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Keeping Parties Together? The Evolution of Israel's Anti-Defection Law

Abstract: In 1991, the Knesset passed a package of legislation with the aim of preventing the rampant party switching and defections by elected representatives. At the time of its adoption, the so-called anti-defection law was supported by an all-party consensus. Although the legislation has remained in effect, its apparent continuity conceals the way in which it has become transformed from what was at first an “efficient” institution to a “redistributive” one (Tsebelis 1990). In this paper, I review the development of the Israeli anti-defection law and argue that whereas at the initial moment of its adoption the anti-defection law was considered to benefit all parties in the system, over time it has become an instrument in the hands of the governing coalition to manipulate divisions and engineer further defections among the opposition in order to shore up its often fragile legislative base.

Keywords: *Knesset; anti-defection law; party switching; party unity*

Introduction

The effectiveness of modern parliamentary government, as Giovanni Sartori (1994) famously argued, rests on the presence of “parliamentary fit” political parties: parties that are sufficiently cohesive, disciplined and united to make the legislature perform its central functions: to legislate, represent the people, and exercise scrutiny over the executive. It is no coincidence, therefore, that the centrality of political parties has led scholars to identify modern democratic government as essentially party government where political parties are the key actors that organize and manage the democratic process from elections through government formation to legislation. In the vast majority of contemporary democracies political parties are in charge of managing their own internal ways by which they seek to secure the compliance of their parliamentary representatives, sanction indiscipline where and when necessary, and deter deputies’ ultimate form of dissent, which is to exit from the party altogether. Over the past couple of decades, however, a growing number of democra-

cies, especially new democracies, have adopted formal legislation, and often constitutional provisions, to strengthen parliamentary parties against their own members' exit option (Malhotra 2005w). Such anti-defection laws normally 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.

The adoption of such anti-defection measures may seem reasonable to make party government work in new democracies, where political parties and the party system are still relatively less institutionalized (Mainwaring and Scully 1995). However, in established democracies with an institutionalized party system the adoption of anti-defection legislation is not only puzzling but it is often described as violating fundamental political rights and freedoms of the individual deputy (IPU). 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 election¹. 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 parties². 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 parties³.

The protection of the free mandate, however, 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 who are motivated by the selfish pursuit of personal gains. In extreme cases defections may even trigger acute political crises causing a deep decline in the legitimacy of the system of government. Viewed in these terms, anti-defection

¹ In his famous Speech to the Electors of Bristol, Sir Edmund Burke argued that parliament was a deliberative body of free agents and not a congress of ambassadors of various interests. As he put it: "You choose a member indeed; but when you have chosen him, he is not a member of Bristol, but he is a member of Parliament." (Burke 1774).

² For a discussion and a list of states that place and outright ban on restricting the political freedom of individual parliamentarians, see European Commission for Democracy Through Law (2012).

³ See, for example the 1990 Copenhagen Document of the Conference on Security and Cooperation in Europe; the 2009 *Report on the Imperative Mandate and Similar Practices* prepared by the European Commission of Democracy Through Law (Venice Commission); or the Inter-Parliamentary Union analytical paper on *The Role of Political Party Control Over the Exercise of the Parliamentary Mandate*.

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 that are adopted in order to limit the freedom of individual deputies.

Israel was one of the first, and remains one of the few, established democracies to adopt an anti-defection legislation. In 1991, the Knesset responded to a major public outcry that demanded the restoration of the integrity of the political system after the infamous “stinking trick” caused the collapse the National Unity government and brought floor-crossing and defections to the center of Israeli political life. Certainly party switches had happened before on a fair number of occasions over the course of previous decades in Israeli political history. However, never before were defections responsible for de-stabilizing national governments and never before were individual defectors able to occupy the position of king makers who would decide about the formation of the new government. Although these events in the 12th Knesset were unique they were also extremely powerful in that they threatened to cause a fundamental shift in the Israeli public’s perception of the transparency and the integrity of Israeli democracy and, especially, the legislature. Therefore, the legislature responded by adopting a detailed and carefully worded package of laws that were aimed at deterring such defections in the future.

