

Introduction

Israel's twenty-third government was brought to an unceremonious end on March 15, 1990, when the Knesset majority voted Prime Minister Yitzhak Shamir's government out of office less than a year and half following its investiture. This was an event of historic proportions because no Israeli government had been defeated on an opposition-sponsored no-confidence vote in the country's legislature ever before. Although the government had started its term as a national unity coalition that included both Likud and Labor, the country's two largest parties at the time, it had lost its majority when Labor entered into an understanding with the ultra-orthodox religious Shas party to bring it down and replace it with a new coalition of Left and religious parties. Eventually, the Labor-Shas deal, which became popularly known in Israel as the "stinking trick," backfired and led to Shamir's return to power at the helm of the twenty-fourth government formed by a narrower coalition of Right and religious parties, leaving Labor squarely in the opposition benches.

Government instability was already a well-known and recurrent feature of Israeli parliamentary life ever since the creation of the State. As such, there was hardly anything unusual about the fact that the coalition of parties that formed the government after the general election would change, leading to the investiture of a new government.

However, what was extremely unusual about the events that transpired in the Twelfth Knesset was the pivotal role that defectors played in determining whether Shimon Peres of the Labor Party or Yitzhak Shamir of Likud would become the next prime minister. During the three months that ensued between Shamir's defeat in March and his eventual return to power in June, the Israeli public watched in dismay as one Knesset member after another defected from their parties in an effort to position

themselves as kingmakers between the rival claimants to power. The eventual outcome of the government formation game was indeed determined by a handful of defectors who successfully demanded, and received, ministerial positions in the new government as a reward for betraying their parties.

The Israeli public did not take kindly to this turn of events, and in one of the largest ever public protests in the country's history it demanded the political class to introduce fundamental reforms to restructure the system and the operation of government. The "stinking trick" reminded Israeli voters of the case of Rahamim Kalanter, a one-time member of the Jerusalem city council whose famous defection from his party in 1956 saved the crumbling coalition headed by Mayor Gershon Agron and gave birth to the highly pejorative term *kalanterism* in the Israeli political lexicon. What was particularly problematic about both *kalanterism*—the phenomenon of Knesset members moving from one party to another in exchange for positions or material benefits—and the "stinking trick" was that the defectors involved received executive appointments in exchange for crossing the floor, which reinforced the public perception that the voters' mandate was negotiable among their representatives and up for grab to the highest bidder. Although *kalanterism* remained a relatively isolated phenomenon in Israeli national politics until 1990, the "stinking trick" brought it back to the center of the public spotlight and debate.

A central element of the reforms that followed the upheaval in the Twelfth Knesset was the introduction of the direct election of the prime minister, which was expected to insulate the office of the head of government from the ill effects of partisan horse-trading.¹ The immediate effect of the reform was the transformation of the Israeli political system from pure parliamentarism to a hybrid presidential-parliamentarism;² however, it proved to be a short-lived experiment, and the direct election of the prime minister was rescinded by the Fifteenth Knesset in 2001. Nonetheless, the change of the government system left behind several long-term effects that can still be detected in the ongoing fragmentation, volatility, and personalization of the Israeli party system.³ In addition to the direct election of the prime minister, the Knesset also responded to the public's demand for reform in yet another way: by passing an anti-defection legislation that was supposed to make it ever less attractive for Knesset members to leave the party that they had represented in the previous election. In contrast to the brevity of the direct election of the prime min-

ister, the anti-defection legislation, a package of several interconnected laws, has proved to be a lasting reform institution. Although its different components have been amended several times since its inception, the legislation has remained an integral part of the architecture of Israeli political institutions, and as such has had profound consequences, both expected and unintended, for the stability of the political parties in the Israeli parliament.

The Argument

This book tells the story of the emergence of Israel's anti-defection law and the consequences it has had on the stability of political parties, as well as on governments in the Knesset. *My central argument is that whereas the law has successfully insulated government stability from the potential hazard of party defections, it has simultaneously given rise to new forms of strategic calculations on the part of elected parliamentarians that have actually resulted in a relative increase in the rate of party switching as well as a weakening in legislative party stability.* In other words, the Israeli anti-defection law has sacrificed party stability in favor of ensuring that governments will no longer fall as a result of defections.

