The art of non-decision in Israel: religion, business, and the day of rest

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ABSTRACT
Non-decision making, as a worldwide public policy pattern, has been gathering attention in the research field of late. In Israel, we are witnessing various issues in which the status quo is, in effect, maintained, often with the intention and design of the interested players. In the absence of a constitutional separation between religion and state, and the lack of a comprehensive law articulating exactly what the public sphere should look like on the day of rest (Shabbat), this issue has continued to preoccupy the State of Israel since its foundation. This article argues that the issue of opening businesses on Shabbat in the State of Israel represents a case demonstrating how policymakers operate to maintain the status-quo by adopting a policy of non-decision making. This is a result of two structural factors in Israeli politics: the consociational model and the multiplicity of political parties. The article elaborates upon the multiple tactics used by the policymakers to carry out the non-decision making policy and characterizes this process.

KEYWORDS
Non-decision; status-quo; state-religion relations in Israel; consociational model; agenda denial

Introduction
At the beginning of 2018, the Israeli parliament (Knesset) approved an amendment to the Laws of Local Authorities (also known as the Supermarket Law), which stipulates that in all matters concerning the enactment of a municipal bylaw that deals with the opening and closing hours of businesses operating on days of rest, the Minister of the Interior must give their approval. As long as the minister is not convinced that this legislation is necessary to provide essential services to the public, they may choose not to approve it. It might appear that this amendment reflects a revolution regarding the character of the Sabbath [hereinafter: ‘Shabbat’ Heb.] in the public sphere, especially with regard to the opening of businesses. However, as we shall contend in this article, there was nothing revolutionary about this change; on the contrary, not only did this amendment not represent a turning point, but in large measure, it reflected the policy of non-decision making on the issue of the Shabbat, whose purpose is to preserve the status quo.

The article’s main argument is that the alternative of passing a comprehensive Shabbat law, or at least, a national law regulating the opening of business on the rest day, has
effectively and intentionally been excluded from the top of the agenda by adopting the policy of non-decision ever since the establishment of the state of Israel. In this context, the supermarket law demonstrates but one of the various tactics decision makers have made use of over the years, in the service of the policy of non-decision.

The motivation to preserve the status quo regarding the Shabbat issue, itself part of the more general puzzle of state-religion relationships in Israel, emanates from two structural factors in Israel, which led to the policy of non-decision in the matter, namely: the consociational model and the multiplicity of political parties. On this backdrop, the choice of a non-decision policy is a very convenient way out for the politicians and allows the pattern to be maintained without undermining the stability of democracy in this context.

The present study aims to trace and analyze the various tactics, utilized throughout the different stages of the policy process, and to characterize the policy pattern of non-decision as it applies specifically to the issue of commerce on Shabbat. In doing so, it contributes to the empirical literature on the intentional adoption of NDM by presenting issue-related motives. Additionally, it introduces various tactics used in the service of the policy of non-decision by policymakers striving to avoid decisions that will change the present state of affairs.

The first section will present the research literature dealing with non-decision and non-decision making (NDM), alongside explaining the two structural factors which led to adopting the policy of non-decision regarding the Shabbat issue in Israel. The second part will introduce the case study; it will start with a review of the historical background of regulating the Shabbat in the public sphere. Then it will review the socio-economic developments in the field of consumer culture and the accelerated commercial activity on the Shabbat. This section will conclude with the different tactics that have been used over the years to preserve the status quo and avoid a fundamental policy change, i.e. localization of the problem, lax enforcement, delay in making a decision (avoiding the ‘hot potato’), legislation that makes a great ado about nothing, and bills and motions for the agenda which are also much ado about nothing. The third part will conclude the analysis with stating the specific meaning of the policy of non-decision in Israel, regarding the issue of the opening of businesses on Shabbat.

Theoretical framework

**Public policy, non-decision and non-decision making (NDM)**

The area of research known as ‘public policy’ has been given various definitions in literature (for further review see: Capano and Howlett 2020). Many of the definitions share the view that public policy focuses on the government’s decision-making process and on the implementation of these decisions. According to Peters (2013, 4) ‘public policy is the sum of government activities whether pursued directly or through agents, as those activities have an influence on the lives of citizens’. Cochran and Malone (1995) argue that public policy refers to political decisions regarding programme performance, with the aim of achieving social objectives. However, other definitions include a conscious decision to refrain from engagement in a specific issue. For example, Dye (1972) holds the opinion that public policy is ‘whatever governments choose to do and not to do’.
Similarly, Akindele and Olaopa (2004) maintained that the essence of policy making is the government’s decision about the degree of its involvement in a particular issue: minor involvement, extensive involvement, or avoidance of involvement. In terms of results and implications, a government’s a priori decision to withhold from a specific issue is equivalent to a situation where it decides not to decide, both of which constitute public policy patterns.

However, this fails to explain a situation in which policymakers avoid making a decision, or alternatively, a situation wherein the decision made leads to [inconsequential] legislation that does nothing to change the current state of affairs. If these outcomes are intentional, then further analysis is required as to the tactics employed by policymakers to reach such ends, especially when the issue at hand is ongoing and bound to cause public upheaval. We address all the aforementioned issues by examining the case of the dispute regarding the character of the Sabbath in Israel in light of the literature of ‘non-decision’ making.