The anti-defection law, with modifications and amendments, has remained an important part of the institutional architecture of the Israeli electoral and party systems to date. The apparent continuity of the anti-defection reform, however, conceals the way in which it has become transformed from initially being an efficient institution to one that is now widely understood to be as redistributive one (Tsebelis 1990). Efficient, or Pareto efficient, institutions are those that promote the collective welfare of all members in the community, whereas redistributive institutions are those that promote the welfare of some members at the expense of those of others. In this paper, I review the evolution of the anti-defection law over the past quarter-century and argue that whereas at the initial moment of its adoption the anti-defection law was considered to benefit all parties in the system, over time it has become an instrument in the hands of the governing coalition to manipulate divisions and engineer further defections among the opposition in order to shore up its often fragile legislative base.

Anti-defection laws in contemporary democracies

The study of the Israeli anti-defection law has significant comparative implications that go beyond the confines of the single case of Israel. In fact, the proliferation of anti-defection laws, pieces of legislation that explicitly penalize elected legislators who leave their parliamentary party groups, has attracted increasing scholarly attention over the recent past (Booyesen 2006; Goeke and Hartman 2009; Janda 2009; Malhotra 2005; Mershon and Shevtsova 2013; Miskin 2003; Nikolenyi and Shenhav 2015; Nikolenyi 2016; Subramanian 2008,

Yadav 2011). However, apart from a few studies on individual cases such as South Africa (Booyesen 2006), India and Israel (Nikolenyi and Shenhav 2009a, b), and Papua New Guinea (Reilly 2002), as well as a couple of broader regional (Malhotra 2005) and global (Janda 2009) overviews, scholarship on the politics of anti-defection laws remains sparse at best.

Janda (2009) notes that one of the key areas where party law differs significantly in old and new democracies is the regulation of party switching and defections. In the former, such regulation is normally left to the political parties themselves. In the latter, however, since the “stateness of the party” in general is much more pervasive, it is not surprising to find that the state plays a stronger role in regulating party cohesion and discipline. In support of this claim, Janda (2009) finds that only 14% of the 41 states that report laws, constitutional or not, against party defections and switching, were established democracies, while 24% were new democracies, the rest being semi- or non-democratic regimes. Miskin (2003:23) also points out that “dictatorships and fragile democracies” (2003: 23) use anti-defection measures more often than established democracies, while Booyesen (2006) argues that the institutionalization of the party system and the age of the democracy can account well for the presence of anti-defection laws, both constitutional and not. According to Miskin (2003), advanced democracies that suffer from high rates of party defection, such as France or Italy, are more likely to use party statutes rather than formal laws as a way to keep legislators in check. However, instances of such practice are also reported from new democracies, such as Spain (de Dios 1999). In what remains the single most comprehensive cross-national overview of anti-defection laws, Malhotra (2005) reports that the use of anti-defection laws tends to be particularly common amongst the member states of the British Commonwealth.

There are currently 40 national constitutions around the world that include some form of an anti-defection provision (Nikolenyi 2016)⁴. These laws show considerable cross-national variation in their content and the severity of the penalty that they impose on defectors. With the sole exception of Israel, constitutional anti-defection clauses punish defectors by requiring them to give up their seat in the national legislature⁵. Anti-defection provisions also vary in terms of how they distinguish and deal with defections depending on the reason for their occurrence. In almost half of the cases the constitution penalizes only voluntary resignation, while in approximately the same number of instances the constitution also penalizes defection that is caused by the deputy’s expulsion from the party. Where expulsion is treated as defection, constitutions often impose strict conditions that parties have to abide by⁶. In most cases where the constitution imposes a penalty for defection deputies can still

⁴ Although Israel has no formal written constitution, key elements of the country’s anti-defection legislation are included in the Basic Law: the Knesset and the Basic Law: the Government.