In the vast majority of established democracies around the world, political parties are in charge of managing their own internal processes and mechanisms by which they secure the compliance of their parliamentary representatives, sanction indiscipline where and when necessary, and deter deputies' ultimate form of dissent, which is to exit the party altogether. Therefore, the adoption of an anti-defection law in a stable democracy, where party competition is already institutionalized, such as Israel, is a puzzle in and of itself. It is true that over the past few decades, a growing number of new democracies, where political parties and the party system are still relatively less institutionalized,⁴ have adopted formal legislation, and often constitutional provisions, to strengthen parliamentary parties against their own members' exit option.⁵ Such anti-defection laws set out concrete penalties for individual parliamentary deputies who change their partisan affiliation during the inter-election period, but in exceptional circumstances they may entirely ban party exit. However, while the adoption of anti-defection measures may seem reasonable in new democracies, in established democracies with an institutionalized

party system the adoption of anti-defection legislation is not only puzzling but is often described as a violation of fundamental political rights and freedoms of the individual deputy.⁶

Informed by the classic Burkean theory of the free mandate, established democracies rarely adopt legal, let alone constitutional, restrictions on their parliamentary representatives' freedom to choose and change their partisan affiliation after the election.⁷ Quite the contrary, a significant number of established democracies actually provide constitutional protection for the freedom of individual parliamentarians' mandate from excessive party control in order to ensure that the voters' interests and preferences will not be subordinated to those of political parties.⁸ This practice is widely supported by the international legal community, which has produced a number of reports, documents, and position papers that share the consensus according to which the freedom of elected deputies' mandate, including their freedom to choose their party affiliation even after the election, takes precedence over the interests and the unity of political parties.⁹

Nonetheless, as the case of the Twelfth Israeli Knesset shows, the protection of the free mandate may come at a high cost if members of parliament change their partisan affiliation on a scale, or in a manner, that leads to loss of public trust in the legitimacy of the electoral and representative institutions. Defections and floor-crossings may create or reinforce the popular perception that legislators are unprincipled and opportunistic actors motivated by the selfish pursuit of personal gains. In extreme cases defections may even trigger acute political crises causing deep decline in the legitimacy of the system of government. Viewed in these terms, anti-defection laws may also be understood as legal instruments whose primary objective is to regulate political parties and legislators in order to protect the legitimacy and the integrity of the political system rather than measures adopted to limit the freedom of individual deputies.

Why Israeli lawmakers responded to the aftermath of the "stinking trick" by formalizing and institutionalizing the regulation of party unity even though the prevailing view in most established democracies, echoed by several leading Israeli jurists, supports the freedom of individual lawmakers is one of the major puzzles that the book will investigate. The puzzle becomes even more interesting when one considers the history of the Israeli anti-defection law: following decades of unsuccessful calls to adopt such legislation, the eventual passage of the legislation in 1991 was succeeded by a series of amendments and changes, which shows

that far from losing any interest in abandoning the formal regulation of party unity, the Knesset has remained seriously committed to regulating it. Prior to 1991, several instances of defections led Israeli lawmakers to demand that some kind of formal regulation be taken against such, allegedly unscrupulous, parliamentary behavior. The recurrent trope in these demands was that since Israeli voters gave their mandate to political parties, by virtue of the fact that on election day they vote for a closed list of candidates, and not to individual representatives, Knesset members should have no right to change the number of seats that parties secured directly from the electorate. In their own defense, defectors would often argue either that they personally were responsible for bringing a substantial number of voters to support the party or that the party has changed its position on issues that it has promised to the voters during the election campaign. As such, they would claim that their defection actually served the interest of the public to by punishing a party that steered too far from what it had committed itself to represent in the last election.

