

The Coproduction of Primary and Secondary Legislation: Israel as a Case Study of Substitutive Relationships

NIR KOSTI and DAVID LEVI-FAUR

Much has been written since the early 1980s about the costs of regulation and the various ways to curb them, but thus far no one has examined empirically the rise or decline of other forms of legislation, mainly primary legislation, in the context of the “war on regulation.” This article examines the extent to which the decline in the rate of production of secondary legislation in Israel since 1985 has been driven by changes in the rate of production of primary legislation. Using an original longitudinal data set, we count, codify various dimensions, and compare the type and length of primary and secondary legislations and the number of delegated provisions that primary legislations contain. We find that the relationship between primary and secondary legislation is not hierarchic, as one might have expected, but has become partially substitutive. The decline in the rate of production of secondary legislation in Israel is, perhaps paradoxically, associated with the rise of primary legislation. This opens a new research agenda on the relationships between primary and secondary legislation that goes well beyond the Israeli case.

The war on regulation is a popular topic among right-wing politicians. Its origins date back at least to the presidency of Ronald Reagan in the US in the early 1980s. Four decades later, the antiregulation agenda is still a widely popular issue for right-wing parties and politicians all over the world (Rabin 1986; Polk et al. 2017; Adam et al. 2019; Norris and Inglehart 2019). US President Donald Trump signed an executive order in January of 2017 requiring federal agencies to remove two existing regulations for every new regulation they produce (Lam 2017). Canada, to take another example, has adopted the Red Tape Reduction Act (2015), which requires regulators to remove an existing regulation whenever they introduce a new regulation that imposes an administrative burden on business (Jones 2015). In Israel, Prime Minister Benjamin Netanyahu, framing regulation as “excessive” and “hasty,” promoted a cabinet decision in 2014 that called for a 25 percent reduction of government regulations and the bureaucracy (Prime Minister’s Office 2015a, 2015b). Though not exhaustive, these examples demonstrate how the current “war on regulation” has been pursuing aggressive regulatory rollback.

This research was supported by the following Israeli Science Foundation Grants: ISF 324/2018, and 1029/2015. We would like to acknowledge comments and useful suggestions by David M. Driesen, Guy Mor, Hanan Haber, two anonymous reviewers, and the editors of the journal.

Address correspondence to: Nir Kosti, Hebrew University of Jerusalem—Department of Political Science, Mount Scopus, Jerusalem 91905, Israel. Telephone: +972 525424395; Email: nir.kosti@mail.huji.ac.il.

Thus far, however, there has been little discussion about how governments' regulatory and legislative instruments vary across national jurisdictions that share similar attitudes toward liberalization and deregulation. Little is known about how countries differ in their regulatory production or in the legal instruments that they use to draw up regulations. The usual way to study regulatory outputs until now has been to focus on the dynamics of regulation and to explore its driving forces (see, for example, Potter and Shipan 2019). In this article, by contrast, we study the coproduction of primary legislation (laws made by legislatures) and secondary legislation (laws made by executive or regulatory agencies, usually known as regulation). By studying how these two types of legislation are produced and interact with each other, we seek to better understand how regulation grows and changes over time, and how legislation and regulation coincide (Voermans 2017).

While it is generally understood that primary and secondary legislation are highly interrelated, explanations for the growth of primary legislation and for the growth of secondary legislation have rarely taken each other into account (but see Jakobsen and Mortensen 2015; Yackee and Yackee 2016; Adam, Knill, and Fernandez-i-Marín 2017). To the best of our knowledge, no one thus far has empirically studied the question of how the dynamics of secondary legislation (or regulation) respond to the dynamics of primary legislation. Previous works in legislative studies have examined how the production of primary legislation relates to the functions, performance, and behavior of parliament (Blondel 1970; Döring 1995; Tsebelis 1999; Arter 2006). Divided government literature sees law production, especially the production of "important laws," as an indicator of institutional gridlock (Mayhew 1991; Howell et al. 2000). The Comparative Agendas Project (CAP) literature uses primary legislation production mainly as a proxy for legislative agenda or policy change (Jones and Baumgartner 2005; Bevan and Jennings 2014). In addition, the rule-making literature largely does not take primary legislation into account in its studies of the determinants and dynamics of secondary legislation (Kerwin and Furlong 1992; Kerwin 2010; Sant'Ambrogio 2011; Lavertu and Yackee 2014).

To study the coproduction of primary and secondary legislation, we draw on official reports of rule-making activities (gazettes) in Israel, making it possible, for the first time, to conduct a quantitative exploration of the relationship between them. The annual production of regulations in Israel increased between 1948 and 1984, but since 1985 it has sharply declined. Shortly after this decline began, the annual production of laws and amendments to laws started to rise. Hence, we seek to understand to what extent the decline in the annual production of regulations in Israel since 1985 has been driven by changes in the production of laws, while also examining alternative hypotheses. The Israeli case may be exceptional (this remains to be assessed), but the issues around the dynamics of, relationships between, and functions of primary and secondary legislation have for far too long been at the margin of the regulation and governance literature.

To clarify, we treat the Israeli case as an exploratory case study in order to open a research agenda for others; at the same time, we challenge the current tradition of research where legislative instruments are studied separately. The surprising findings about the substitutive relationships between primary and secondary legislation in Israel suggest that cross-national comparisons should also take into account the different national traditions in the coproduction of primary and secondary legislation. The comparative numbers that we show in the next part—from nine additional countries—illustrate the existence of different relationships between primary and secondary legislation. However, more research on this topic is required before the association between primary and secondary legislation can be more clearly understood.

Despite the exploratory nature of this study, in studying the coproduction of primary and secondary legislation, we aim to make three contributions. First, we aim to provide a better understanding of the division of labor between primary and secondary legislation, one that largely captures and signifies the division of labor between legislatures and bureaucracies. The cross-national differences reflect the different ways in which similar countries govern and are governed; these differences have not been captured and analyzed thus far. Second, there is a general lack of research on the agenda, content, and volume of states' annual and cumulative production of primary and secondary legislation. This article therefore sheds new light, both empirically and theoretically, on regulatory governance and the regulatory state. Third, this study develops methods of codifying and analyzing regulatory and legislative texts that can serve well beyond the present research.

The remainder of the article is structured in four parts. Part I provides an overview of primary and secondary legislation as legislative instruments, using innovative data sets of their production in ten countries. It then presents the case of Israel and raises six possible explanations for the decline of secondary legislation in Israel since 1985, considering the relationship between primary and secondary legislation, their respective lengths, and other characteristics of either one or both. Part II describes the methodology, dealing with both the process of data collection and the measurements. Part III then presents our findings, emphasizing especially the substitutive relationship between primary and secondary legislation in Israel. Part IV concludes, suggesting that the study of the coproduction of primary and secondary legislation provides new insights well beyond the case of Israel.

I. THEORETICAL FRAMEWORK AND HYPOTHESES

A. THEORETICAL BACKGROUND

Democracies generally distinguish carefully between two major legislative instruments: primary and secondary legislation (Blondel 1970; Page 2001, 2012, 2016; Taggart 2005). This distinction is accompanied by different legislative procedures; different national divisions of labor between the two instruments; multiple ways in which the law is used in policymaking; and different systems of control and accountability, and therefore multiple sources of state and legal legitimacy. Primary legislation is generally considered the most important and highest form of legislation. It is created by legislatures via the direct or indirect activity of elected politicians and is expected to define basic norms, frame major policy decisions, and provide guidance and authorization for further legislation via secondary instruments. At the same time, secondary, subordinated, or delegated legislation comprises most of the legislative activity of contemporary democracies and is meant to provide the details of implementation.

The production of primary and secondary legislation varies significantly across nations, reflecting persistent national traditions (see Table 1). These national traditions open a new window into the phenomenon of legalization, understood here as the process whereby the social, the political, and the economic are increasingly shaped by the intensive use of law in its various forms (Sutton et al. 1994; Abbott et al. 2000; Kahler 2000).

The original data sets of primary and secondary legislation that we collected reveal remarkable differences in the way in which different countries use these two kinds of legislation. Some countries produce more primary legislation than do other countries. For example, the Riksdag (Swedish Parliament) passed nearly 600 statutes annually between 1999 and 2016, while the Storting (Norwegian Parliament) legislated only 20 acts per

Table 1. Descriptive Statistics of Primary and Secondary Legislation in Ten Countries* ¹²

		Mean	Median	SD	Min.	Max.	Ratio**	Years
Israel	Secondary	750	742	186	139	1,199	9	1948–2017
	Primary	96	80	42	40	240		
Ireland	Secondary	441	389	163	239	924	12	1948–2015
	Primary	38	38	8	23	66		
UK	Secondary	948	872	348	325	1,747	19	1949–2014
	Primary	57	59	18	23	98		
Australia	Secondary	858	403	1,211	78	4,790	5	1949–2016
	Primary	147	149	43	70	263		
US	Secondary	4,760	4,416	1,207	3,410	7,745	23	1976–2016
	Primary	254	240	107	72	471		
Spain	Secondary	1,007	896	322	543	1,807	18	1979–2013
	Primary	63	62	22	18	123		
Germany	Secondary	724	786	250	122	1,168	5	1950–2016
	Primary	154	153	51	54	276		
Denmark	Secondary	1,084	1,091	220	739	1,520	5	1988–2016
	Primary	207	211	41	114	270		
Norway	Secondary	1,405	1,389	135	1,137	1,607	81	2001–2016
	Primary	20	18	9	8	39		
Sweden	Secondary	794	791	124	597	1,017	1	1999–2016
	Primary	594	584	155	385	1,040		

*Clarification and information about the data collection and sources can be found in Appendix A and Table A1.

**Annual production of secondary legislation divided by annual production of primary legislation (rounded values).

year from 2001 to 2016. Countries also vary in their production of secondary legislation. While the US produced approximately 4,750 regulations annually between 1976 and 2014, Ireland issued only 440 secondary legislations annually between 1948 and 2015. Additionally, countries exhibit differences in the ratio between primary legislation and secondary legislation (number of secondary legislations per primary legislation). In the UK, the ratio has been 1:19 on average (for the past sixty-seven years), while in Germany the mean ratio has been 1:5 for the same period. These differences are even more striking given that the polities concerned have similar legal origins and similar attitudes regarding liberalization and deregulation.

Surprisingly, thus far these differences have not been addressed in the literature. Since primary and secondary legislation are increasingly being used as means to transform and engineer society, this is not a trivial omission. The current literature provides several explanations for the delegation of legislative powers by legislatures to executives, and for the legislative division of labor between primary and secondary legislation.

