered high-level policy debates with increasing weight over the past decade. In May 2001, a year after the entry into force of the EU–Israel EMAA, the Israeli Ministry of Justice (MOJ) organised a training conference for all ministerial legal advisors entitled: ‘Legal Harmonization with the European Union’. The conference critically examined the panoply of potential areas of legal convergence covered by the EMAA, addressing removal of barriers to free movement of capital, competition rules, public procurement standards, protection of intellectual property rights, trade in services (particularly financial services), approximation of industrial and agricultural product standards, justice and home affairs cooperation, environmental regulation, labour and migration standards, as well as harmonisation of taxation and social security regimes. The senior Israeli legal advisors taking part in the conference concluded with a position whereby selective approximation of Israeli legislation with the *acquis* should be actively examined, but only regarding sectors of the Single Market where significant economic advantage would be expected, where no superior alternatives existed for market access, and after careful examination of political costs and benefits (MOJ 2001).

A similar position was articulated by an inter-ministerial strategic consultation organised by the Ministry of Finance in 2007, with extensive business and academic input, in the run-up to negotiations with the Commission over a potential revised AP and ENA. The consultation began with an ‘outside the box’ brainstorming of potential modalities for future EU–Israel relations, ranging from application for full membership (an option quickly dismissed), to the EEA, Norwegian, and Swiss models. The inter-ministerial team also considered models not currently in existence, such as a ‘membership light’ option which several participants projected could be offered to Turkey in the future as an alternative to full membership.<sup>4</sup>

Yet the consultation finally zoomed in on a far narrower, overwhelmingly economic vision. The desired goal was identified as the establishment of conditions of ‘competitive equality’ for Israeli businesses with their EU

peers. ‘The aim’, as one official put it, ‘is to end any disadvantage an Israeli company may have by not being part of the Single Market’.<sup>5</sup> Israel’s national interest was best served, the consultation concluded, by the country adopting best practice guidelines and participating in four sets of European regulatory regimes: (1) the EU’s Lamflusy Process on regulation of financial services, and as observers, and ultimately members, of the three main European financial services regulatory bodies – the Committee of European Banking Supervisors (CEBS), Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), and Committee of European Securities Regulators (CESR) membership; (2) the Council of Europe’s MONEYVAL system for ensuring effective measures to counter money-laundering and terrorist financing; (3) the EU’s regime for mutual recognition of corporate governance standards and prevention of harmful tax practices; and (4) full acceptance by Israeli companies exporting to Europe of the EU’s standards concerning control of production, marketing, and use of chemicals (REACH).<sup>6</sup>

#### *Diffusion through Business-led Market Competition Emulation*

The goal of advancing market access for Israeli corporations into the Single Market also led Israel’s competitive pharmaceutical industry to push the Israeli Ministry of Industry to negotiate an EU–Israel Conformity Assessment and Acceptance of Industrial Products (ACCA) agreement with the Commission. A Framework ACCA agreement – a priority listed in the 2005 AP – was signed in June 2010, coupled with a Good Manufacturing Process (GMP) agreement concerning pharmaceutical products. Once in force, the GMP would cancel the costly requirement that European assessors test Israeli pharmaceutical products at production sites every two years as a precondition for export to the EU. The ministry is now exploring similar specific agreements for machinery, pressure vessels, and medical devices. Such agreements will, like the GMP, produce EU-derived institutional change in Israel, as they will compel it to accept, en bloc, EU rules in these regulatory fields.<sup>7</sup>

#### *Copying and Lesson-drawing*

Instances of direct copying are rare in the Israeli context, but not entirely unknown. A pertinent example is the 1995 amendment to the Competition Act (1988), which introduced a new provision concerning abuse of dominance by practically cutting and pasting then Article 82 of the EC Treaty (now Article 102 TEU as amended by the Lisbon Treaty) into domestic legislation. Following a change in government, and spurred by economic crisis, Israeli economic chiefs sought to promote market liberalisation by combating monopolistic and anti-competitive conduct on the part of domestic corporations. The appointment of a new director of the Israeli Competition Authority in 1994 parachuted a change agent into a pivotal

decision-making position, which provided the institutional catalyst necessary to have the legal transplant accepted by the Knesset (Gal 2007). In this narrow context, Article 82 was identified both as a desirable solution to a specific Israeli policy need, and as superior to alternative foreign legal models, notably the Sherman Act, which governed anti-trust law in the US. As Gal observes:

Several benefits arose directly from the content of the transplanted law. [The EU rule] includes, besides a general prohibition of abuse, a list of specific types of conduct which are considered to be abusive . . . This enabled the Israeli legislator to move from a standard-based provision to a rule-based one, and to provide some guidance as to the legality of certain types of conduct . . . It also saved the costs that would have been otherwise incurred in the course of determining what content ought to be given to the law. The realization of this benefit was strengthened by the fact that that Article 82 was adopted 'wholesale'. This signalled to the domestic community that not only the idea was transferred but also it created a strong and unmistakable connection between Israeli and EU interpretation of the law. (Gal 2007: 475)

More prevalent are instances of lesson-drawing, involving adaptation to local needs, sometimes in hybrid form, combining American, Australian, Canadian, English, and German legislative models. Leading examples are found in the 2006 Class Actions Law (Magen and Segal 2009), certain aspects of environmental legislation (De-Shalit 2003), anti-money laundering rules (Herman 2002), and animal protection standards (Harpaz and Frid 2004). Emulation of this type appears to be completely independent of EU efforts to promote its rules, and does not seem to involve socialisation *per se* – here domestic actors are engaged in voluntary policy transfer, motivated primarily by dissatisfaction with existing policies, rather than the seeking of international social acceptability.