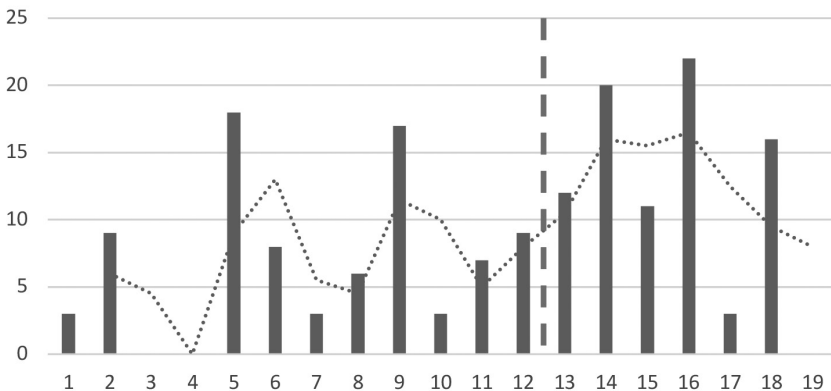
Although the anti-defection law has been amended on several occasions, it has consistently retained at its core a mixed delegate-trustee mandate of representation, which combines the free agency of the individual representative with political parties' ownership of the voters' mandate. This mixture, however, has created normative ambivalence with regard to the question of who actually owns the voters' mandate: the individual Knesset member (MK) or the party on whose ticket he or she was elected. Instead of making a clear choice either in favor of the free mandate or in favor of the party government model of representation, the Israeli anti-defection law sought to strike a middle ground between the two models. On the one hand, the law established clear penalties for defections, which suggests a movement toward the partisan end of the mandate continuum. On the other hand, the law has also created loopholes and conditions that continued to keep the exit option open for legislators dissatisfied with their party's directions and decisions. In this sense, the anti-defection law has maintained the freedom of individual legislators to exercise their exit option, albeit under more circumscribed conditions than what was the case before the legislation had taken effect.

By refusing to punish defections in a categorical manner and, instead, establishing precise conditions under which defections can go unpunished, the anti-defection law has created an institutional foundation for the weakening of the cohesion of legislative party groups. Prior to the passage of the legislation, disgruntled Knesset members would

quit their parties whenever they estimated that the circumstances were appropriate. However, once the anti-defection law stipulated the precise conditions under which defections were not penalized such disgruntled parliamentarians had a strong incentive to defer their defections until those conditions were met. In the meantime, they would provoke deeper internal dissension within the party, which would cause a severe loss of cohesion and institutional stability.

In addition to prolonging intra-party dissent, a second important unexpected consequence of the Israeli anti-defection law has been its failure to reduce the actual number of defections. Figure I.1 provides firsthand evidence that the number of elected Knesset members who have changed their party affiliation since the anti-defection law came into effect: party switching per Knesset has increased from an average of 7.5 before to 12.4 after the adoption of the anti-defection law.

Moreover, the types of defections have also changed dramatically: direct floor-crossings from one party group to another have been eliminated; the establishment of single-member party groups has dropped to a negligible number; and the overwhelming majority of defections have been collective in nature and have taken the form of creating new legislative party groups. The increase in the number of new party formations

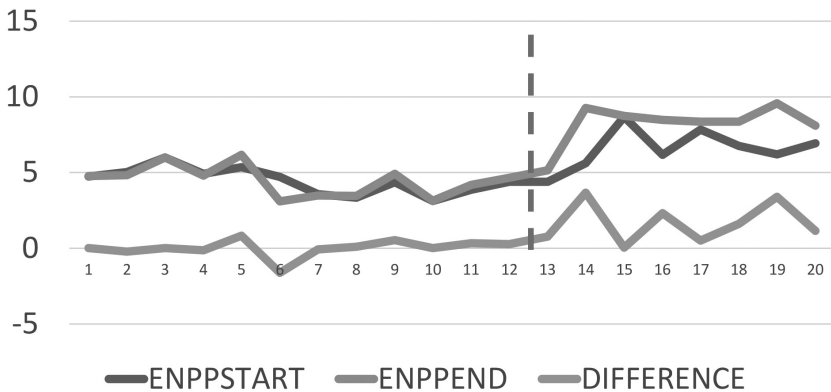


Note: The vertical dashed line separates the time series between the years before and after the adoption of the anti-defection law. For source and details, see the Appendix.