The first set of explanations focuses on the expansion of the state's roles and services, asserting that the rise of the modern machinery of the state, the expectations of citizens and organized groups, and the complexity of social and economic life have all led to a growing demand for laws. In these accounts, legislatures may transfer legislative activities to executives because they are unable to deal effectively with the rising workload associated with lawmaking (Miers and Page 1982; Croley 1998; Page 2001; Taggart 2005; Slapper and Kelly 2012).

A second set of explanations emphasizes the flexibility of the regulatory process and the expertise needed to justify delegation. Producing secondary legislation is less time consuming than producing primary legislation, and when unforeseen matters, crises, or emergencies occur, a quick legislative response is required (Miers and Page 1982; Baldwin 1995; Page

2001; Taggart 2005; Slapper and Kelly 2012). Furthermore, legislative power is delegated to bureaucracies because bureaucrats often possess more necessary expertise in legislation than their parliamentary counterparts (Baldwin 1995; Kerwin 2010; Slapper and Kelly 2012).

While these two subsets of the literature explain legislative growth by referring to preferences for secondary legislation over primary legislation, a third set of explanations emphasizes the historical division of labor between the executive and legislative branches. The formal and constitutional constraints on the authority of the executive reflect different democratic cultures as well as cross-national differences in the power of the legislative and executive branches. The preference for one instrument over another is therefore historical, and distinctly national.

However, according to a fourth set of explanations, the two legislative instruments are bound to grow together, but there will always be conflicts over power and the proper division of labor between primary and secondary legislation. Conflicts over power is a theme also emphasized by the public choice literature, which shows that legislators delegate legislative powers to avoid blame from their constituents' preferences, to "pass the buck" and avoid taking responsibility for the consequences of their legislation, and to satisfy special interest groups (Frickey and Farber 1991).

B. THE CASE OF ISRAEL

Long before Israeli Prime Minister Netanyahu began to condemn the use of regulation, the annual rate of growth of secondary legislation in Israel had already begun to decline. More specifically, the annual output of secondary legislation has declined considerably since 1985 (Figure 1), which is widely considered to mark a turning point in the Israeli political economy toward a neoliberal economic order (Maron and Shalev 2017; Mandelkern and Paz-Fuchs 2018). From 1950 (two years after the state's establishment) to 1984, an aggregate of 26,649 secondary legislations were issued in Israel. If the same rate of growth had continued after 1985, the estimated aggregate number of secondary legislations between 1985 and 2017 would have been 83,818—three times more than the actual number. Does this represent a big gain for Israeli politics, economy, and society? Proof of the power and effects of neoliberalism? We doubt it.

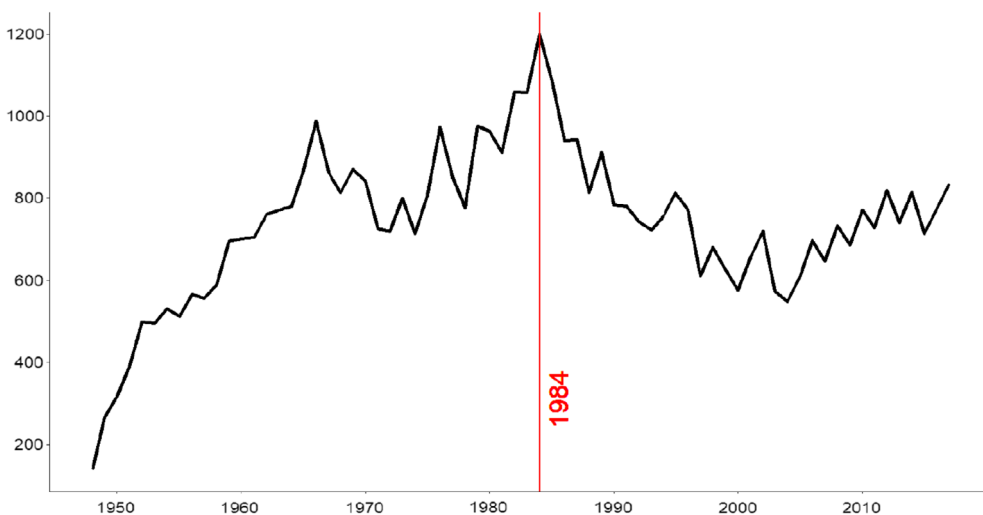


Figure 1. Annual Production of Secondary Legislation, 1948–2017.

Source: authors' data set.

Surprisingly, at approximately the same time that the production of secondary legislation in Israel began to decline, the annual rate of production of primary legislation began to increase (Figure 2). This decline is puzzling if one takes seriously the theory of democratic legislation according to which the relationship between primary and secondary legislation is hierarchical (Kelsen 1967). That theory suggests that since both the legislative and the executive branches share the legislative function in modern democracies, there is a division of labor between them and consequently between primary and secondary legislation. It has commonly been assumed that the majority in parliament frames and outlines policies through primary legislation, whereas the executive branch provides the details of implementation through secondary legislation. It might therefore be hypothesized that the more primary legislation is produced, the more the production of secondary legislation is likely to grow. What drives the production of less secondary legislation, therefore, is assumed to be limited legislative activity by the legislative branch.

In the context of the “war on regulation,” it is plausible that right-wing governments will be reluctant to engage in governmental intervention and will be opposed to many kinds of legislative activity (Blais, Blake, and Dion 1993). Thus, less primary legislation and subsequently less secondary legislation might be expected. But is this really the case? Unfortunately, far too little attention has been paid to these questions, mainly due to the failure of cross-national, cross-temporal studies to address the issue. Indeed, the capacity to conceptualize, collect, and distinguish various sources of law and regulation across many countries over time is generally weak. Our first foray into the issue, based on data collection over time and across ten countries, suggests that the nominal adherence to the theory of the hierarchical relationship between the legislative and executive branches conceals widely different legislative practices—and these differences are not getting narrower over time.

C. HYPOTHESES

As noted above, the existing literature has not critically examined the relations between primary and secondary legislation. The assumption of hierarchical relations is deeply entrenched in the literature, the textbooks, and the theory of democracy more generally.

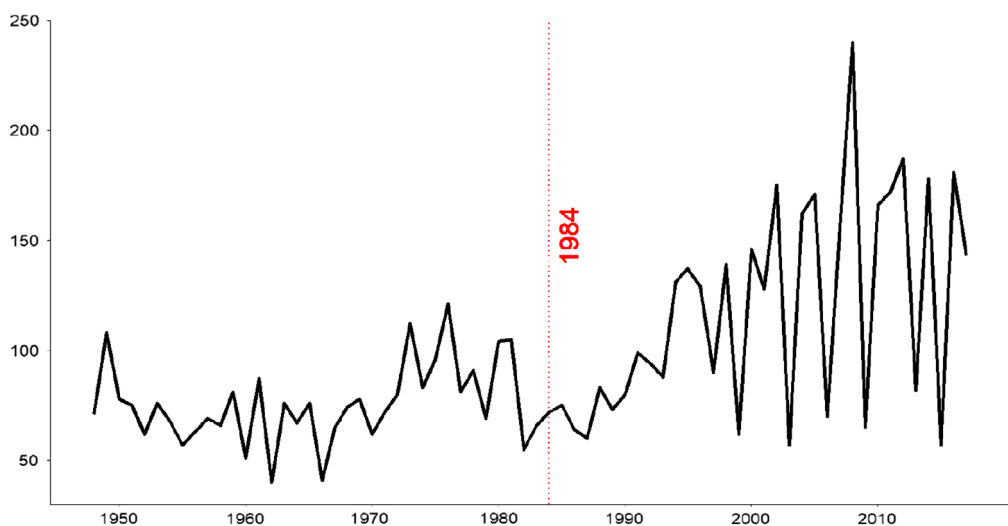


Figure 2. Annual Production of Primary Legislation, 1948–2017.¹¹

Source: authors' data set.

Our suggestion is that the Israeli case raises the possibility that the relationship is substitutive rather than hierarchical. The Israeli legal process has become much more inclined toward primary legislation than it was before the 1990s. At the same time, in certain years, there has been much less reliance on secondary legislation. Of course, other countries may prefer to use secondary over primary legislation. Such preferences can also be seen at the level of specification, issue area, or regulatory regime. Whatever the level of variation, it reflects choices and a preference for one of the main tools of legislation. This choice and agency have rarely been recognized in the literature. To examine the substitutive relationship argument, we will assess the dynamics of coproduction across the two periods and over the years 1948–2017. We will count and compare the share of secondary legislation with respect to primary legislation across the two periods; we will sample the delegation provisions in the primary legislation, compare private and governmental legislation, count the number of pages of the two types of legislation and how they change, and finally classify and compare the agendas of the two types of legislation. The extent to which primary legislation in Israel substitutes for secondary legislation is formalized in six hypotheses.

The first hypothesis explores the number and percentage of primary legislations without secondary legislations in the two periods. Since primary legislations come into force through secondary legislations, the production of the latter is assumed to complement the production of primary legislation (either new or amendments). This means that the production of primary and secondary legislation is thought to be positively correlated, as the production of primary legislation is expected to dictate the production of secondary legislation (Karpen 2012). Hence the first hypothesis is

H1: *The decline in the annual production of secondary legislation in Israel since 1985 has been driven by an increase in the share of new primary legislation without secondary legislation.*

The second hypothesis looks at the number of secondary legislations per new primary legislation over the two periods. Primary legislations vary in the number of secondary legislations they produce (Yackee and Yackee 2016). Some primary legislations create more secondary legislations, while others create fewer. Consequently, another possible reason for the decline in Israeli secondary legislations is that new primary legislations that have created secondary legislations since 1985 have produced fewer secondary legislations as compared to earlier primary legislations. Hence,:

H2: *The decline in the annual production of secondary legislations in Israel since 1985 has been driven by a reduction in the number of secondary legislations per new primary legislation.*

The third hypothesis goes beyond the mere number of legislations and examines the number of delegation provisions in each period. The distinction between legislatures and bureaucracies, and between primary and secondary legislation, creates a “legislative division of labor” in which legislatures are supposed to provide broad outlines and the essence of public policy while bureaucracies are required to provide the details of implementation. However, interpretation and implantation involve the intense use of secondary legislation, which is made possible by widespread delegations of legislative powers. In fact, delegation has become an essential need for the functioning of modern states in order to handle the level of detail needed for the

regulation of public services (Page 2001). This means that the production of secondary legislation follows the number of delegated provisions within primary legislation. Hence,

H3: *The decline in the annual production of secondary legislations in Israel since 1985 has been driven by a decrease in the number of delegation provisions in primary legislation across the two periods.*