⁵ This sanction has also been raised yet rejected in the Israeli parliament, the Knesset. (Har Zahav 1993, 112)

⁶ For example, the constitution of Fiji requires that any such expulsion must take place in accordance with the “rules of the party relating to party discipline” and the constitution of Panama states the “reasons

exercise their right to a free vote, which means that they can vote against their party line without incurring a legal penalty⁷.

The adoption of the Israeli anti-defection law

The fall of the National Unity government, 1990

The immediate political context that led to the adoption of the anti-defection law was provided by the instability of the National Unity government formed under the leadership of Yitzhak Shamir after the 12th Knesset elections in 1988. The elections created a very close balance between the Left and the Right blocs, led by Likud and the Alignment respectively, with the bloc of religious parties assuming a pivotal role between them as long as they could coordinate their legislative strategies. Similarly to the previous legislative term (1984 to 1988), the Alignment and Likud renewed their partnership by forming another National Unity coalition government after the 12th Knesset elections. However, in contrast to the preceding National Unity government, in which the office of the Prime Minister rotated between the two senior coalition partners, the Prime Ministership remained squarely in the hands of Likud's leader, Yitzhak Shamir, with no rotation offered to the Alignment (Korn 1994:225).

The unity agreement between Likud and the Alignment was fraught with ideological contradictions and policy conflicts from its inception. One particular area of major disagreement between the two large parties was their difference of opinion regarding the formula put forward by U.S. Secretary of State James Baker to re-start peace negotiations with the Palestinians. Prime Minister Shamir demanded that the Labor Party must give "iron clad" assurance that it would not try to topple the government if the peace talks failed and that the United States should provide loans to help Israel absorb the massive wave of immigrants from the dismantling Soviet Union without the condition that the new immigrants would not be settled in the West Bank (Arens 1995). The Labor Party leadership was adamant that the Baker proposal must be accepted without these conditions and that the peace process must be resumed as early as possible. Although Defense Minister Yitzhak Rabin (Alignment) maintained that it was desirable for Israel to have a unity government, the Labor Party

for the termination of the mandate and the applicable procedure must have been established in the party by-laws". The Thai constitution even specifies that expulsion can result in a deputy's loss of mandate only if a resolution to that effect is passed by a qualified $\frac{3}{4}$ majority of the party's Executive Committee and its current legislative representatives.

⁷ The prohibition of any imperative mandate is actually enshrined in the constitutions of several states such as Malawi and Niger even though party switching is penalized. There are only 6 states (Guyana, India, Pakistan, Bangladesh, Zimbabwe and Sierra Leone) where the constitution penalizes both defection and voting against the party line.

central committee resolved at its meeting on March 12 that in the absence of any progress in the peace process there was no point in the Labor Party staying in the coalition anymore (Korn 1994: 235).

Another development that played in Labor's favor was the internal strife within Likud that by early March had culminated in the departure of five of its MKs who formed a new political party called the Party for the Advancement of the Zionist Idea (PAZI)⁸. The dissident group argued that the unity government betrayed Likud's historical and natural alliance with the religious parties adding that they also demanded more government positions and safe spots on the Likud list in the next election for themselves. Although PAZI did not leave the coalition, their departure from Likud meant that Shamir was no longer in control of the largest party group in the Knesset: the loss of the five members reduced the number of MKs in Likud's Knesset faction to 35 MKs vs. the Alignment's 39.

These developments culminated in a head-on collision between Likud and the Alignment on March 13, 1990 when Shamir, responding to the ultimatum, issued by the Labor Party central committee, fired Shimon Peres from the cabinet. Alongside with Peres's termination, all ten Labor Party ministers resigned from the cabinet and two days later, on March 15 the Labor faction submitted a motion of no-confidence against Shamir's government. The vote became of historical significance not only because it was the first, and to this day the last, time that an incumbent Israeli government would actually fall on a vote of no-confidence but also because it revealed the *stinking trick*, the Labor Party's secret alliance with Shas, that would bring the entire political system to a crisis point⁹.