In their pioneering work, Bachrach and Baratz explain that power exists also in a covert way, and thus alongside making a decision by exerting overt power, one can find a situation of ‘Non-Decision’ which they have defined as: ‘the practice of limiting the scope of actual decision-making to ‘safe’ issues by manipulating the dominant community values, myths and political institutions and procedures’ (Bachrach and Baratz 1963, 632).

Since a non-decision is undetectable and is not subject to observation and analysis, they suggested examining the process wherein no decision is made – non-decision making (hereinafter: NDM). In other words, the process by which the dominant values, the conventional tools, the power relations between groups and instruments of power can effectively prevent expressions of protest over a grievance regarding issues that were ripe for decision, either separately or in combination. Therefore, NDM refers to actors who deliberately limit the range of decision making to issues that are relatively non-controversial (Koskinen Sandberg 2016).

Continuing the definition given by Bachrach and Baratz, other definitions of this term were presented in the literature. For example, according to Rose and Davies (1994), this refers to the exclusion of certain alternatives, rather than issues, from the agenda of collective choice, because dominant values make them politically impossible at a given moment. Like Bachrach and Baratz, their view of this concept represents the hidden face of power.

While the above researchers focus on the manipulation of institutional systems, as a reason for NDM, McCalla-Chen (2000) identifies four additional reasons for NDM as follows. She terms the first reason ‘opportunity cost’ and refers to a situation whereby individuals fail to transfer their concerns to political arenas of decision making because this would mean sacrificing something of value, such as time or happiness. In such a case, satisfaction of an interest does not outweigh sacrificing the thing of value. Another reason is ‘the index of incompetence’, which describes a situation where issues are excluded from decision making because players are unable to pass on their concerns due to the failure of institutional procedures or their lack of essential skills. In both of these reasons, NDM arises mainly from the inaction of certain individuals in the decision-making process (for further elaboration on inaction see: McConnel and t’Hart,2014). A third reason for NDM is called ‘personalities’, in which a negative conflictual relationship exists between the one pursuing a decision and the decision maker, or there is dislike between people, like a clash of personalities. Such relationships lead to failure in bringing
an issue before the relevant decision-makers or in appropriate arenas for decision-making to take place. The final reason for NDM is ‘accommodation’, where those who are pursuing the issue fail in their pursuit and instead adapt themselves to the existing state of affairs (McCalla-Chen 2000). Similarly to Bachrach and Baratz, this article suggests that the NDM that has characterized the issue of business activity on Shabbat in Israel over the years was intentional, rather than a result of inaction, personalities, or ‘accommodation’.

**Structural factors as motives for adopting NDM regarding Shabbat in Israel**

When dealing with issues of religion and state in Israel, there are two main structural factors that motivate policy makers to adopt the policy of non-decision and thereby maintain the status quo: the consociational model and the multiplicity of political parties.

First, in the absence of a constitution, which determines the relationship between religion and state, and since there is no comprehensive detailed law stating what exactly the public sphere should look like during the day of rest, Israel has been experiencing a substantive religious-secular rift that touches upon the most preferable desired relations between religion and state. Gutmann (1976) was the first to propose the use of consociationalism (accommodation and power sharing) to explain patterns of relationships and political arrangements in the relations between religion and state in Israel, thereby setting aside predictable controversies regarding the substance, nature, and status of the state.

This model was proposed by Lijphart (1968) as an explanation for the ability of a democratic society, characterized by deep social and political rifts, to maintain its stability and unity. There are different mechanisms to deal with disputes in the framework of the consociational model, all of which are characterized by forgoing unilateral decisions. Among them are coalition partnerships, the autonomy principle, compromises, and allowing representatives of the main groups to participate in government institutions and policy-making processes. These mechanisms enable the political system to relegate controversial issues to low positions on the agenda in order to preserve its stability. When the evolving situation requires decisions on controversies that arise periodically, the political leadership would prefer to do this at the administrative level, rather than by primary legislation, at the level of local rather than national government. Thus, the opposing sides do not have to hold uncompromisingly to their positions and avoid reaching an accommodation, as could happen (Lipshits and Michal 2019).

In Israel, the ‘status quo’ principle is one of the most important mechanisms used in the politics of accommodation in the field of religion-state in Israel (Don-Yehiya 1997). This principle calls for refraining from making absolute decisions and crossing red lines while providing the mutual right of veto to each camp on questions that emerge periodically. Even if a freeze of the ‘status quo’ principle has not been possible due to crises during the last three decades, its establishment as a guideline for policy and political agreements evinces the dominant tendency toward a consociational democracy (Don-Yehiya 2008). Malach (2013) suggests a ‘new consociationalism’ model that includes different policy mechanisms and players that enable continuity of the politics of accommodation regarding religion-state issues in Israel. Other researchers hold the opinion that changes of the ‘status quo’ principle in Israel have eroded the consociationalism in Israel (Friedman 2019; Shamir and Ben-Porat 2011).
The second structural factor relates to political power relations, especially regarding religion-state issues. The Israeli parliamentary system, characterized by multiplicity of parties, enables small-sized parties to tip the scales in matters of agenda setting (Hazan 1999). Moreover, during recent decades, the Ultra-Orthodox parties found themselves as kingmakers since both political blocs needed their support to form a coalition. Ever since, their political representatives have been part of most governments, using their position to garner coaltional support for their political goals (Horowitz and Lissak 1990; Cohen 2004). As neither of these two sides, pro-religious and anti-religious, seem to manage to gain the upper hand, non-decision making is quite a common pattern of policy regarding these issues (Sharkansky 1996).