The fourth hypothesis examines the decrease in the rate of growth of secondary legislation since the 1980s by looking at the relationship between private and governmental bills. Private members' bills, unlike governmental bills, could be enacted by members of parliament as political statements rather than for the purpose of implementing policy outlines. Today, Israel exemplifies an extreme case in the initiation and adoption of private member bills (Maor 2008; Friedberg 2014). Thousands of private member bills are submitted by Knesset members every year. According to the National Legislation Database (NLD) on the Knesset website, Knesset members initiated 41.7 percent of all primary legislation enacted between 1985 and 2009, as compared to only 13.8 percent between 1960 and 1984. It has been argued that one of the main reasons for the rise in private primary legislation in Israel is that intraparty elections incentivize members of the Knesset to act individually and not as part of a group (Hazan 1997). As a result, the enactment of primary legislation by politicians is seen as an indicator of their parliamentary successes, even if they do not bring about actual policy outcomes (for example, by their implementation). Hence,

H4: *The decline in the annual production of secondary legislation in Israel since 1985 is associated with an increased amount of private primary legislation, which does not yield secondary legislation to the same extent as governmental primary legislation.*

The fifth hypothesis focuses on the possibility that substitutive relations between the two forms of legislation are also expressed in the respective lengths of the two instruments. When a primary legislation (or amendments to a primary legislation) replaces secondary legislations, it must provide the details of implementation that are often prescribed in secondary legislations. This could be the case when politicians try to restrain the power of the bureaucracy by enacting very precise and detailed laws that leave little room, if any, for the executive branch to exercise discretion (Huber and Shipan 2002). When primary legislations are used to both outline policies and provide the details of implementation, they may become longer while secondary legislations become shorter. Hence,

H5: *The decline in the annual production of secondary legislations in Israel since 1985 has been driven by an increase in the length of primary legislations and a decrease in the length of secondary legislations.*

Finally, the sixth hypothesis focuses on changes in the topics dealt with by these two types of legislation. More specifically, the decline in the production of secondary legislation could also be a function of changes in the policy agendas of primary legislation. The relationship between primary and secondary legislation is supposed to reflect the supremacy of parliaments. In the context of Israel, the decline in secondary legislation since 1985 could be the result of decreasing attention to policy areas that were high on the primary legislation agenda before, but not after, 1985. Hence,

H6: *The decline in the annual production of secondary legislation in Israel since 1985 has been driven by changes in the primary legislation agenda.*

Taken together, the six hypotheses can allow us to assess the extent to which the relationship between primary and secondary legislation in Israel after 1985 has become more substitutive than in the past, thereby explaining both the decline in the annual growth of secondary legislation and the rise in the annual growth of primary legislation.

II. METHODOLOGY

Longitudinal and quantitative approaches to the study of rulemaking have some important limitations. Counting the number of primary and secondary legislations is fundamentally different than tallying up fiscal expenditures. Unlike fiscal expenditures, the units in legislative outputs are not all equivalent. Some rules have wider implications than others: some target businesses, others target the government itself; some have to do with highly contentious issues, while others are mundane or even trivial. Yet differences in the propensities to use primary and secondary legislation reflect variation in the ways public policies are legalized. National variation in legalization needs to be understood through the distinction between primary and secondary legislation, the two primary legislative instruments of democratic countries.

A. DATA COLLECTION

The data set of Israeli secondary legislations (*Takkanot Mishne*)¹ is based on the Israeli *Kovetz Hatakanot*, which is published regularly in the Israeli official gazette (*Reshumot*).² Each collection (*Kovetz*) contains between one and several secondary legislations, including bylaws, orders, instructions, proclamations, notices, and rules. The data set of Israeli primary legislation production includes a numbered list of primary laws published in the Israeli *Sefer Hahukim*, which is also part of Israel's official gazette. It contains new and amending primary legislations and excludes indirect amendments to them.³

B. RESEARCH PERIOD

We distinguished between two periods: 1960–1984 and 1985–2009. The cutoff year 1985 is conventionally considered to be a turning point in the Israeli political economy. Since the mid-1980s, Israel has experienced far-reaching changes in its political system, including fragmentation and personalization, as well as political-economic transformations from an “illiberal” to a globalized and liberalized market economy (Mandelkern and Paz-Fuchs 2018). Second, and more importantly, the number of secondary legislations started to decline beginning in 1985 after more than three decades of growth. Since this article seeks to understand whether the decline in secondary legislation since 1985 has been driven by the production of primary legislation, the opposite dynamics of secondary legislation in both periods allow for a comprehensive study of their mutual relationships.

New primary legislations legislated during 1960–2009 were connected to their corresponding secondary legislations through 2017. This allowed us to create a comparative data set of these primary legislations and their “descendant” secondary legislations for at least eight years following their production (there is a difference of eight

years between 2009 and 2017). The number of secondary legislations that these primary legislations spawned is 23,953 out of 46,132 secondary legislations (51.9 percent) issued from 1960 to 2017. These primary legislations and secondary legislations were further studied by considering the number of primary legislations with secondary legislations, the number of secondary legislations per primary legislation, the number of delegated provisions, and the types of primary legislations (governmental/private). The remaining secondary legislations in this set were enabled by primary legislations enacted before 1960 or by other secondary legislations. These were studied by focusing on the lengths and policy agendas of both primary and secondary legislations across the entire research period.

C. CLASSIFICATIONS AND MEASUREMENT

Primary legislations with secondary legislations, and number of secondary legislations per primary legislation. New primary legislations were distinguished from amending primary legislations. Amending primary legislations were classified according to their titles, since they are indicated by the inclusion of the word “amendment” (*Tikun*) in brackets within the primary legislation’s title. In some cases, however, the classification of new primary legislations was difficult. For example, many pieces of legislation are temporary (“sunset”) legislations, which are “laws (or statutory provisions within laws) enacted for a limited amount of time, after which they expire unless their validity is extended” (Bar-Siman-Tov 2018, 2). In such cases, we referred to temporary legislations as new if they did not carry a name similar to any previous primary legislation. When they did, they were classified as amendments. In other cases, pieces of legislation were also classified as amendments if they were used to extend emergency secondary legislations or Mandate ordinances (legislation issued during the British Mandate that became part of the Israeli legal system when the state was established). Overall, the number of new primary legislations enacted between 1960 and 2009 was 988, which represents 21 percent of all 4,698 primary legislations enacted by the Knesset in this period. The remaining 3,710 (79 percent) were amending primary legislations.

We then connected approximately 45,000 secondary legislations issued from 1960 to 2017 to their enabling primary legislations. Since most collections of secondary legislation were too degraded to be read by automatic software, we performed this task manually by reading every piece of secondary legislation issued between 1960 and 2017 and specifying its enabling primary legislation.⁴ To ease the process, the data were organized by titles and document numbers, since many secondary legislations have similar names and enabling primary legislations. In such cases, we sampled several secondary legislations to ensure that they were enabled by the same primary legislations. This process allowed us to calculate the number of secondary legislations for each new primary legislation legislated between 1960 and 2009. If a secondary legislation had more than one enabling primary legislation, only the first was considered. In order to compare old and new primary legislations, we calculated the number of secondary legislations yielded by primary legislations within an eight-year period. In addition, we calculated the number of primary legislations with secondary legislations—that is, the number of primary legislations with at least one secondary legislation that appeared during the period under study.

Length of primary and secondary legislation. This was measured by the number of pages for each year between 1960 and 2009. Although word count might be the most accurate proxy for the length of primary and secondary legislations (Huber and Shipan 2002; Jakobsen and Mortensen 2016; Kaufmann and van Witteloostuijn 2016), the quality of

the digitization of Israeli primary and secondary legislations did not permit such an analysis. The Israeli official gazette (*Reshumot*) counts the number of pages of primary and secondary legislations according to the Hebrew calendar. The number of pages in each series resets to zero every new Hebrew year. Therefore, counting the number of pages of primary and secondary legislations was done by subtracting the beginning number from the end number. Since the Hebrew calendar and the Gregorian calendar are different, we calculated the exact differences to determine the accurate number of pages according to the latter. Secondary legislation by local governments and indirect amendments of primary legislation were not counted.

Delegated provisions in primary legislation. A random sample of 223 new primary legislations (22.3 percent of the total for the period 1960–2009) was used to examine the number of delegated provisions included in each of them. Those primary legislations were randomly sampled, as 116 of them were legislated between 1960 and 1984, and 107 were legislated between 1985 and 2009. Delegated provisions were counted as each permission or instruction for action directed to ministers and officials in ministries. Mandatory delegated provisions were not distinguished from optional ones.

Governmental and private legislation. A random sample of 255 new primary legislations (approximately 25 percent of the total for the period 1960–2009) was used to examine the number of secondary legislations issued eight years following the legislation of either private members' or governmental laws. The classification of each legislation according to its type of bill (either private members' or governmental) was done using the Israeli National Legislation Database on the Knesset's website.

Policy agendas of primary and secondary legislation. Legislations were coded according to their policy agendas by reading the title of each legislation and assigning a policy topic to it. Codification was based on the Comparative Agendas Project Master Codebook (for more details, see Bevan 2019). Each item was assigned to one of twenty-one policy topics, such as macroeconomics, transportation, or health (see Table 2). Two independent coders coded a random sample of 6,616 secondary legislations issued between 1960 and 2009 as well as all 4,692 primary legislations enacted during this period. For secondary legislation, we used systematic sampling ($k = 6$), which represented 16.5 percent of all secondary legislations issued between 1960 and 2009. We then calculated the approximate number of secondary legislations in all policy areas for every year and both periods (1960–1984 and 1985–2009), and compared the policy agendas of both primary and secondary legislation in the two periods. Both coders coded all the units included in the analysis, and their results were compared. Where disagreement arose over any classification, the coders discussed and decided on a single code.

III. FINDINGS AND ANALYSIS

Exploring the substitutive relations between primary and secondary legislation via the above six hypotheses provides some significant support to the argument that the dynamics of the two are highly interrelated. Still, and as will be clear from the findings, two of the six hypotheses are not as supportive as the others and go partly or fully against our assertion.