#### *Alternative Pathways of Diffusion*

Emulation of EU institutional models may also occur (and institutional change in third countries beyond Europe take place) through alternative causal pathways of diffusion. A revealing example is found in the Israeli request that EU institutions formally recognise its existing standards in a given policy area as being equivalent to, and thus in compliance with, EU rules. As Schmidt observes, mutual recognition may be understood as a new form of governance. Within the EU it has been a perennial feature of legal culture, and mutual recognition has also gained importance as a mechanism for diffusion of best practices in the World Trade Organization (Schmidt 2007). The quest for recognition produces deliberative processes of learning and active adaptation, leading to institutional change.

In 2007 the Israeli Ministry of Justice requested that the Commission formally recognise – under a mechanism available in Directive EC/95/46 on Data Protection – Israel’s existing standards as ‘adequate’ for the purpose of the Directive. The move was initiated by Israeli telecommunications corporations and was motivated by market competitive considerations.<sup>8</sup> A finding of adequacy would enhance market access into the Single Market, and would ease contracting between European and Israeli corporations, particularly with regard to the outsourcing of data processing and storage services. Following this application, the MOJ requested that a twinning project be established to ensure full compatibility of Israeli practices with those mandated by the Directive. A finding of adequacy was made by the Commission in December 2009, and awaits the final approval of the European Parliament (European Commission 2011).

Finally, the Israeli case also displays EU-traceable institutional change through another causal pathway, namely voluntary domestic reference to the euro convergence criteria (or ‘Maastricht criteria’) concerning inflation rates, annual government deficit, government debt, and long-term interest rates.<sup>9</sup> As a means of legitimising stringent fiscal discipline domestically, and signalling macro-economic stability to foreign investors, Israel has since 2000 consistently pegged its strategy for long-term economic growth on the Maastricht criteria. In the words of one senior Israel central bank official:

These criteria became a benchmark for policies aimed at attaining economic stability in general, and in the financial markets specifically. Israel’s economic policy during the last years was inspired by these rules, and so we unilaterally began to emulate them . . . globalization of the markets does not leave Israel much choice but to [adopt] norms a-la-Maastricht, if it wishes to maintain a prolonged growth process. (Piterman 2000)

In March 2010, the Israeli government committed itself to reducing the country’s public debt–GDP ratio to 60 per cent of GDP, in line with the Maastricht criteria and with direct reference to them (Ministry of Finance 2010).

## **Conclusion**

The prevailing literature on Europeanisation generally posits that in the absence of coercive authority, potent manipulation of utility calculations, and dense socialisation fora, EU institutional models, rules, and standards are unlikely to diffuse into the domestic structures of third countries to any significant degree. The Israeli case bears out some of these expectations but confounds others. It suggests a far more nuanced pattern of interaction, with diffusion occurring under certain conditions, largely as the result of conscious, calibrated lesson-drawing on the part of domestic actors, and in



response to market competitive pressures. It demonstrates EU-traceable diffusion occurring at different institutional levels and along varied causal pathways. In contrast with diffusion patterns inside the EU and among candidates and potential candidates, EU-traceable institutional change in Israel, where it occurs, typically displays societal 'push' of political decision-makers to emulate Europe in select areas of policy. Those decision-makers tend to accept EU rules where they judge the price to be right, and where no superior alternatives exist that would achieve equal or better economic gains at lower political costs. Where an attractive alternative peer group emerges (in this case the OECD) the relative importance and influence of the EU is diminished. Influence is clearly differentiated too, with significant institutional change observable in certain economic and regulatory fields – despite paralysis in macro EU–Israel formal relations – but practically absent in political matters where domestic actors prefer Europe's non-involvement. Formal adoption of EU rules takes place gradually, sometimes over decades, and represents a fraction of the EU institutional models, regulatory standards, and rules with which Israeli policy elites are familiar.

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### Notes

1. Interviews with senior Israeli officials in the Ministry of Finance and Ministry of Foreign Affairs (January 2011) and with Commission officials in DG External Relations (2005, 2006). See also Javier Solana in *Haaretz* (2009).
2. The relationship has not been devoid of punitive measures however. In response to Israeli military action in the West Bank and Gaza during the Second Intifada, the European Parliament voted in 2002 to suspend the EU–Israel EMA. Though formally declaratory, the vote nonetheless constituted a significant symbolic and political act, with EU–Israel relations only recovering after the end of the Second Intifada in 2004.
3. Interviews with Ministry of Foreign Affairs and Ministry of Industry, Trade and Labour (March 2011).
4. Interviews with the senior officials responsible for managing the consultation, Ministry of Finance (September 2010).
5. *Ibid.*
6. *Ibid.*
7. Interviews with the senior officials, Ministry of Industry, Trade and Labour (March 2011).
8. Interview with chief legal advisor of the Israel Data Protection Agency, Ministry of Justice (March 2011).
9. The criteria are based on Article 121(1) of the ECT.

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