As opposed to Bachrach and Baratz, who relate NDM to covert power, other researchers, as well as the current article, suggest that in order to keep an alternative off the agenda, overt power may be in use, too. For example, according to Marchbank (1994) there are several tactics to bring about NDM, including de-legitimization, which is achieved through claims such as that the proposal was not based on a joint discussion; that some of the issues presented were not within the framework of the working group’s mandate, or that the views presented were not supported by international conventions. Another method is by labelling the issue using negative symbols or labelling the other participants as problematic or rigid. Similarly, repressing the issuing by using intimidation or threats against the challenger, co-opting the challenger, and delaying tactics.

Moreover, as the policy-making process constitutes a series of barriers or hurdles that may be found at various points along its course, any of these tactics may be employed during the different stages of the policy-making process, i.e. each step in the policy-making process can involve NDM (Marchbank 1994). Continuing this view of non-decision, this article demonstrates several points where this policy pattern is adopted, including even at the implementation stage.

**Different interpretations of non-decision**

Sharkansky and Friedberg (2002) drew up a typology of the various interpretations given to the term non-decision and pointed to three different meanings. The first, refers to non-decision caused by opposition to a proposed policy alternative. When the alternative does not have a large coalition of enthusiastic supporters and in the background, there are much more burning problems that draw the attention of politicians, one cannot point to any great losers that result from avoiding a decision. In fact, this meaning suggests political convenience. Examples of this are avoiding a decision to establish casinos in Israel (Sharkansky and Friedberg 2002) and the absence of a systematic policy on the issue of immigration to Israel (Avineri, Orgad, and Rubinstein 2010; DellaPergola 2012; Neubauer-Shani 2007).

The second interpretation refers to the government auditing body’s criticism of the authorities for ‘neglecting their responsibilities’. Sharkansky and Friedberg contend that using this term as the essence of the criticism, in most cases, does not do justice with the authority being audited, and it is the result of seeking an easy way to write the audit reports. For example, various reports by the State Comptroller levelled criticisms against the agencies responsible for road safety for not having done enough in the field of prevention, and this, without proving that specific actions could actually have contributed to road safety (Sharkansky and Friedberg 2002; Sharkansky 1988).
Similar to Bacharach and Baratz’s definition, the third interpretation concerning non-decision arises from a desire to protect interests by preventing changes in existing policies, for example, the non-decision regarding water policy in Israel derived, in the main, from the powerful interests of the agriculture sector, which opposed any change in the status-quo (Menahem, 1998).

A complementary, yet, similar term is ‘agenda denial’, suggested by Cobb and Ross (1997), which encapsulates the logic behind the failure of issues to get meaningful consideration from the political institutions. Contrary to most researchers in the field of agenda setting, who focus on issue pursuers, Cobb and Ross focus on the players who seek to bar the issue from the agenda. These opponents may be either individuals formally authorized to make decisions or players who would be negatively affected by a change in the status-quo (Capella 2016). Cobb and Ross identify some strategies adopted by these opponents, for example, avoiding the acknowledgement of a problem, or acknowledging it as an isolated event rather than a recurrent pattern. Another strategy involves attacking either the issue or the group pursuing it. Alternatively, the opponents may express interest and concern about the issue at the symbolic level, providing a visible response rather than a meaningful solution, and in doing so, obstructing the pursuers’ action. (Cobb and Ross 1997).

Methodology
This is a qualitative study based on the analysis of existing sources. These sources include protocols of the Knesset plenum and its committees, bills, bylaws enacted by various local governments, rulings of the various judicial instances, position papers and policy papers of research institutes, articles, newspapers, and various internet publications. Using these sources allows us to present the historical background to the development of the struggle over the unique nature of the Shabbat in Israel, to review the attempts at regulating the issue through legislation, and to present the various amendments to the law and the court’s involvement in the matter. The review and analysis of these sources were made using the theoretical framework of non-decision in order to examine its various manifestations and the main tactics that policy makers adopt to avoid making a decision that will change official policy on this burning issue.