A. EXPANSION OF NEW PRIMARY LEGISLATION WITHOUT SECONDARY LEGISLATION

The number of new primary legislations that either have or do not have secondary legislations reveals significant differences between the two periods [H1]. There were 290 new

Table 2. Israeli Legislative Policy Agendas (by Topics), 1960–2009

	Secondary Legislations*			Primary Legislations		
	1960–1984	1985–2009	Gap/Percent Change	1960–1984	1985–2009	Gap/Percent Change
Macroeconomics	5,317	4,556	761 (-14%)	394	337	57 (-14%)
Civil Rights	24	97	-73 (299%)	13	74	-61 (469%)
Health	467	491	-24 (5%)	40	99	-59 (148%)
Agriculture	1,331	724	607 (-46%)	26	42	-16 (62%)
Labor and Employment	601	566	35 (-6%)	86	134	-48 (56%)
Education	121	103	18 (-14%)	56	68	-12 (21%)
Environment	235	247	-12 (5%)	16	35	-19 (119%)
Energy	72	394	-322 (448%)	7	24	-17 (243%)
Immigration	96	94	2 (-2%)	3	0	3 (-100%)
Transportation	1,882	1,865	17 (-1%)	65	98	-33 (51%)
Law and Crime	1,368	1,699	-331 (24%)	310	420	-110 (35%)
Social Welfare	883	724	159 (-18%)	106	178	-72 (68%)
Housing	328	1,065	-737 (224%)	48	100	-52 (108%)
Banking and Commerce	3,928	1,882	2,045 (-52%)	160	244	-84 (53%)
Defense	680	550	130 (-19%)	144	176	-32 (22%)
Telecommunication	234	580	-346 (147%)	21	69	-48 (229%)
Foreign Trade	1,083	215	868 (-80%)	14	15	-1 (7%)
International Relations	95	137	-42 (44%)	18	22	-4 (22%)
Government Operations	1,695	1,804	-109 (6%)	331	544	-213 (64%)
Public Lands	1,016	592	424 (-42%)	64	80	-16 (25%)
Culture	42	49	-7 (16%)	1	11	-10 (1,000%)

*Estimated number of secondary legislations, based on a sample. For more details, see Part II.

primary legislations with secondary legislations between 1960 and 1984, but only 230 between 1985 and 2009.⁵ And while only 172 new primary legislations did not yield any secondary legislations between 1960 and 1985, 296 new primary legislations did not produce any secondary legislations in the second period of 1985–2009. This seems to confirm the substitutive relationship between the two. Still, as can be seen in Figure 3, the growth in the number of new primary legislations without secondary legislation only started during the 1990s and was especially apparent during the 2000s. Until the 1990s, the annual percentage of all new primary legislation that did not yield any secondary legislation ranged between 30 and 43 percent. The change in the number of primary legislations without secondary legislation during the 1990s reflects an increase both in their absolute number, which doubled, and in their percentage (a range of 48–66 percent per year).

B. FEWER SECONDARY LEGISLATIONS PER PRIMARY LEGISLATION SINCE 1985

An analysis of the number of secondary legislations per new primary legislation shows different propensities of primary legislations to create secondary legislations in the two periods [H2]. We decided to examine the number of secondary legislations per primary legislation during an eight-year period following enactment to allow comparison of the data in different periods. Although the findings show fluctuations (Figure 4), primary legislations enacted between 1960 and 1984 yielded altogether 5,483 secondary legislations within a period of eight years following enactment, while primary legislations enacted during between 1985 and 2009 created only 3,555 secondary legislations within the same period. In other words, the number of secondary legislations per new primary legislation enacted in the former period was 11.5, while new primary legislations enacted

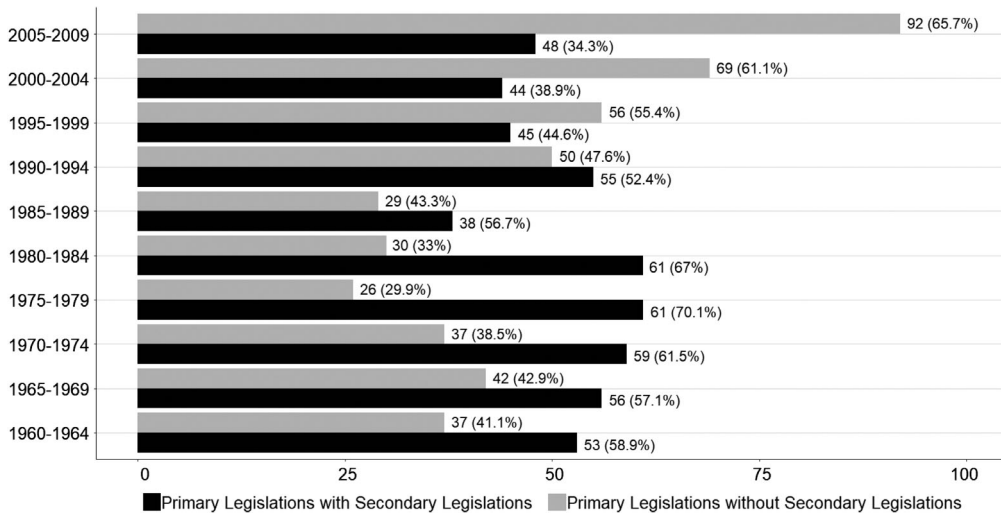


Figure 3. Number of New Primary Legislations with Secondary Legislations and New Primary Legislations without Secondary Legislations.

in the latter period yielded an average of only 6.8 secondary legislations. The median number of secondary legislations per new primary legislation was 1.3 in the former period as compared to 0.2 in the latter period. These differences between the median and average numbers indicate that some primary legislations in both periods yielded an enormous number of secondary legislations as compared to most primary legislations. The findings confirm the second hypothesis, while the decline in the number of secondary legislations per primary legislation also lends support to the assertion of substitutive relations between primary and secondary legislation.

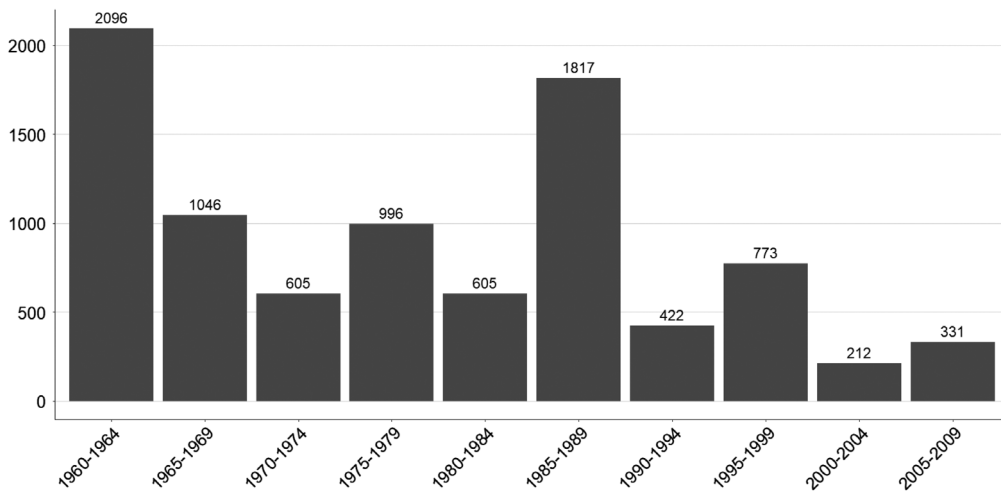


Figure 4. Number of Secondary Legislations Issued Eight Years Following the Enactment of Primary Legislations, 1960–2009.

C. DELEGATED PROVISIONS

For the third hypothesis, an analysis of the number of delegated provisions in new primary legislation during the research period shows that while the number of secondary legislations decreased beginning in the 1990s, the average number of delegated provisions included in primary legislations increased (Figure 5). However, the median number of delegated provisions (2) remained constant throughout the research period. This indicates that although the number of primary legislations increased, the number of delegated provisions did not decline. Therefore, fewer delegated provisions were implemented or used in new primary legislation from 1985 to 2009 than during the years prior to 1985 [H3]. Overall, this evidence demonstrates that the relationship between primary and secondary legislation is not only shaped by the “letter of the law” and the legislative process but is also subject to discretion through the policy process (Page 2001; Williams 2017, 2018). This could also mean that a relatively large amount of primary legislation was not implemented by secondary legislation. In other words, the decline in the annual rate of production of secondary legislation is driven by both the replacement of secondary legislation by primary legislation, as mentioned earlier, and by its level of implementation.

D. FEWER SECONDARY LEGISLATIONS BY PRIVATE LEGISLATIONS, MORE SECONDARY LEGISLATIONS BY GOVERNMENTAL LEGISLATIONS

An examination of the production of secondary legislations yielded by governmental bills as compared to private members’ bills suggests that the former produced nearly four times as many secondary legislations as the latter [H4]. Compared to the period 1960–1984, the increase in the production of primary legislation during 1985–2009 reflects an increase in private legislation. The findings reveal that of the 255 new primary legislations sampled during the research period, an average of 5.6 secondary legislations were produced within eight years following legislation of the 116 governmental primary legislations enacted between 1960 and 1984, while an average of 7.1 secondary legislations were created eight years following legislation by the 63 governmental legislations

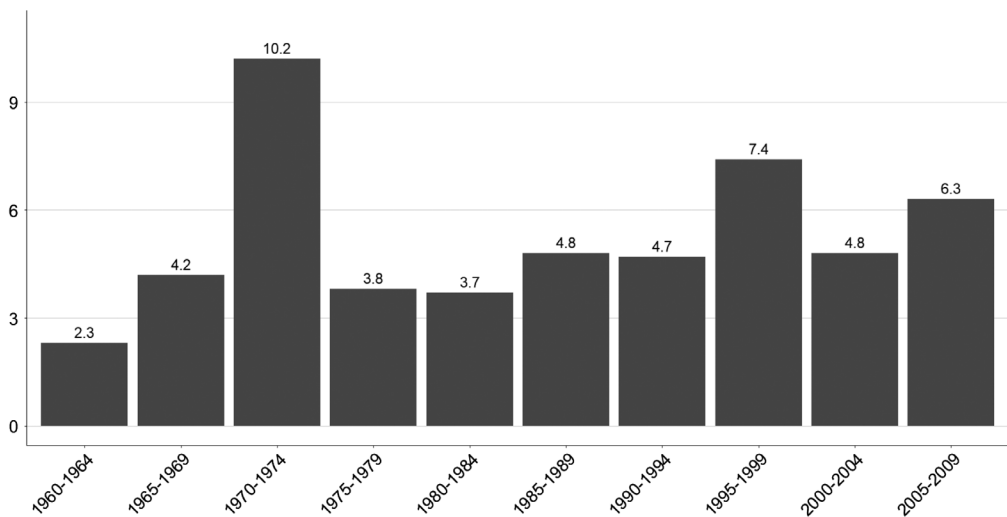


Figure 5. Mean Number of Delegated Provisions in New Primary Legislations Enacted between 1960 and 2009 (based on sample; for more details, see Part II.)

enacted between 1985 and 2009. In addition, analysis of the 11 private legislations sampled between 1960 and 1984 and the 65 private legislations enacted between 1985 and 2009 shows that in the two periods they produced 1.7 and 1.9 secondary legislations on average, respectively, eight years following legislation. It may therefore be suggested that while the number of secondary legislations per private legislation remained stable between 1960 and 2009, a large increase in their production since the 1990s can explain why the growth in the production of primary legislation did not lead to a subsequent increase in the production of secondary legislation. Private legislation, as shown, does not yield as much secondary legislation as does governmental legislation. This means that private legislation either replaces secondary legislations or has different characteristics than governmental legislation. The hypothesis is therefore partially confirmed.