The outcome of the vote was an extremely narrow victory of 60 votes in favor and 55 votes against the no-confidence motion with five of the six members of the religious Shas party abstaining and another religious party, Aguda, actually voting against the government. With the government defeated, President Chaim Herzog appointed Shimon Peres, leader of the Alignment, to try to form a new government within the following three weeks. It was during this period, which would last for the next three months, that thanks to a series of well publicized defections, political parties reached the nadir of the Israeli public's trust (Sprinzak and Diamond 1993: 3–4). Eventually, on April 26 Peres had to return his mandate to President Herzog who in turn once again asked Shamir to try to form a government. A little less than two months later, the Knesset voted into office Shamir's second coalition government with a bare majority of 62 votes in favor. Shamir had to pay a high price to win back his position as Prime Minister: he successfully

⁸ All five defectors were former members of the Liberal Party that had merged with Herut on the eve of the 1988 elections thus transforming the Likud electoral alliance into a genuine and united political party. The five former Liberals were led by Yitzhak Moda'i, Minister of Economics and Planning in Shamir's government, and they announced in early March their decision to split and form the new party PAZI.

⁹ The popular term for this episode, *the stinking trick*, was an expression used by Yitzhak Rabin in an interview to the *Maariv* newspaper (Koren 1995).

wooed a defector from the Labor Party, Efraim Gur, and made him Deputy Minister of Communications; he further appointed Eliezer Mizrachi, a defector from the Aguda party, which opposed the formation of second Shamir-government, as Deputy Minister of Health; and from among the PAZI members he gave Yitzhak Moda'i, the group's leader, his coveted Finance portfolio as well as appointing Pinhas Goldstein as Deputy Minister of Transportation. Two other members of PAZI, Sharir and Goldberg, who actually returned to Likud were promised safe seats on the next Likud election list. Yitzhak Peretz, the former leader of Shas who remained loyal to the Shamir government and did not partake in the conspiracy of his co-partisans with the Labor Party, was re-appointed to the new government as Minister of Immigration and Absorption.

Although Likud returned to the helm of a new coalition government, the party suffered severe internal discord during the process of its re-negotiating and re-building. A long line of prominent Likud politicians went on public record to express their disapproval of forming a government that rewards defections. Former members of the Liberal Party who did not join Moda'i's break-away PAZI faction were especially adamant that the Moda'i group should not be offered the concessions that they demanded. Therefore, it was not surprising that the initiative to pass legislation that would mete out harsh sanctions on future defectors came from one such former Liberal politician, Uriel Lynn (Wallfish 1990).

The passage of the anti-defection law, 1991

No sooner had Shamir's second coalition government been sworn-in, than the Knesset's Law Committee proposed a bill, initially submitted as a private member bill by the committee's chairman Uriel Lynn (Likud), titled "Law for the Prevention of Perfidy (Publicly Elected Persons)". The key provisions in the draft legislation made it clear that Lynn specifically sought to ensure that the kinds of perfidious practices that his former Liberal colleagues had engaged would never arise in the future or, at least, they would carry severe sanctions. The sanctions and restrictions that Lynn's bill proposed were the following: a) an MK who quit his/ her party group could not run in the next election; b) such an MK could not join any other party group in the current Knesset; c) such an MK could not receive a party funding allocation; d) MKs cannot be promised safe seats on election lists; e) agreements to place an MK on a particular party's election list is legal only if it is carried out within 90 days before the next election; f) there can be no financial or other guarantees to back up promises about appointing or not dismissing particular individuals; g) coalition agreements that are related to the termination or establishment of a government must be submitted to the Speaker of the Knesset within three days of their conclusion and they must be brought to the knowledge of all MKs. In addition, the draft legislation also provided that only the person designated by the President to form a government can make promises to appoint ministers and deputy ministers and that no agreement that promises not to dismiss particular ministers or deputy ministers is valid if such dismissal is authorized by law. Finally,

the Lynn bill also stipulated that none of the sanctions mentioned above would apply if the faction were to break up in its entirety.