Case study: Shabbat in Israel

Background and rules of the game
Political and social disputes on issues of religion and state, such as marriage and conversion, have been on the Israeli public agenda since establishment of the state. However, even today, after seventy years of statehood, it seems that the heart of the dispute between the religious public and the secular public still revolves around the issue of the nature of Shabbat in the public sphere. While the religious public views the weekly day of rest as a day dedicated to prayer, rest, and family, the secular public sees it as a day devoted to leisure and recreation with the family, whether at the beach, in the countryside, in the movie theatre, or at the mall (Yaffe and Rosenthaler 2005).
Beyond the historical enshrinement of the Shabbat as the weekly day of rest, which was sanctified in the Jewish Bible, the character of Shabbat was discussed before the establishment of the state. Research defines the starting point in the battle over the nature of the Shabbat with a document that later became known as ‘the status-quo letter’. This letter, sent to the heads of the Ultra-Orthodox party (Agudath Yisrael) in June 1947 by the heads of the Jewish Agency, enshrines the status of the Shabbat for the first time as the official day of rest in the Jewish state-in-the-making (Galnoor & Blander, 2013). In rather general phrasing, it says: ‘It is clear that the legal day of rest in the Jewish state will be the Shabbat, but of course, also allowing Christians and other religious people to rest on their weekly day [of rest]’ (Eliassuf 2001). Despite the fact that the letter did not have any legal or political validity, it is of great historical importance. Over the years, it has been perceived as expressing not only political agreement between the parties but also the starting point for an unwritten agreement that enabled relatively comfortable daily coexistence (Friedman 2005; Ravitzky 1997).

In order to discuss the unique nature of Shabbat, we must distinguish between two main aspects that pertain to it. The first aspect is the employee having a day of rest on the weekly sabbatical day. Second, the prohibition to conduct economic-commercial activity on Shabbat. With the establishment of the State of Israel, the consensus was that the Shabbat was the weekly day of rest, the first to be legally enshrined in the Order of Government and Law that was legislated in 1948. Although section 18a of the Ordinance stipulates that the Shabbat is the official day of rest, this statement was not accompanied by a detailed description of the rules regulating what is permitted and prohibited on the Shabbat, or the sanctions that accompany the violation of these rules (Hacohen 2002). A more detailed interpretation was given three years later in the Hours of Work and Rest Law that was legislated in 1951. Section 7 of the Law provides that ‘An employee’s weekly rest shall be not less than thirty-six consecutive hours in the weekend.’

While in the sphere of employment policymakers chose to regulate the rules of the game at the national level, in all matters relating to economic-commercial activity, authority and responsibility for regulation were transferred to the local level. This measure is based on the Mandatory Municipalities Ordinance, which was amended many times over the years, defining the authority of the municipality to regulate and supervise the opening and closing hours of businesses operating within its jurisdiction, not only during the week but also on the days of rest, Shabbat and the Jewish holidays. This authority extends to a wide range of businesses, including shops, workshops, restaurants, cafes, cinemas, theatres, and many other places where public recreation takes place.

The transfer of decision-making authority to the local authorities has led to many struggles over the years at the local level. These struggles, which differed in frequency and intensity, were conducted chiefly around cultural and leisure activities that religious groups saw as a mass desecration of the sanctity of the Shabbat.

In the context of these struggles, in 1987, Justice Ayala Procaccia found the cinemas that operated on Shabbat in Jerusalem innocent of wrongdoing, and even ruled that the bylaw passed by the municipality in this matter is void, in light of the fact that the local authority is authorized to enact laws in order to realize ‘the aims of public order and normal city life and not to prescribe to the residents how to live’ (CrimA 3471/87, State of Israel v. Amatzia Kaplan et al., 1988, (2), 26) This ruling called down the response
of the legislator who three years later approved the ‘Law for the Amendment of the Municipalities Ordinance (No. 40) – 1990’, which is also known as the Authorization Law. This amendment to the law states that the municipality is entitled to exercise its authority or part of it in respect to rest days, taking into consideration the reasons of religious tradition, among others. In effect, the legislator sought to allow the local authorities to regulate the activities of businesses on the days of rest in accordance with the nature of the relations between the religious public and the secular public which pertained in each locality.

Nevertheless, in 1998 the Municipalities Ordinance (and respectively, the Local Councils Ordinance) was amended so that the Minister of the Interior would retain the right to impose a veto on bylaws relating to the opening of businesses on the day of rest. Amendment No. 33 of the 1998 Ordinance clearly states that the local authority must inform the Minister of the Interior of the bylaw, and the Minister has authority to delay publication of the law in the Reshumot [Ministry of Justice Official Gazette] for a period of up to 60 days. Within this time, the Minister may either give notice that they have no objection to the publication of the law or alternatively order that it be delayed, while giving the head of the local authority an opportunity to present his arguments. Afterwards, the Minister may give an order that is one of the following three options. The first option is to cancel the delay, thus allowing the law to be published in the Official Gazette. The second option is to disqualify the law, while giving detailed reasons for this. The third possibility is to return the law with the Minister’s comments to the local authority for reconsideration. As we shall see below, this formal change has not influenced reality.

The rules of the game described above took on a variety of expressions and ramifications at the level of action, according to the socio-economic context in which they exist. Below we will discuss changes that have occurred in this context, in order to understand later how the changing reality is compatible with these rules of the game.