E. LENGTH OF PRIMARY AND SECONDARY LEGISLATIONS

An examination of the length of all primary and secondary legislations by the number of pages shows large differences in their level of detail [H5]. As shown in Figure 6, the length of both primary and secondary legislations has changed dramatically over the years. In fact, the average annual length of primary legislations between 1960 and 1984 was 240 pages, while from 1985 to 2009 it was 357. This increase in the length of laws can be attributed, among other things, to the use of omnibus legislation since 1985 (Kosti, Shpizman, and Levi-Faur 2019). Furthermore, the average annual number of pages of secondary legislations reached 2,292 between 1960 and 1984, while the annual number of pages between 1985 and 2009 was only 1,322. The increase in the length of primary legislations is especially apparent from 1995 onward. These findings suggest that primary legislations have become progressively more detailed over time, whereas secondary legislations have become shorter. Therefore, the substitutive relations assertion is confirmed. Some primary legislations replaced secondary legislations, providing both policy outlines and the details of implementation that are usually prescribed in secondary legislations.

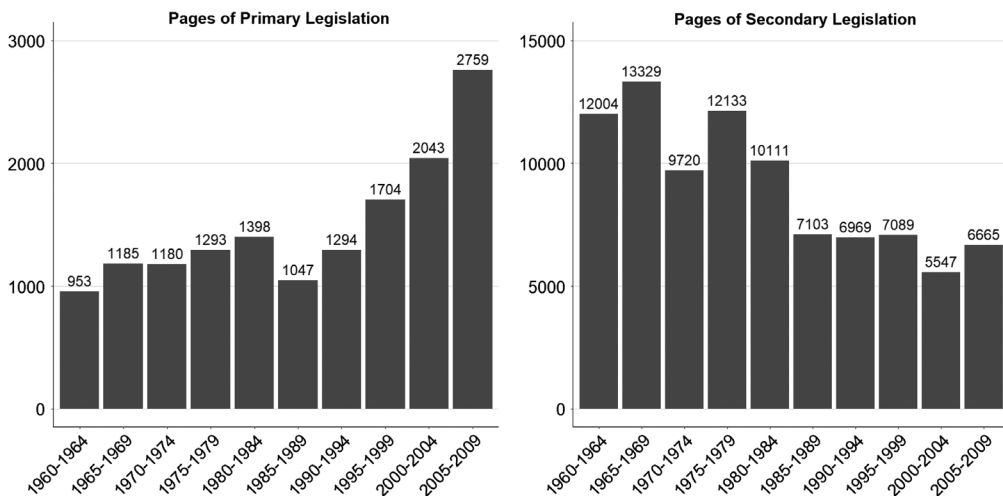


Figure 6. Annual Number Pages of Primary and Secondary Legislation, 1960–2009.

F. POLICY AGENDAS OF PRIMARY AND SECONDARY LEGISLATIONS

An examination of the Israeli legislative agenda demonstrates that the decline in secondary legislation occurred primarily in five policy areas [H6]. As shown in Table 2 (and Figure B.2 in Appendix B), economic secondary legislations dealing with macroeconomics, banking, commerce, and foreign trade exhibited the most significant decline between both periods. In the first period, they comprised nearly 50 percent of the secondary legislation agenda, as compared to only 35 percent in the second period. The decline in banking, commerce, and foreign trade secondary legislation was accompanied by an increase in secondary legislation in other policy areas. Secondary legislation concerning agriculture and public lands also underwent a significant decline between the two periods. Can the decline in these issue areas be explained by more attention being paid to them in primary legislation? Primary legislation substitutes for secondary legislation when there is no congruence between their policy agendas and, more specifically, when the salience of the issue area in primary legislation does not correspond with the prominence of the same issue area in secondary legislation.

As shown, primary legislation concerning macroeconomics declined between the first and second periods, and in both periods the decline in both primary and secondary legislation concerning macroeconomics was 14 percent (Table 2 and Figure B.3 in Appendix B). However, this is clearly not the case for the other four policy areas, which demonstrated either growth or stability in their primary legislation production. While the number of secondary legislations concerning agriculture declined by 46 percent between the periods, the number of primary legislations related to agricultural issues increased by 62 percent. Similarly, secondary legislation concerning banking and commerce declined by 52 percent during the two periods, whereas the number of corresponding primary legislations increased by nearly the same percentage. Public lands secondary legislation decreased by 41 percent between 1960–1984 and 1985–2009, but primary legislations dealing with those issues increased by 25 percent. Finally, the number of foreign trade secondary legislations decreased by 80 percent between the two periods, whereas the number of foreign trade primary legislations remained constant.

However, the number of secondary legislations grew significantly in other policy areas, including civil rights, energy, law and crime, housing, telecommunications, and government operations. In fact, in nine of twenty-one topics, an increase in the saliency of an issue area in the primary legislation's policy agenda did not lead to any greater attention to the issue area in the secondary legislation's policy agenda. In these policy areas, the production of primary legislation increased significantly as well. Additionally, in other policy areas, such as health, civil rights, labor and employment, education, environment, transportation, social welfare, and defense, the production of primary legislation grew less significantly, while the number of secondary legislations decreased. In other words, the decline in the production of secondary legislation was not necessarily driven by changes in primary legislation agendas. As in some issue areas there are opposite trends, the hypothesis is therefore partially confirmed.

G. SUMMARY OF FINDINGS

The empirical analysis suggests that the decline in the rate of production of secondary legislation in Israel since 1985 has been driven in large part by changes in the production of primary legislation. The relationship between primary and secondary legislation has become partially substitutive since 1985 and more clearly so since the early 1990s. We find that the reliance on primary legislation explains significant parts of the decline in

the annual growth rate of secondary legislation since the mid-1980s. The findings show that since 1985, and more strikingly since the early 1990s, the number of new primary legislations with secondary legislations declined as well as the number of secondary legislations produced per primary legislation. Consequently, the average ratio of secondary to primary regulation declined, suggesting that the Israeli political–legal–administrative system has become more dependent on primary legislation.

In addition, the substitution of primary for secondary legislation is also evidenced by their lengths. New primary legislations have become longer and more detailed while secondary legislations have become shorter. This means, among other things, that primary legislation has come to provide the details of implementation that previously had been prescribed in secondary legislation. Additionally, to demonstrate another dimension of the substitution, we analyzed the legislative regulatory agendas and found that while various new policy areas have become more central in primary legislation, these policy areas have not drawn similar attention in the secondary legislative agenda. This leads us to conclude that since 1985 much more emphasis has been placed on the use of primary legislation, at the expense of secondary legislation. Still, not all of our findings support the substitution thesis. The analysis of the delegation provisions in governmental legislation shows that their number has in fact increased, although they give rise to fewer secondary legislations. However, the type of primary legislation has changed since the 1990s. Almost half of all legislation has originated from private members' bills, and unlike governmental legislation, this primary legislation produced a relatively small amount of secondary legislation. Therefore, although more governmental legislation has encountered an implementation gap, this is untrue for almost half of all legislation enacted in the period.

IV. DISCUSSION AND CONCLUSIONS

The main argument of this article is that the production of primary legislation can powerfully influence the production of secondary legislation. Based on an empirical analysis of the Israeli case, we found that the decline in secondary legislation since 1985 has been associated with tremendous changes in the production of primary legislation since the early 1990s. This provides us with an important opportunity to understand how changes in political economy and the “war on regulation” can affect the form of states' rules. While secondary legislation is often considered independently, perhaps based on the US system (Workman 2015), this article has shown that secondary legislation is in fact directly affected by legislatures and primary legislation. Indeed, even in presidential systems such as the one used in the US, the production of secondary legislation (labeled as regulation in the US system) still follows to some extent the production of primary legislation (i.e., acts of Congress) (Yackee and Yackee 2016). In parliamentary systems, such as the one used in Israel, the interrelations between the two are naturally stronger.

Perhaps surprisingly, this article has shown that, rather than being positively correlated, primary legislation in Israel has partially replaced secondary legislation. This result is contrary to the expectation of increasing use of secondary legislation, according to which modern regulatory states differ from their predecessors particularly in “the delegation of broad decision-making authority to a professional civil service” (Epstein and O'Halloran 1999, 1). Furthermore, this article has demonstrated that, despite the constitutional principle of the supremacy of the legislature, the norms of limited government, the idea of bottom-up and top-down “chains of delegation” (Gilardi 2008; Cafaggi 2011), and the existence of a hierarchy of norms (Kelsen 1967), the dynamics of primary and secondary legislation are not necessarily aligned with the circumstances of the contemporary “war on regulation.” New

waves of populism and an antiregulatory agenda often entail attacks on regulatory policy. However, regulation has become the “core” business of governments in recent decades, which was not the case during the wave of antiregulatory sentiment that occurred during the 1980s. Thus, the contemporary “war” should receive more scholarly attention in an attempt to understand how the state rearranges itself and functions under these new threats.

Focusing on the relationship between primary and secondary legislation, this Israeli case study exemplifies why the current tradition of research in which legislative instruments are studied separately is misleading. If the relationship between primary and secondary legislation can take different forms and shapes, as indicated by our case study, we need to further investigate how modern political systems formulate and make policies. This research therefore opens a new research agenda concerning the different national traditions of legislation and regulation. *While the literature on regulation and governance often attributes the production and expansion of regulation to private actors’* employment of nonhierarchical or less formal instruments in policymaking (Black 2001; Lobel 2004; Scott 2004; Levi-Faur 2011; Grabosky 2013), there is a scarcity of empirical evidence as to whether, and why, states’ “command and control” outputs grow or decline. This is an important topic for future study, especially because state legislation, belying the myth of the retreat of the state, has been growing continuously. As Adam, Knill, and Fernandez-i-Marín (2017, 242) put it, “The production of legally binding rules continues to be the core business of advanced democracies, today maybe even more so than 20 years ago. Consequently, rules remain the rule, not the exception.”

This article has taken a first step in this direction and has shown, for the first time, that there are national traditions concerning the use of primary and secondary legislation (Table 1). It also sheds new light on the phenomenon of legalization, which has been mainly identified with the process of juridification, in which the courts have attracted the most attention (see Blichner and Molander 2008). The increasing legalization of politics has also been reflected in the growing scholarly attention paid to the concepts of the “regulatory state” (Majone 1994, 1997; Braithwaite 2000; Moran 2003; Scott 2004; Levi-Faur 2011, 2013), “regulatory capitalism” (Levi-Faur 2005; Braithwaite 2008; Levi-Faur 2017), and the proliferation of regulatory agencies (Gilardi 2008; Jordana, Levi-Faur, and Fernandez-i-Marín 2011; Jordana, Fernández-i-Marín, and Bianculli 2018). However, legalization as a form of rule growth is still an unexplored phenomenon.