The final reading of the bill took place on February 12, 1991 and it passed with an overwhelming majority of 82 MK in support, 2 against and 2 abstaining; clearly the vote indicated a strong consensus behind the legislative measure to regulate defections in the future (Nikolenyi and Shenhav 2015). The final text of the law departed somewhat from the original bill and it was eventually adopted as a package of four legislative amendments: to the *Basic Law: The Knesset*; to the *1969 Knesset Election Law*; and to the *Basic Law: The Government* and to the *1973 Party Funding Law*. The first of these consisted of amending the *Basic Law: The Knesset* and it spelt out a restriction to the candidacy requirements in future Knesset election. It stated that a Knesset member who leaves his / her faction but does not quit the Knesset soon thereafter cannot be included in the candidate list for the following election of any party that is represented in the current Knesset. In other words, a disloyal MK would have to join or form a new electoral party if he or she wished to run in the next election. The amendment spoke clearly about individual legislators and it explicitly exempted party splits from its provision as long as they followed certain specific conditions. The amendment to the *Basic Law: the Knesset* further specifies that voting against the party line on a question of confidence, or no-confidence, in the government was to be regarded as quitting the party if, and only if, the MK in question received any direct or indirect benefit or compensation for doing so. As such, the Basic Law continued to allow a sincere, that is non-instrumental, breach of party discipline so long as it could not be demonstrated that a transfer of benefits took place.

The second part of the anti-defection law introduced amendments to the Knesset election law by identifying the precise conditions under which a party split would be recognized and in which cases, therefore, the MKs participating in such splits would not incur the sanctions mentioned above. The central provision of this amendment is the 1/3 rule stating that for a party split to be recognized as such it would have to involve the secession of at least a third of the total number of the faction's elected members. In the case of a faction of six MKs, it would mean a minimum of 2 MKs leaving together. In case of an electoral alliance, or a candidate list that is jointly submitted by multiple parties, factions or organizations, the constituent members could split if they had provided written notice to the central election commission, at the time of submitting their candidate list for the election, of their agreement that marks which parties, factions or organizations the different candidates belong to. The amendment designated the Knesset Committee to be in charge of determining splits and establishing the new allocation of seats among party groups as a result of such changes in their ranks. However, the decision of the committee could be appealed and brought before the Jerusalem district court. If the Knesset Committee has determined that a Knesset member has left his / her faction, the said member cannot join any other faction during the remainder of the Knesset's term¹⁰. Finally, the amended election law forbade the conclusion

¹⁰ If a question arises after a split as to which of the new factions would be entitled to represent the

of agreements and promises with regard to the composition of candidate lists prior to 90 days before the date of the next election.

The third pillar of the anti-defection reform consisted of amending the *Basic Law: the Government* by stipulating that an MK who left his / her faction could not be appointed to the government as a minister, or a deputy minister, and that agreements about the allocation of government positions could only be carried out by authorized representatives of factions that were party to the agreement. The amendment further forbade the posting of any direct or indirect, monetary or in-kind benefit as a way to guarantee the agreement. The amendment also required that inter-party agreements must be made public and transparent; if parties entered into an agreement to present a new government or seek a no-confidence vote in the current one then such an agreement had to be submitted to the Knesset secretariat within no later than three days of its signing.

The fourth pillar of the reform package related the issue of defections to the legislation on party finance. The amendments to the *1973 Party Funding Law* stated that an MK who leaves his / her faction would not be granted a share of the faction's state provided funding, a part of which was determined on the basis of the number of Knesset members that a party got elected. Once again, however, recognized splits constituted the exception: according to the new legislation, the factions that resulted from a party split would divide among themselves the amount of state funding that had accrued to the original faction according to the new number of their respective MKs.

The circumstances that led to the adoption of Israel's anti-defection law point to an interesting observation regarding the relationship between intra-party politics and government stability. Similarly to Saalfeld's (2009) finding that shows the impact of intra-party discord on government instability, the collapse of the National Unity government was as much to be blamed on the internal factionalism of Likud as it was the result of inter-party disagreements and conflict. Although the departure of Alignment and Shas sealed the fate of the coalition government, it was the exit of the five-member PAZI group from Likud that started the process of the coalition's dissolution. When PAZI exited, Likud lost its bargaining advantage over Alignment, which was now in a numerically superior position in terms of the number of seats under its control, which caused the latter to seize the initiative and conclude its pact with Shas, *the stinking trick*, to bring down the government.