In the early days of the state, the struggles over the nature of Shabbat in the public sphere were usually centred around the common recreational and leisure patterns of those days, e.g. the opening of cinemas and cultural institutions. These struggles were conducted over the years mainly at the local level, where the solution was also usually found. However, the economic, cultural, and social changes that Israeli society has undergone, and which have led to the development of a consumer society with global characteristics, have intensified the debate.

One may recognize the turning point in the struggle over the character of Shabbat in the 1970s, as Israeli consumer society began to develop and was opened to global influences (Shamir 2017). Until that time, Israeli society was characterized as a society relatively isolated from foreign cultural influences. It devoted most of its energies to nation-building and state-building, in view of the importance of survival, all the while maintaining values of asceticism and modest lifestyle. However, with the rise in the standard of living and the increased exposure to foreign influences, large segments of Israeli society adopted new patterns of recreation and leisure which were similar to those of Western countries (Ben Porat et al. 2008; Ram 2013). This trend came to a peak in the late 1980s and early 1990s when the globalization, or Americanization, of Israeli society manifested itself in the massive expansion of commercial areas, malls, and shopping centres, which began operating outside the cities on Shabbat and holidays (Shamir and Ben-Porat 2011).
Various studies conducted in the recent years indicated a trend of continued growth in shopping on Shabbat. A survey conducted in 2001 found that about 600,000 Israelis visit shopping centres every Saturday (The Marker, December 27, 2001). In 2005, the number of shopping malls had reached 70, accounting for more than 40% of the commercial turnover in Israel (Gilboa 2007). The shopping centres that were bustling with life on weekdays became desirable destinations for social and cultural entertainment also on Shabbat. A study, conducted in 2017, found that at least 40% of Israelis regularly shop on Shabbat to some extent, of whom 22% do so at least once a month (Dovrat-Mezrich and Bassok 2017). Another study that sought to map the extent of the phenomenon found that 20%, i.e. 39 of the 196 shopping centres mapped in the study, are open on Shabbat (Finkelstein 2016).

These findings lead to the conclusion that the increasing volume of commercial activity carried out every Saturday in the shopping centres has brought about a change in the character of the public domain in Israel over the last decades. This commercial activity is especially conspicuous in the shopping centres, and the various ‘power centers’, which attract hundreds of thousands of Israelis every Saturday. The power centres are usually located outside city limits, often near central junctions and within regional and local councils, some of which even encourage their activity. The significant changes in the public sphere in general and the patterns of consumption in particular, call for an examination of the policy that accompanied the process – both at the national and local levels of politics. It is clear that despite the change, this policy has been, and is still, characterized by non-decision, which preserves the status quo in practice, and sometimes also in theory.

Non-decision making and commerce on Shabbat: tactics

As stated, any essential change in policy will encounter opposition forces because of their preference for the status quo. Therefore, continuity is not a trifling matter, but rather something, that is deliberately preserved. Furthermore, every stage of the policy-making process can involve non-decision making (NDM), so that even if we identify a legislative process that ends with passing the law on the second and third readings, it is quite possible that this is actually an effort to prevent a fundamental change in the status quo. Moreover, as we shall see below, even in the subsequent stage, one can discern the use of power, which is entirely directed at effectively preventing any grievances from becoming ripe issues that call for actual decision making. Below we will discuss a variety of NDM tactics with the aim of preserving the status quo on the issue of the Shabbat, focusing on the commercial activity, as follows: localization of the problem, lax enforcement, delay in making a decision (avoiding the ‘hot potato’), legislation that makes a great ado about nothing, and bills and motions for the agenda which are also much ado about nothing.

The first, which served the NDM policy, was localizing the issue through the regulation of the opening and closing of businesses on days of rest within the jurisdiction of the local authorities, and this is under the Authorization Law. Recent studies indicate that there is a difference between the local authorities regarding the enactment of bylaws that regulate commercial activity on days of rest. A recent study conducted in 2018, whose purpose was mapping the legislation relating to economic activity on days of rest, revealed that 92% of
the municipalities have a bylaw regulating commercial activity on days of rest, compared to only 20% of the regional councils. It was further found that when it comes to opening businesses on days of rest, the local authorities in Israel distinguish between a business (or a store) and a place to eat (or coffee shop) and a place of entertainment. While 88% of them allow the opening of eateries on days of rest, 94% of them prohibit commercial activity on those days.

More than once, an accusing finger is pointed at local government, claiming that it is not doing enough to enact in virtue of those authorities granted to it by the central government. Many struggles over the desecration of the Shabbat took place at the local level, where they received relatively quick fixes, stop-gap measures which provided a specific solution to the dispute at the local level, without having to formulate a clear policy at the national level. Transforming the issue into a subject that is regulated at the local level makes it possible to remove the heated debates from the national political agenda, and thus forms part of the mechanism of the politics of accommodation. Therefore, this is a practice aimed at limiting the scope of the decision making.