This Israeli case study therefore provides an example of how regulatory states vary in the ways in which they create public policies. Yet many questions remain unanswered at present. Despite the limitations of counting legislations (see Part III), without it the extent of US exceptionalism or the variations within similar countries within the EU would go unnoticed. In future studies, there is abundant room to investigate these diversities as well as their efficiency and democratic consequences.

NOTES

1. The most straightforward translation of the Hebrew term *Takkanot Mishne* is “subordinated regulations.”
2. Similar to the US Federal Register and the German *Das Bundesgesetzblatt*.
3. Indirect amendments are pieces of legislation that amend specific laws, following the legislation of new laws or the (direct) amendment of other laws. In such cases, either new laws or direct amendments are legislated and require further changes in existing laws.
4. Overall, each secondary legislation was connected to its enabling primary legislation, although less than ten percent of the secondary legislations issued between 1960 and 2009 had more than one enabling primary legislation.

5. The number of secondary legislations that these new primary legislations yielded refers to the period of 1960 to 2017.
6. Sharp declines are around election years. Since the production of primary legislation fluctuates drastically, Appendix B contains Figure B.1, which uses a longer timeframe.
7. The numbers reflect different determinations across nations of what has to be put in primary and secondary legislation. Variations in the volume of primary and secondary legislations across countries should be complemented by further analysis of their agenda and content over time.

NIR KOSTI is a PhD candidate at the department of Political Science at the Hebrew University of Jerusalem. His research focuses on the interplay between legislation, regulation, and comparative politics. His works examine the legislative and regulatory productivity in several countries.

DAVID LEVI-FAUR is a Professor of regulation and policy at the Department of Political Science and the Federmann School of Public Policy at the Hebrew University of Jerusalem. He is a founding editor of *Regulation & Governance*, a top journal that serves as the leading platform for the study of regulation and governance in the social sciences.

REFERENCES

- Abbott, Kenneth W., Robert O. Keohane, Andrew Moravcsik, Anne-Marie Slaughter, and Duncan Snidal. 2000. "The Concept of Legalization." *International Organization* 54 (3): 401–19.
- Adam, Christian, Steffen Hurka, Christoph Knill, and Yves Steinebach. 2019. *Policy Accumulation and the Democratic Responsiveness Trap*. Cambridge: Cambridge University Press.
- Adam, Christian, Christoph Knill, and Xavier Fernandez-i-Marín. 2017. "Rule Growth and Government Effectiveness: Why It Takes the Capacity to Learn and Coordinate to Constrain Rule Growth." *Policy Sciences* 50 (2): 241–68.
- Arter, David. 2006. "Introduction: Comparing the Legislative Performance of Legislatures." *Journal of Legislative Studies* 12 (3–4): 245–57.
- Baldwin, Robert. 1995. *Rules and Government*. Oxford: Clarendon Press.
- Bar-Siman-Tov, Ittai. 2018. "Temporary Legislation, Better Regulation, and Experimentalist Governance: An Empirical Study." *Regulation & Governance* 12 (2): 192–219.
- Bevan, Shaun. 2015. "Bureaucratic Responsiveness: Effects of Elected Government, Public Agendas and European Attention on the UK Bureaucracy." *Public Administration* 93 (1): 139–58.
- . 2019. "Gone Fishing: The Creation of the Comparative Agendas Project Master Codebook." In *Comparative Policy Agendas: Theory, Tools, Data*, edited by Frank R. Baumgartner, Christian Breunig, and Emiliano Grossman, 17–34. Oxford: Oxford University Press.
- Bevan, Shaun, and Will Jennings. 2014. "Representation, Agendas and Institutions." *European Journal of Political Research* 53 (1): 37–56.
- Black, Julia. 2001. "Decentring Regulation: Understanding the Role of Regulation and Self Regulation in a 'Post-Regulatory' World." *Current Legal Problems* 54 (1): 103–46.
- Blais, Andre, Donald Blake, and Stephane Dion. 1993. "Do Parties Make a Difference? Parties and the Size of Government in Liberal Democracies." *American Journal of Political Science* 37 (1): 40–62.
- Blichner, Lars Chr., and Anders Molander. 2008. "Mapping Juridification." *European Law Journal* 14 (1): 36–54.
- Blondel, J. 1970. "Legislative Behaviour: Some Steps towards a Cross-National Measurement." *Government and Opposition* 5 (1): 67–85.
- Braithwaite, John. 2000. "The New Regulatory State and the Transformation of Criminology." *British Journal of Criminology* 40 (2): 222–38.
- . 2008. *Regulatory Capitalism: How It Works, Ideas for Making It Work Better*. Cheltenham, UK: Edward Elgar Publishing.
- Cafaggi, Fabrizio. 2011. "New Foundations of Transnational Private Regulation." *Journal of Law and Society* 38 (1): 20–49.

- Croley, Steven P. 1998. "Theories of Regulation: Incorporating the Administrative Process." *Columbia Law Review* 98 (1): 1–168.
- Döring, Herbert. 1995. "Fewer Though Presumably More Conflictual Bills—Parliamentary Government Acting as a Monopolist." In *Parliaments and Majority Rule in Western Europe*, edited by Herbert Döring, 593–600. Frankfurt, Germany: Campus Verlag.
- Epstein, David, and Sharyn O'Halloran. 1999. *Delegating Powers: A Transaction Cost Politics Approach to Policy Making under Separate Powers*. Cambridge: Cambridge University Press.
- Frickey, Philip P., and Daniel Farber. 1991. *Law and Public Choice*. Chicago: University of Chicago Press.
- Friedberg, Chen. 2014. "Short Term—Many Private Members' Bills Proposals." December 14. <https://www.idi.org.il/articles/4358>.
- Gilardi, Fabrizio. 2008. *Delegation in the Regulatory State: Independent Regulatory Agencies in Western Europe*. Cheltenham, UK: Edward Elgar Publishing.
- Grabosky, Peter. 2013. "Beyond Responsive Regulation: The Expanding Role of Non-state Actors in the Regulatory Process." *Regulation & Governance* 7 (1): 114–23.
- Hazan, Reuven Y. 1997. "The 1996 Intra-party Elections in Israel: Adopting Party Primaries." *Electoral Studies* 16 (1): 95–103.
- Howell, William, Scott Adler, Charles Cameron, and Charles Riemann. 2000. "Divided Government and the Legislative Productivity of Congress, 1945–94." *Legislative Studies Quarterly* 25 (2): 285–312.
- Huber, John D., and Charles R. Shipan. 2002. *Deliberate Discretion? The Institutional Foundations of Bureaucratic Autonomy*. Cambridge: Cambridge University Press.
- Jakobsen, Mads L. F., and Peter B. Mortensen. 2015. "How Politics Shapes the Growth of Rules." *Governance* 28 (4): 497–515.
- . 2016. "Rules and the Doctrine of Performance Management." *Public Administration Review* 76 (2): 302–12.
- Jones, Bryan D., and Frank R. Baumgartner. 2005. *The Politics of Attention: How Government Prioritizes Problems*. Chicago: University of Chicago Press.
- Jones, Laura. 2015. *Cutting Red Tape in Canada: A Regulatory Reform Model for the United States?* Arlington, VA: Mercatus Center, George Mason University.
- Jordana, Jacint, David Levi-Faur, and Xavier Fernández-i-Marín. 2011. "The Global Diffusion of Regulatory Agencies: Channels of Transfer and Stages of Diffusion." *Comparative Political Studies* 44 (10): 1343–69.
- Jordana, Jacint, Xavier Fernández-i-Marín, and Andrea C. Bianculli. 2018. "Agency Proliferation and the Globalization of the Regulatory State: Introducing a Data Set on the Institutional Features of Regulatory Agencies." *Regulation & Governance* 12 (4): 524–40.
- Kahler, Miles. 2000. "Conclusion: The Causes and Consequences of Legalization." *International Organization* 54 (3): 661–83.
- Karpen, Ulrich. 2012. "Comparative Law: Perspectives of Legislation." *Legisprudence* 6 (2): 149–89.
- Kaufmann, Wesley, and Arjen van Witteloostuijn. 2016. "Do Rules Breed Rules? Vertical Rule-Making Cascades at the Supranational, National, and Organizational Level." *International Public Management Journal* 21 (4): 650–76.
- Kelsen, Hans. 1967. *Pure Theory of Law*. Clark, NJ: The Lawbook Exchange.
- Kerwin, Cornelius M. 2010. *Rulemaking: How Government Agencies Write Law and Make Policy*. 4th ed. Washington, DC: CQ Press.
- Kerwin, Cornelius M., and Scott R. Furlong. 1992. "Time and Rulemaking: An Empirical Test of Theory." *Journal of Public Administration Research and Theory* 2 (2): 113–38.
- Kosti, Nir, Ilana Shpizman, and David Levi-Faur. 2019. "The Israeli Agendas Project." In *Comparative Agendas Project*, edited by Frank R. Baumgartner, Emiliano Grossman, and Christian Breuning, 114–19. Oxford: Oxford University Press.
- Lam, Bourree. 2017. "Trump's 'Two-for-One' Regulation Executive Order." *The Atlantic*, January 30, 2017. <https://www.theatlantic.com/business/archive/2017/01/trumps-regulation-eo/515007>.
- Lavertu, Stéphane, and Susan W. Yackee. 2014. "Regulatory Delay and Rulemaking Deadlines." *Journal of Public Administration Research and Theory* 24 (1): 185–207.
- Levi-Faur, David. 2005. "The Global Diffusion of Regulatory Capitalism." *ANNALS of the American Academy of Political and Social Science* 598 (1): 12–32.
- . 2011. "Regulation and Regulatory Governance." In *Handbook on the Politics of Regulation*, edited by David Levi-Faur, 3–21. Cheltenham, UK: Edward Elgar Publishing.