The rest of the story, however, shows that the subsequent period of heightened government instability between March and June 1990 actually had its own adverse effect of the unity of several parties in the Knesset: in addition to Likud, four other parties (Shas, Aguda, PAZI,

original faction, the decision has to be based on which of the new parties has the larger number of MKs from the original faction; in case these numbers are equal then the new faction that includes the leader of the original factions' Knesset election list can represent the original group. If this person has already quit the Knesset, then it is the person who was next highest in the election list whose new factional belonging will decide the question and so on and so forth.

and the Alignment) also suffered defections within the short period between the fall and the re-formation of the two Shamir-led governments. Each and every one of these defections was the result of an unstable coalitional environment, in which the major parties had nearly equal bargaining power and could form almost identical coalitions with the other available junior parties. In this very unusual bargaining environment, the temptation to defect was enormous since given that the balance of power between the two main alternative coalitions was on a knife-edge, individual legislators could, and did, easily drag Likud and Alignment into a bidding war and by so doing increase the expected benefit from their exit. The example of the PAZI group provides a telling illustration of this bidding war: the splinter group agreed to pledge its support for the second Shamir government only when Likud agreed to meet and exceed the terms that Alignment had already been prepared to offer.

In order to ensure that breakdown in party unity would not have such a debilitating effect on government stability, the anti-defection law made it explicit that disobeying the party line on floor votes that affect the formation or dissolution of the government will automatically trigger the punitive sanctions against the dissenting member. In this, the legislation provides an institutional guarantee that the stability of future governments will be insulated from the potentially harmful effects of internal party disunity and breakdown of cohesion. Indeed, no other government in the subsequent history of the Knesset has fallen as a result of defections.

Subsequent changes to anti-defection law: from an efficient to a redistributive institution

Since its passage in 1991, the anti-defection law was amended in three major ways. The first amendment occurred very soon after the passage of the reform package in the Fall of 1994 during the 13th Knesset. In an effort to bolster the legislative base of what had by then become a minority government, Prime Minister Yitzhak Rabin successfully secured the commitment of Yi-ud, a three-member break-away faction from the opposition Tzomet party, to join his coalition government. However, while the formation of Yi-ud had satisfied the 1/3 rule of the recently passed anti-defection law, and as such the split in Tzomet was legal and recognized, the High Court issued a ruling that members of Yi-ud could not be appointed to the government as per the recent change to *Basic Law: the Government*. The Court's justification was that the legislation did not exempt MKs who partook in a recognized party split from the ban on government appointment whereas in other parts of the anti-defection package, such an exemption was made clear and explicit. Technically, therefore, each of the three Yi-ud members was considered as having resigned from their faction, which meant that they could not be appointed to government either as ministers or deputy ministers. The ruling was a major shock not only to Rabin, who had promised cabinet positions to two of Yi-ud' members but it also generated as strong pushback from all corners of the political spectrum by lawmakers who regarded the Court as having completely misunderstood the original

intent of the anti-defection law. With the Court having ruled against the appointment of the two Yi-ud ministers, the only course that was left available to Rabin was to muster a Knesset majority and pass yet another amendment to the *Basic Law: The Government*, which would make it explicit that MKs who split from their faction to set up a new one under conditions recognized in the legislation would be exempted from the ban on cabinet appointment.