Even after legislation has been passed on a particular issue, various actions may still be taken that are aimed at preventing a change in policy and, in effect, at enshrining a policy of non-decision making. Accordingly, the second tactic is *Partial enforcement or lack of enforcement*, serving the goal of maintaining the status-quo. As Bachrach and Baratz stated: ‘Non-decision-making is a means by which demands for change in the existing allocation of benefits and privileges in the community can be suffocated before they are voiced, or kept covert; or killed before they gain access to the relevant decision-making arena; or, failing all of these things, maimed or destroyed in the decision-implimenting stage of the policy process’ (Bachrach and Baratz 1970, 45).

Local authorities may enforce bylaws in a few ways. One way is to stipulate that a violation of these laws will be subject to a fine by the inspectors of the local authority. A second way of enforcing the bylaws is by filing an indictment to a court that can decree a fine of up to NIS 3,600 (Zeira et al, 2014). Research findings from recent years show that the local authorities differ in their policy of enforcing the bylaws that they themselves enact. A study found that slightly more than half of the 13 local authorities which have a by-law declared that, for various reasons, they do not enforce it. Enforcement varies from one authority to another due to turning a blind eye towards commercial activity on the outskirts of cities. As a result, the law will often not be enforced in areas of commerce and entertainment that are mostly located outside the cities’ limits (Friedman 2019).

Bylaws regarding commercial activity on days of rest may not be fitting, as circumstances may change over time. In that case, initiatives calling for a new policy may appear, demanding ministerial approval. However, *delay and postponement*, during which a decision passes from hand to hand without any serious consideration by those involved, is a way of exercising covert power, thus contributing to a situation of non-decision making. In other words, the third tactic is avoiding ‘the hot potato’ by means of stalling.

The most prominent example of this was a petition filed with the Administrative Affairs Court in 2007 by a group of business owners, mainly small mini-markets, in the city of Tel Aviv-Jaffa against the municipality on the grounds that it refrains from enforcing the by-laws relating to business activity on days of rest. In consequence, the petitioners argued,
unfair competition was created due to the fact that large chain supermarkets such as AM: PM and Tiv Ta’am were operating unhindered throughout the city, a fact that not only violates their freedom of occupation but also causes them considerable economic damage. This petition was rejected on the grounds that the municipality is not authorized to consider the effect on market competition of opening a business on Shabbat, and that underlying the municipal bylaw is the ultimate principle of freedom of occupation. About a year after the petition was rejected, the mini-market owners decided to petition the Supreme Court, and the latter chose to overturn the ruling. In their decision, the justices stated that as long as the bylaws were in force, the municipality must act in every way to enforce it effectively, because if it fails to do so, it is violating the rule of law (Adm. App. 2469/12). It went on to claim that if the municipality finds that the law is not compatible with the life of the city and is irrelevant, it may amend it in the city council. As a result, the city council turned its hand to legislation and introduced an updated by-law permitting the opening of businesses in three commercial centres and the operation of a small number of convenience stores, kiosks, and mini markets throughout the city.

The amendment of this bylaw required the approval of the then-Minister of the Interior (2014), Gideon Sa’ar, who opposed the broad scope of the permits and referred it back to the city council for reformulation. The city council, without delay, proposed a stricter bylaw than the first. However, Sa’ar delayed his decision and in any case, was about to resign from government. The two interior ministers who succeeded him, dragged their feet in dealing with the issue and avoided addressing this bylaw using various pretexts, and so it remained pending. Moreover, during that period it was decided to establish a government committee to examine the matter, but its findings did not lead to any decision. This means that by 2017, about three years after the amended bylaw had been presented, policy makers were still avoiding formulating a clear policy. When the Tel Aviv Municipality saw that this was the case, it petitioned the High Court of Justice, which ruled that the law should be published in the Ministry of Justice Official Gazette and that it should take effect immediately. Officially, the new by-law does not significantly change the reality in Tel Aviv, since even before it went into effect, there were many stores open (mainly chains), so that ‘laundering’ of offenses would merely save them from paying fines that were, in any case, negligible.

The response to the High Court of Justice ruling, which approved the municipal by-law in Tel Aviv, was not long in coming. In the beginning of 2018, the Knesset passed the Law to Amend the Laws of Local Authorities (By-laws on the Opening and Closing of Businesses on Rest Days), 2018. This law, also known as the Supermarket Law, sought to amend the Municipalities Ordinance (as well as the Local Councils Ordinance) in several aspects relating to the authority of the local government to determine the hours of business activity on rest days. However, the significant change in the law is the one that stipulates that a local authority cannot publish the bylaws pertaining to this area in the Official Gazette until the Minister has given their consent to the bylaw. The Minister, as defined by the amendment, shall not give their consent unless the opening and closing of the business during rest days is required in order to satisfy needs which he deems are essential to the public, and the limit of 60 days he had to express his opinion no longer pertain. Ostensibly, this aspect appears to be a significant amendment to the existing legislation, but in practice, this is not the case. In reality, this amendment largely perpetuates the existing reality; it does not invalidate
previous bylaws that had already permitted the operation of businesses on Shabbat, but seeks to intervene in future legislation, such that local authorities may wish to promote in order to change the existing reality in this respect. We doubt whether in the future, the various local authorities will demand to amend existing legislation in this area, especially in cases where there is already auxiliary legislation that regulates the issue, since in some cases it is only partially enforced or is not enforced at all, as will be explained further on.