- . 2013. "The Odyssey of the Regulatory State: From a 'Thin' Monomorphic Concept to a 'Thick' and Polymorphic Concept." *Law & Policy* 35 (1–2): 29–50.
- . 2017. "Regulatory Capitalism." In *Regulatory Theory: Foundations and Applications*, edited by Peter Drahoš, 289–302. Acton, Australia: ANU Press.
- Lobel, Orly. 2004. "New Governance as Regulatory Governance." In *The Politics of Regulation: Institutions and Regulatory Reforms for the Age of Governance*, edited by David Levi-Faur, 65–82. Cheltenham, UK: Edward Elgar Publishing.
- Majone, Giandomenico. 1994. "The Rise of the Regulatory State in Europe." *West European Politics* 17 (3): 77–101.
- . 1997. "From the Positive to the Regulatory State: Causes and Consequences of Changes in the Mode of Governance." *Journal of Public Policy* 17 (2): 139–67.
- Mandelkern, Ronen, and Amir Paz-Fuchs. 2018. "Privatizing Israel: An Introduction." In *The Privatization of Israel: The Withdrawal of State Responsibility*, edited by Amir Paz-Fuchs, Ronen Mandelkern, and Itzhak Galnoor, 1–18. New York: Springer.
- Maor, Anat. 2008. "The Dramatic Growth of Private Legislation in Israel, 1992–2006." *Israel Studies Review* 23 (1): 84–103.
- Maron, Asa, and Michael Shalev. 2017. "Introduction." In *Neoliberalism as a State Project: Changing the Political Economy of Israel*, edited by Asa Maron and Michael Shalev, 1–26. Oxford: Oxford University Press.
- Mayhew, David R. 1991. *Divided We Govern: Party Control, Lawmaking, and Investigations, 1946–2002*. 1st ed. New Haven, CT: Yale University Press.
- Miers, David, and Alan C. Page. 1982. *Legislation*. London: Sweet & Maxwell.
- Moran, Michael. 2003. *British Regulatory State: High Modernism and Hyper-Innovation*. Oxford: Oxford University Press.
- Norris, Pippa, and Ronald Inglehart. 2019. *Cultural Backlash: Trump, Brexit, and Authoritarian Populism*. New York, NY: Cambridge University Press.
- Page, Edward C. 2001. *Governing by Numbers: Delegated Legislation and Everyday Policy-Making*. Portland, OR: Hart Publishing.
- Page, Edward C. 2012. *Policy without Politicians: Bureaucratic Influence in Comparative Perspective*. Oxford: Oxford University Press.
- Page, Edward C. 2016. "Law and the Construction of Policy: A Comparative Analysis." *Paper prepared for the Annual Conference of the Political Studies Association*. <https://www.psa.ac.uk/sites/default/files/conference/papers/2016/PagePSAPaper.pdf>
- Polk, Jonathan, Jan Rovny, Ryan Bakker, Erica Edwards, Liesbet Hooghe, Seth Jolly, Jelle Koedam, Filip Kostelka, Gary Marks, Gijs Schumacher, Marco Steenbergen, Milada Vachudova, and Marko Zilovic. 2017. "Explaining the Salience of Anti-Elitism and Reducing Political Corruption for Political Parties in Europe with the 2014 Chapel Hill Expert Survey Data." *Research & Politics* 4 (1): 1–9. <https://doi.org/10.1177/2053168016686915>
- Potter, Rachel Augustine, and Charles R. Shipan. 2019. "Agency Rulemaking in a Separation of Powers System." *Journal of Public Policy* 39 (1): 89–113.
- Prime Minister's Office. 2015a. At the Weekly Cabinet Meeting 31.05.2015. <http://www.pmo.gov.il>.
- . 2015b. *Reducing the Regulatory Burden: Guidelines for Managing Work Process* [Hebrew]. <http://www.pmo.gov.il>.
- Rabin, Robert L. 1986. "Federal Regulation in Historical Perspective." *Stanford Law* 38 (5): 1189–326.
- Sant'Ambrogio, Michael D. 2011. "Agency Delays: How a Principal-Agent Approach Can Inform Judicial and Executive Branch Review of Agency Foot-Dragging." *George Washington Law Review* 79 (5): 1381–448.
- Scott, Colin. 2004. "Regulation in the Age of Governance: The Rise of the Post-Regulatory State." In *The Politics of Regulation*, edited by Jordana Jacint and David Levi-Faur, 145–74. Cheltenham, UK: Edward Elgar.
- Slapper, Gary, and David Kelly. 2012. *The English Legal System: 2012–2013*. London: Routledge.
- Sutton, John R., Frank Dobbin, John W. Meyer, and W. Richard Scott. 1994. "The Legalization of the Workplace." *American Journal of Sociology* 99 (4): 944–71.
- Taggart, Michael. 2005. "From 'Parliamentary Powers' to Privatization: The Chequered History of Delegated Legislation in the Twentieth Century." *University of Toronto Law Journal* 55 (3): 575–627.
- Tsebelis, George. 1999. "Veto Players and Law Production in Parliamentary Democracies: An Empirical Analysis." *American Political Science Review* 93 (3): 591–608.

- Voermans, Wim J. M. 2017. "Legislation and Regulation." In *Legislation in Europe: A Comprehensive Guide For Scholars and Practitioners*, edited by Helen Xanthaki and Ulrich Karpen, 17–32. Oxford: Hart Publishing.
- Williams, Matthew. 2017. "The Grammar of Politics: A Brief History of Legislative Language in Britain." *Political Quarterly* 88 (2): 248–57.
- . 2018. *How Language Works in Politics: The Impact of Vague Legislation on Policy*. Bristol, UK: Bristol University Press.
- Workman, Samuel. 2015. *The Dynamics of Bureaucracy in the US Government: How Congress and Federal Agencies Process Information and Solve Problems*. Cambridge: Cambridge University Press.
- Yackee, Jason, and Susan W. Yackee. 2016. "From Legislation to Regulation: An Empirical Examination of Agency Responsiveness to Congressional Delegations of Regulatory Authority." *Administrative Law Review* 68 (3): 395–443.

APPENDIX A: DATA SOURCES AND ANALYSIS

The data on Israeli secondary legislation (*Takkanot Mishne*) are based on Israeli collections of regulations (*Kovetz Hatakanot*), which contain several types of secondary legislation. The primary legislations data were derived from the Israeli Book of Laws (*Sefer Hahukim*). For more information, see Part II.a.

Irish data on primary and legislation were derived from the *Irish Statute Book*, which contains both Statutory Instruments (secondary legislation) and Acts of the Oireachtas (primary legislation).

Our primary source for the UK secondary legislation data is the LexisNexis database, which includes the full text of British Statutory Instruments (SIs, secondary legislations) but excludes local British SIs as well as Scottish, Welsh, and Northern Irish SIs. Note that there are differences in the annual number of secondary legislation observed by LexisNexis and the *UK Official Gazette*. These differences are estimated at a few hundred SIs every year, and more than one thousand SIs since 2010. The differences are apparently due to the inclusion of local SIs in the *Official Gazette*. In 2010, according to the *Official Gazette*, a sharp increase in the annual production of SIs occurred. This might be entirely due to the inclusion of more local SIs, especially regarding road transport. However, the LexisNexis database does not include such SIs. Primary legislation (UK acts of parliament) data is based on the UK Policy Agendas data set (Bevan 2015) for the period 1949–2008. For the period between 2009 and 2014, we rely on the National Archives of the United Kingdom.

Data on legislation in Australia, with regard to both Legislative Instruments (secondary legislation) and Acts of Parliament (primary legislation), are based on the *Federal Register on Legislation*. Note that the annual production of Legislative Instruments has increased dramatically since 2004, following the enactment of the Legislative Instruments Act 2003.

In the US, secondary legislation were collected from the *Federal Register*. These legislations pertain to all items published in the "Rules and Regulations" section of the *Federal Register*, which are mostly classified as "final rules." The data for 1976–1993 were systematically extracted from scanned copies of the *Federal Register* that were downloaded from the Library of Congress website. Regulations issued between 1994 and 2016 were collected from the *Federal Register* website. Data on US public laws (primary legislation) were derived from the US Policy Agendas Project (The Policy Agendas Project at the University of Texas at Austin, 2017).

The data on Spanish legislation are based on the Spanish official gazette, *Boletín Oficial del Estado* (Boe.es). It contains three types of secondary legislation—*Real decreto*, *Reglamento*, and *Orden*—and excludes *Instrucción* and *Circulares*. With regard to

Table A1: Coverage of Primary and Secondary Legislation Data

Country	Legislation Type	Source	Link	Years
Israel	Secondary	University of Haifa; Hebrew University of Jerusalem; Justice Ministry; (<i>Kovetz Hatakanot</i>)	http://www.justice.gov.il/	1948–2017
	Primary	Justice Ministry & Israeli Law Database (<i>Sefer Halukim</i>)	http://www.justice.gov.il/Activity/Legislation/Laws/Pages/LawAboutSite.aspx http://www.irishstatutebook.ie	
Ireland	Secondary	The electronic <i>Irish Statute Book</i> (Statutory Instruments)	http://www.irishstatutebook.ie	1948–2015
	Primary	The electronic <i>Irish Statute Book</i> (Acts of the Oireachtas)	http://www.irishstatutebook.ie	
United Kingdom	Secondary	UK Statutory Instruments	LexisNexis Database	1949–2014
	Primary	UK Policy Agendas & National Archives of the UK (UK Acts of Parliament)	Bevan 2015; www.legislation.gov.uk https://www.legislation.gov.au/	
Australia	Secondary	<i>Federal Register of Legislation</i> (Legislative Instruments)	https://www.legislation.gov.au/	1949–2016
	Primary	<i>Federal Register of Legislation</i> (Acts of Parliament)	https://www.federalregister.gov/	
US	Secondary	Library of Congress & <i>Federal Register</i> (Rules and Regulations)	https://www.comparativeagendas.net/us	1976–2016
	Primary	US Policy Agendas Project (Public Laws)	https://www.boe.es	
Spain	Secondary	<i>Agencia Estatal Boletín Oficial del Estado</i>	https://www.boe.es	1979–2013
	Primary	<i>Agencia Estatal Boletín Oficial del Estado</i>	https://www.bgbli.de/	
Germany	Secondary	<i>Bundesgesetzblatt (Verordnungen)</i>	https://www.bgbli.de/	1950–2016
	Primary	<i>Bundesgesetzblatt (Bundesgesetz)</i>	https://www.retsinformation.dk/	
Denmark	Secondary	<i>Lovtidende (lov)</i>	https://www.retsinformation.dk/	1988–2016
	Primary	<i>Lovtidende (Bekendtgørelser)</i>	https://lovdata.no/	
Norway	Secondary	<i>Lovdata (Norsk Lovtidend)</i>	https://lovdata.no/	2001–2016
	Primary	<i>Lovdata (Lover)</i>	http://rkrattisdg.gov.se	
Sweden	Secondary	<i>Regeringskansliet (Lagar)</i>	http://rkrattisdg.gov.se	1999–2016
	Primary	<i>Regeringskansliet (förförordningar, föreskrifter)</i>	http://rkrattisdg.gov.se	

primary legislation, it contains the following types of legislation: *Ley*, *Ley Orgánica*, *Decreto-ley*, and *Decreto legislativo*. Both primary and secondary legislations were collected between 1979 and 2013.