Figure I.1. Party switching per Knesset, 1949 to 2015.

has also led to a sharp increase in the rate of the fragmentation of the legislative versus the electoral party system. Using the effective number of parties index,¹⁰ figure I.2 compares the level of party system fragmentation in each Knesset at the start of its term with the level of fragmentation at the end of the term. Put simply, since the Twelfth Knesset, the legislative party system has been consistently more fragmented at the end of the term than it was right after the election.

The failure of the Israeli anti-defection law to reduce legislative party fragmentation is related to the countervailing effects of the Israel's extreme proportional representation electoral system.¹¹ Well known for its favorable treatment of small political parties, the electoral system in and of itself creates an inherent obstacle to legislative party unity. The combination of a historically low electoral threshold coupled with a regime of generous state funding for political parties has made it historically quite easy for dissatisfied politicians to split from their parent party and set up new ones with a realistic expectation to win representation in the



Note: ENPPSTART refers to the effective number of parliamentary party at the start of each Knesset; ENPPEND refers to the effective number of parliamentary parties at the end of the same Knesset. The effective number of parties, also known as the Laakso-Taagepera index, is calculated by dividing into the unity the sum of the squared percent of all parties' seat share that won at least one seat in the Knesset. The vertical dashed line separates the time series between the years before and after the adoption of the anti-defection law.

Figure I.2. Inter-election changes in the number of parties in the Knesset, 1949 to 2019.

Knesset in the next election. For the anti-defection law to have a strong bite it would have had to be defined much more sharply and it would have had to forbid defections and party exit categorically in order to counteract the fissiparous tendencies that stem from the electoral system and the party funding rules. Instead, the very legislation that is supposed to keep parliamentary parties stable and united actually acts to reward intra-party minorities and factions as long as they satisfy the relatively weak conditions set out in the law.

An Overview of the Chapters Ahead

The presentation of the argument unfolds as follows. Chapter 1 provides a theoretical background to the study of rules and laws established to keep legislative parties together. As the chapter will show, although the scholarly literature on party switching has become a growth industry, scholars to date have paid scant attention to the ways in which anti-defection laws, the legal instrument with the explicit and direct intended effect on party switching, operate. Moreover, anti-defection laws have also been neglected by scholars who study party laws, legislation by which the state regulates the activities of political parties. Whereas the state regulation of particular areas of party life have been more thoroughly studied, such as party finance, others, such as legislation aimed to keep parliamentary parties together, have remained by and large neglected.

Chapter 2 provides a historical overview of party switching and its attempted regulation both before and since the adoption passage of the anti-defection law in 1991. It shows that in spite of the frequency of party switching, the Knesset remained consistently reluctant to adopt formal legislative measures against them until the “stinking trick” de-stabilized Yitzhak Shamir’s national unity coalition government and the defectors became king-makers in the government formation drama that followed. In stark contrast to the dramatic events in the Twelfth Knesset, none of the successive legislative amendments to the anti-defection law were triggered by deep political crises. Quite the contrary: the history of the anti-defection legislation shows that governing coalitions have gained a very strong legal instrument in this legislation to shore up their strategic political needs. As such, the stability of the anti-defection law has become quite vulnerable to the shifting realities of Israeli coalition government.

Chapters 3 to 7 are dedicated to an in-depth exploration of the five main consequences of the Israeli anti-defection legislation for (1) the

frequency of switching, (2) the type of switching in terms of the number of parliamentarians involved, (3) the timing of the switch and (4) the direction of party switching in terms of the government-opposition divide, and (5) the electoral consequences of party switching. Chapter 3 explains the counter-intuitive finding that the frequency of party switching has actually increased rather than decreased in the aftermath of the law taking effect. The chapter expands on the argument that not only does the anti-defection law have specific features encouraging party switching but it also interacts with other institutional mechanisms, specifically the electoral system and the proliferation of intra-party candidate selection primaries, that further incentivized party exit. The chapter illustrates the interaction of these processes through a case study of the disintegration of the Likud party in the Fourteenth Knesset.