Likewise, even before the amendment was introduced, in the event that the minister expressed their opposition within 60 days, they had the right to demand a re-wording of the bylaw, and approving the updated version was not time limited. This is how Minister Gideon Sa’ar acted concerning the first version of the by-law in Tel Aviv, which led to the continuous delaying that was described above. In other words, this legislation manifests the fourth tactic: *legislation that makes a great ado about nothing*.

Passing the Supermarket Law is not self-evident, considering this article’s argument that the pattern of NDM regarding the issue of the Shabbat has been accompanying decision makers since the establishment of the state. Therefore, to better understand the need to protect the status quo through this legislation, one should pay attention to the broader context of this policy arena.

As mentioned earlier, there has been a significant growth of shopping rates on Shabbat in Israel since the late 1980s. This local ‘consumer revolution’ was accompanied by a new phenomenon of commerce conducted in malls and shopping centres, which the ‘status quo’ arrangement found difficult to maintain. However, the Supermarket Law was not only a reaction to these economic changes but also addressed political changes, more specifically, the clash between the Israeli parliament (the Knesset) and the Israeli Supreme Court (Meydani 2011). In the last 3 decades, the Israeli Supreme Court has adopted a more activist approach and became a key player in Israeli public policy making, in regard to a wide range of policy issues, such as civil marriage, the public sale of non-kosher meat, and opening businesses on Shabbat (Ben-Porat 2013). In several cases, the rulings of the Supreme Court have granted it a judicial review of the legislation that in practice led to canceling the law that was legislated by the Knesset and weakened some of the status quo arrangements (Friedmann 2016). A prominent example of this is the issue of draft exemptions of Ultra-Orthodox men from military service, wherein the Supreme Court ruled that the Tal Law was not constitutional, and of course, the ruling of the Supreme Court regarding commerce on Shabbat in Tel Aviv. Indeed, the legislation of the Supermarket Law followed, chronologically, the Supreme Court ruling regarding the commerce in Tel Aviv. But, in fact, it was a reaction of the Knesset to the broader context of this issue, rather than a reaction to this isolated event, especially as the new by-law does not significantly change the reality in Tel Aviv.

As official national policy remains unchanged, there are demands calling for action on the part of politicians, who have an interest in satisfying their electorate with rhetoric, while in fact maintaining the status quo. Bills and motions for the agenda representing ‘Much ado about nothing’, the fifth tactic, serve this purpose as follows. Since the amendment of the 1998 law and up until 2005, there was no parliamentary activity on this issue. The year 2005 marks the beginning of a period of continuous activity for several years until 2009. Subsequently, interest in the issue was renewed in 2015 and continued until 2019. It is noteworthy that of all the bills introduced during this period, none passed the first reading, and this was for a reason: The proposed bills were referring to
the full range of aspects constituting the public sphere, based mainly on the Gavison-Medan Covenant, distinguishing between activities permitted on the Shabbat (recreation, culture, entertainment, and limited transportation) and prohibited activities (state institutions and commercial activity), except for essential activities. By contrast, the ‘Supermarket Law’ which came into force in January 2018, was not as encompassing as the others were and its repercussions were quite limited.

Additionally, most of the bills are not consistent with the ultra-Orthodox outlook and aspiration in this context. Therefore, it can be said that these are proposals, which a priori were unlikely to pass second and third readings, and their purpose was to create a false representation of measures being taken towards making a fundamental decision, while in practice, avoiding changes that challenge the dominant values. In the 20th Knesset, a number of bills were raised that also create a distinction between permitted and prohibited activity, most of which are identical in content to the distinction made in bills in previous Knesset sessions. The last bills in the 20th Knesset on this subject were introduced following the enactment of the aforementioned Supermarket Law, with the aim of restoring the status quo, namely, restoring the authority to local government to enact by-laws regarding businesses operating on days of rest.

*Motions for the agenda and urgent motions for order* are another expression of the policy of non-decision by elected officials. On the one hand, they allow discussion of the issue and a demonstration of activity, but in practice, there is an exercise of covert power here in order to avoid a real change in policy. Moreover, motions for order are often not discussed in the Knesset plenum but rather are discussed in the relevant committee; however, the committee chairman is not always punctilious about convening a discussion on the subject. One may see that in several Knesset sessions, beginning with the 12th Knesset until the 20th, several motions for the agenda were raised, usually around a focusing event. Usually, no discussion was held in the plenum and the proposal was referred to a committee for discussion. Although such motions were sent to committee for deliberation, discussions of them almost never took place in those committees.

**Conclusion**

‘Public policy’ has been given various definitions and modes of expression. One of these expressions is a state of non-decision, a term that was coined by Bachrach and Baratz (1963), and which reflects a situation where the status quo is, in effect, maintained, often with the intention and design of the interested players. Thus, the politics of the non-decision-making process (NDM) consists of the ability to exclude certain alternatives from the agenda of collective choice.