German primary legislation data contain all acts (*Gesetze*) published in either *Teil I* or *Teil II* of the *Bundesgesetzblatt* between 1949 and 2016. The German secondary legislation data set contains all regulations (*Verordnungen*) published in other parts of the gazette during the same period. Other types of items published in the federal gazette (e.g., *Bekanntmachung*, *Hinweis*, etc.) have not been included in either data set.

Legislation in Denmark was derived from *Lovtidende*, the official gazette in Denmark. It includes primary legislation (*lov*) passed between 1988 and 2016, and secondary legislation in the form of executive orders (*Bekendtgørelser*) in the same period.

Primary and secondary legislation in Norway was collected from *Lovdata*. Secondary legislation was collected from the Law section I published in *Norsk Lovtidend*, the Norwegian official gazette. Primary legislation was derived from the *Lover* in *Lovdata*. Both primary and secondary legislations were collected between 2001 and 2016.

Swedish legislation was collected from the *Regeringskansliet* (Government Offices of Sweden) website. It includes primary (*Lagar*) and secondary (*förordningar*) legislation issued between 1999 and 2016.

APPENDIX B

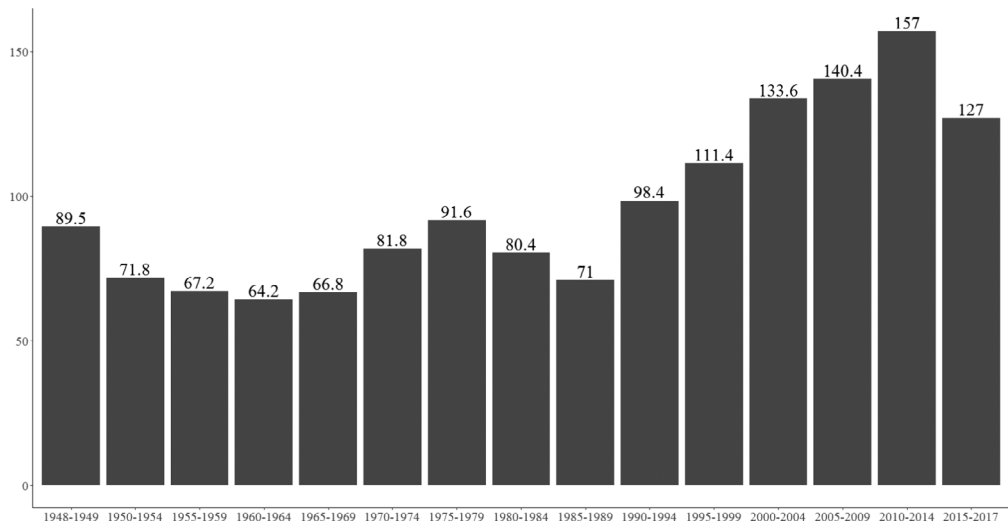


Figure B.1 Production of Primary Legislation by Half-Decades (1948–2017).

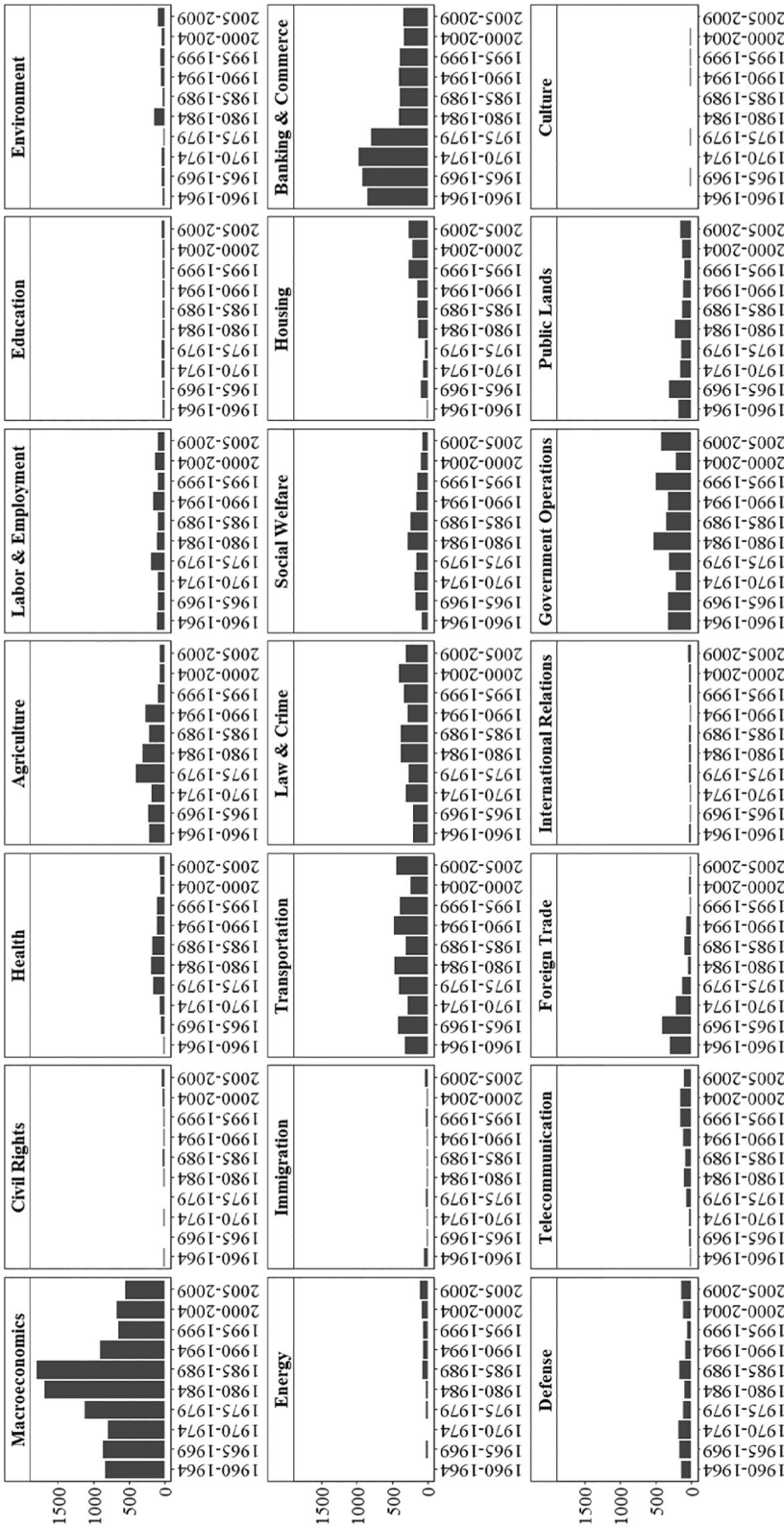


Figure B.2 Israeli Secondary Legislation Agendas (by Topic), 1960–2009.*
* Estimated number of secondary legislation, based on a sample. For more details, see Part II.

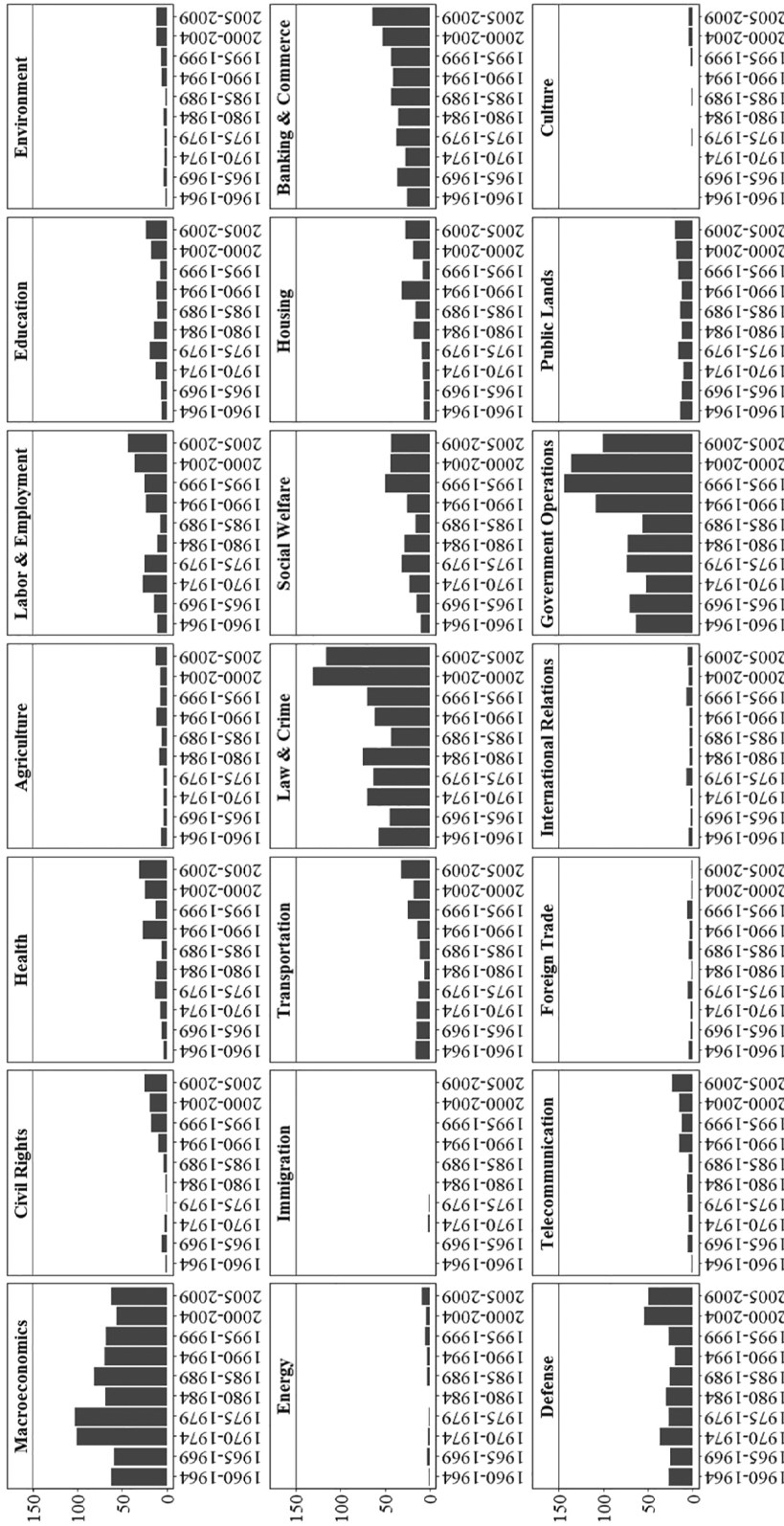


Figure B.3 Israeli Primary Legislation Agendas (by Topic), 1960–2009.