The second amendment to the Anti-Defection Law took place ten years later in 2004 when Prime Minister Ariel Sharon's Likud-led coalition government changed the numerical criteria to recognize legal party splits. In the 16th Knesset, a three-MK party group called Am Ehad, led by Amir Peretz, a former Labor Party politician who would soon become the party's leader, engaged in merger discussions with the then opposition Labor Party. One member of the Am Ehad faction, David Tal, however was opposed to the merger and, in fact, Likud had also entertained hopes of wooing him over. Under the existing legislation, however, even though Tal would meet the 1/3 requirement he would not meet the second requirement, which set the minimum number of defectors of a legal split at 2. Therefore, the coalition government passed an amendment to the Knesset Law, which specifically allowed a single member of a 3-MK party group to break away without a penalty if such an MK disagrees with the merger of the party group with another one. In the end, Am Ehad did merge with the Labor Party, David Tal seceded and formed a new party group called Noy, which shortly thereafter merged with Ariel Sharon's new break-away party group, Kadima.

The third major change in the Anti-Defection Law took place in 2009, once again under conditions that revealed the government's myopic self-interest. In the summer of 2009, the Likud-led coalition secured the passage of the infamously called Mofaz Law ("Law on Party Splitting"), which allowed a minimum of 7 MKs to break away together from their party group without incurring the sanctions of the anti-defection law. Arguably, the intent of the legislation was to allow Shaul Mofaz's group to break away from Kadima and join the Likud-led coalition. Although Mofaz himself vehemently protested against the legislation, and a number of Kadima MKs engaged in a vibrant display of their disgust by putting on anti-pollution masks during the reading of the bill in the Knesset, the law passed with a narrow majority. The Mofaz law was subsequently rescinded in 2014 as part of a package of laws to introduce governance reforms.

The three amendments to the anti-defection law indicate that governing majorities remain capable of altering the law to fit their own immediate needs. Thus, it would seem that whereas the anti-defection law may have insulated governments from the negative effects of party disunity, the reverse is just not true: party unity continues to be vulnerable to the manipulative effects of the governing coalition if and when it is in need of shoring up its legislative support base. In this, the anti-defection law also shows the limits of institutional reform in Israel's fundamentally majoritarian parliamentary democracy. The consensus, which marked the adoption of the initial law, clearly indicated that the law was regarded by all parties in the Knesset as highly desirable and necessary for the continued functioning of the system. Indeed, there was no sense in the adoption of the initial legislation that any

particular party or groups of parties would be privileged over others: the law would compel party unity in a universal and undifferentiated manner.

This efficiency of the anti-defection law had clearly broken down when it met its major test in the 13th Knesset. In order to ensure that his government would have the requisite number of votes in the Knesset to pass the Oslo Accords, the truncated Rabin government changed the law so that it would be able to break-up the opposition Tsomet party by offering its dissidents attractive cabinet positions. Similarly, the Tal and Mofaz amendments were also conceived and carried out in the same redistributive manner by privileging the incumbent coalition over the opposition parties. As a result, and in stark contrast to the all-party consensus that passed the law in 1991, only narrow coalition majorities were able to vote in the subsequent amendments. Table 1 summarizes the key changes that have been effected to the Israeli anti-defection law over time.

Table 1. Major amendments to the Israeli anti-defection law since 1991

Legislation	Key provision	Final vote
Original ADL, 1992	<ul style="list-style-type: none"> • 1/3 rule • pre-election exemption 	82 vs 2
Yiud law, 1994	<ul style="list-style-type: none"> • defectors allowed in government 	59 vs 49
Saar amendment, 2004	<ul style="list-style-type: none"> • singleton defection allowed 	42 vs 22
Mofaz law, 2009	<ul style="list-style-type: none"> • ceiling of 7 MKS 	60 vs 43

Conclusion

The adoption of the Israeli anti-defection law was a legislative response to a unique moment in Israel's political history. The conditions that made it necessary for the Knesset to adopt this law had never occurred before and will be highly unlikely to recur in the future. As such, the legislation was essentially a post-facto measure that sought to discourage future legislative behavior that would be detrimental to party unity and government stability. Once the crisis passed and Knesset politics returned to its normal course, the all-party consensus that had initially supported the passage of the anti-defection law vanished. Given the absence of a constitutional mechanism that would allow the entrenchment of special laws that could be overturned only by a special majority, successive governments found it very easy to amend the anti-defection law in ways that would benefit their short-term political interests vis-à-vis the opposition.

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