The issue of Shabbat has continued to preoccupy the State of Israel ever since its foundation. Yet despite the various attempts to bring about a fundamental change of policy regarding the issue of stores, in particular, and the Shabbat policy in general, it appears that no such change has taken place to date.

This article has shown that the pattern of non-decision making has characterized public policy regarding the opening of stores on Shabbat in the State of Israel over the years in order to maintain the status quo. Two structural factors have been motivating the adopting of this policy pattern: the first is the consociational model in religion-state relations, and second is the multiplicity of political parties.
The different players in the policymaking venue have been using various NDM tactics, which were discussed in this article: localization of the problem; lax enforcement; delay in making a necessary decision (avoiding the ‘hot potato’); legislation that is much ado about nothing; and bills and motions for the agenda which are also much ado about nothing.

As mentioned above, Sharkansky and Friedberg give three different meanings to the use of the term ‘non-decision’. An examination of the policy of non-decision on the issue of conducting business on Shabbat reveals that the first meaning is appropriate for describing events in both the national and local political arena. First, a policy change that would transfer the authority to decide about business hours of stores to the national level, and the high probability of its being drafted in a way that would limit commercial activity on Shabbat (based on the Gavison-Medan Covenant) would lead to strong objections in the opposing camp, especially in localities with a high commercial profile. On the other hand, the ultra-Orthodox are also opposed to bills in this direction, which would allow holding leisure, cultural, and entertainment activities throughout the country, in contravention of Jewish law.

Each of the three interior ministers who refrained from addressing the new by-law passed by the Tel Aviv City Council did so knowing that approving the bylaw would have aroused the wrath of the ultra-Orthodox, who would surely have protested vehemently against the Minister of the Interior’s approving Shabbat desecration. On the other hand, his invalidating it would have caused opposition on the other side. Second, throughout this entire period there was no identifiable coalition of enthusiastic supporters for any of the alternatives mentioned above. Although a few Knesset members allied each time for bills dealing with national regulation of the issue, beyond raising them for a preliminary reading, they never seemed to cooperate in order to bring about a change in policy. This is true also at the local level, where efforts were not concentrated among the various local authorities in order to change the policy in a way that would enable them to disengage from central government. The Federation of Local Authorities was also not active in forging coalitions and generally confined itself to reactions to the media following developments.

Moreover, in leaving the situation as is, there are no big losers, and that is for two main reasons: first, localization, which passes the decision to the local authority, allows each population to live its life at will, ultimately, because of the option to adopt a pattern of partial or selective enforcement. Second, the Supermarket Law has implications for the future only, so that most of the local authorities have already made decisions in the past and are not required to change their policies. And anyway, as has been observed, the law does not change reality significantly. It is true that the owners of small mini-markets and shops in the city of Tel Aviv (and possibly in a few other cities which have lively commercial activity), indeed lose out in the current situation, but taking a macro view, there is no doubt that these are not losses on a large scale. This is all occurring against the background of more burning issues on the agenda, ranging from stories of corruption to unending issues of national security.

This situation is convenient for the politicians, considering that Israeli society is deeply divided and has been making efforts over the years to avoid undermining the politics of accommodation in religion-state relations. The policymakers, who were elected largely to manage complex issues such as the issue of the Shabbat, are reluctant to try to find a formula acceptable to both sides, or at least to simplify this complexity.
Additionally, the significant political power of small parties, among them, the Ultra-Orthodox parties, does not allow the majority to impose any changes, and therefore, the motivation for NDM in the sense of political convenience is intensified. At the same time, one could detect the third interpretation as well, where non-decision making arises from a desire to protect interests by preventing changes in existing policies. The businesses that are open on Shabbat unquestionably benefit from the current situation, wherein the by-law is not being enforced. Enacting a comprehensive national law, probably based on the Gavison-Medan covenant, would put an end to their ability to make use of the different manifestations of non-decision. Therefore, they employ lobbyists that influence Knesset members in favour of the existing situation.

Alongside the advantages offered by a non-decision policy, it imposes challenges as well. First, maintaining the status-quo brings about ‘industrial peace’ in the short term, but it may be encouraging destabilization in the long term. The current convenience for policymakers discourages them from grappling with the factors and circumstances underlying the rifts, whereas under the surface, these divisions deepen. In the event that one or more of the structural factors change in the course of time, the motivation and legitimacy for such a policy pattern decrease and the rift may implode forcefully. Second, regulating significant issues through bylaws at the local level may leave them in the hands of ad-hoc coalitions. In these cases, the policy does not represent the actual social composition and does not reflect the regulation favoured by the majority of the population.

Israel is an example of a country that has been challenged with deep internal rifts for decades, unlike many Western democracies that started experiencing such a state of affairs only in recent decades, especially as a result of emigration. These divisions raise various related issues onto the agenda, with the aim of changing the official national policy. Although the majority of these Western countries did regulate the relations between state and religion in the past, (unlike Israel), it seems that this is no longer relevant. However, changing the official national policy regarding issues that are related to these rifts is a powder keg, threatening to burst and risk the stable democracy in these countries. Therefore, adopting the Israeli pattern of policy of NDM, as demonstrated earlier, may serve best these countries.

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