Chapter 4 examines the rise of collective party switching, as opposed to solo exits, since the adoption of the anti-defection law. The chapter specifically argues that the number of Knesset members involved in a given switch has been consistently a reflection of the institutional provision in the anti-defection law that allowed one-third of a party group to split away with no penalty. Although the one-third provision was originally intended to be a proxy measure for an ideologically driven party split, it has instead become a focal point toward which party switchers strategically converged. The chapter provides three cases studies to show the mechanics and the ambiguities in the application of the “one-third” condition: the formation of the Yi’ud (Destiny) party in the Thirteenth Knesset, the disintegration of the Pensioners’ Party in the Seventeenth Knesset, and the split in the Israeli Labor Party in the Eighteenth Knesset.

Chapter 5 studies the puzzling preponderance of pre-electoral party switching in Israel. Comparative studies suggest that the electoral cost for party switching should be higher in close proximity to the next election, which should therefore lead more legislators to switch party earlier in the term. In the Knesset, however, the anti-defection law has had very specific built-in provisions that actually facilitated and encouraged pre-electoral party exits. In most cases, this meant that intra-party dissension and conflict would fester throughout much of the legislative term, making parties less united and less cohesive, and would become formalized at the pre-electoral stage. The chapter presents four cases, two solo and two collective switches, to illustrate the causes and dynamics of the pre-electoral timing of party switching.

Chapter 6 explores the directionality of party switching. It shows that the overwhelming majority of switches have taken place among the oppo-

sition parties, both before and since the adoption of the anti-defection law. As such, the anti-defection law has not had any particular effect on the direction in which MKs switch. However, through a detailed case study of the gradual disintegration of Prime Minister Ariel Sharon's successive coalition governments in the Sixteenth Knesset, leading to the highest number of MKs switching parties since the adoption of the anti-defection law, the chapter shows the important role that the anti-defection legislation played in prolonging the tenure of a rapidly weakening coalition government.

Chapter 7 examines the electoral consequences of party switching both for individual MKs as well as for the new party groups they form. The chapter shows that for individual Israeli legislators the electoral cost of party switching has increased since the anti-defection law took effect, which is surprising given that the actual rate and frequency of switching has increased over the same period. The seeming contradiction is resolved by looking at the electoral consequences of party switching for the new party groups that are created: new party groups often survive and do well in the next election, however, the MKs who are elected from its list may not be the same ones who carried out the formation of the group in the first place. In this regard, first-term rookie MKs are particularly vulnerable and are re-elected only half as frequently as their more experience colleagues.

Chapter 8 shifts the discussion to a comparative context by situating the Israeli case in the context of three other contemporary democracies that have adopted anti-defection laws in order to maintain the political integrity of their elected legislators: India, South Africa, and New Zealand. This chapter shows that the Israeli legislation is indeed comparatively mild in terms of its sanctions, which resulted in its failure to eliminate defections. At the same time, by institutionalizing the mixed delegate-trustee model Israel has successfully combined its simultaneous commitment to fostering party stability without compromising the political freedoms of individual parliamentarians.

A Note on Terminology

Throughout the book several technical terms are used to denote various forms of party switching. The generic term "party switching" refers to any change in an elected legislator's party group during an inter-election

period. Technically, this could include the full-scale amalgamation of multiple party groups creating a new one. However, since the anti-defection law was not concerned with such changes but rather with regulating MKs *exiting* from their party group, I use the term “party switching” in the sense of “party exit” and will, therefore, use the terms interchangeably. As such, I define party exit as an event when an *elected member of the Knesset leaves his or her parliamentary party group, either alone or together with other members, before the next general election with one of the following three outcomes: (1) the switching MK becomes a Single MK in the Knesset, (2) the switching MKs form a new party group, or (3) the switcher(s) join an existing party group.*

A “defection” is a specific form of party exit as defined in the anti-defection law and its various amendments, as discussed in chapter 2. Similarly, a “split” is also defined in the anti-defection legislation as a form of party exit exempted from the penalties meted out for defectors. While party amalgamations are not covered in my analysis, there are a few instances when a small party group collectively merges into another larger party group. Such cases are counted as forms of exit since the parties involved are not creating a new “third” party. The appendix presents a list of all party switches in the Knesset, both collective and solo, that meet this definition.