

Party Switching and Government Stability:

Anti-Defection Laws, ‘Representative Lock-In’, and the Counting of Governments in Israel

Conference draft presented at the workshop on “Multiple dimensions of Government Instability”

held at Western Galilee College, Akko, Israel, May 14-16, 2023

Csaba Nikolenyi
Department of Political Science
Azrieli Institute of Israel Studies
Concordia University

1. Introduction

Conventional measurements of government duration, termination and stability follow the long-standing assumption of coalition theory according to which political parties are unitary actors. Although scholars disagree about the definition of the precise changes in the composition of a governing coalition that should be considered as the termination of the incumbent and the start of the next government, they agree that such changes are normally manifest at the level of legislative party groups. Recent work about the nature and regulation of legislative party switching, which has evolved in isolation from the well-established large body of work on government and coalition stability, suggest that in some very specific instances the assumption of party unity may be incorrect. If so, conventional methods may mischaracterize the composition of a government coalition and, therefore, also its duration. This paper uses the cases that concept of ‘representative lock-in’, to explore and illustrate this problem in the case of several Israeli coalition government.

2. Measuring the termination and duration of parliamentary governments

According to conventional wisdom in the voluminous literature on the measurement of government duration, three independent criteria are normally used to mark the termination of an existing government:

- i) a change in prime minister;
- ii) a new general election;
- iii) a change in the partisan constitution of the coalition on which the government's parliamentary support rests.

In a recent contribution to this literature, Shomer, Rasch and Akiravⁱ call for a more nuanced treatment of the third criterion based on the assumption that not every change in the composition of the partisan coalition should be counted equally or at all. They propose a distinction between partisan changes that produce either 'crucial broadening' and 'crucial shrinking' in the size of the government's legislative base. The former refers to the movement of parties into the coalition that changes the latter's status from minority to a minimum winning size or from a minimum winning to an oversized majority. Conversely, 'crucial shrinking' implies the departure of parties from the incumbent coalition such that the government's legislative base is reduced from an oversized majority to a minimum winning, or from minimum winning to minority status.

The concepts of 'crucial broadening' and 'crucial shrinking' constitute novel ways of thinking about government and coalition stability and duration. In an important way, the conceptual innovation also leads to new and substantively more robust empirical data that avoid the problem of overcounting, or inflating, the number of types that a government may change in a particular country. Yet even this important work fails to pay attention to the problem that party switching and party disunity may present to scholars. It is worth stressing that instances of manifest party change, such as a merger or a split, can be relatively easily accommodated by the revised

counting rule proposed by Shomer, Rasch and Akirav. For instance, a split in the ranks of a coalition partner followed by the exit of one of the splinters groups from the coalition can be easily recorded as a ‘crucial shrinking’ if it produces the required change in the majority status of the governing coalition. However, under specific rules pertaining to defections, splits and party switching, such a change may not become formally manifest although it can lead to very concrete changes in the size and the management of the government’s parliamentary coalition.

The next section outlines the ways in which Israel’s anti-defection laws have produced precisely this effect: by imposing very high costs for party exit, these laws instituted situations of ‘representative lock-in’ that concealed the formation of sub-party groups, or even individual dissenters, who took a clear and evident position towards the incumbent government in opposition to their party without formally breaking ranks with it. When such lock-in forms inside coalition parties, it effectively shrinks the parliamentary base of the coalition whereas lock-in within an opposition party broadens it.

3. *'Representative lock-in'*

The concept of 'representative lock-in' was introduced by Andrew Geddis, a scholar of New Zealand party and legislative politics.ⁱⁱ He noted that under the terms of New Zealand's anti-defection legislation, originally passed in 2001 with a sunset clause to kick in four years later and subsequently re-passed in 2018, parliamentarians may assume a position towards the incumbent government that contradicts that of their party group without formally breaking away and either joining the coalition or the opposition ranks depending on the case. The specific case that prompted Geddis to coin the new term featured a division within the Alliance party that served as the Labor party's junior coalition partner in a minority coalition government. Towards the end of the term of the legislature, Alliance suffered a major internal schism: the minority group including four of the party's 10 MPs wanted to break away from the coalition, while the majority faction wanted to stay put. Importantly, the extra-parliamentary party organization sided with the minority faction. Under the terms of the anti-defection law, however, a formal truce had to prevail: since neither side was able to prevail and force the opposing faction out of the party, a move that required a 2/3 majority, and voluntary resignation from the party group would have meant automatic disqualification from the parliament, the two factions finished their term as a *formally* united parliamentary party group, which, for all intents and purposes acted as two *substantively* separate groups, one inside and the other outside the governing coalition.

Similar to New Zealand, the Israeli parliament, the Knesset, has also employed a complex and frequently changing set of legislative rules about defection and party switching. The first anti-defection law was passed in 1992 in response to the unprecedented outcome of party switchers successfully bringing down and then preventing the formation of a new government. Although

switches had occurred in the Knesset quite frequently in previous years as well, they were normally relegated to the margins of party and legislative politics in the sense that they never interfered with the politics of forming let alone terminating an existing government. The gist of the new law stipulated that MKs who change their party affiliation during the term of a Knesset will not be allowed to run on the list of any of the party groups in the next election unless their switch takes place in the pre-electoral period (90 days before the next election) or they undergo a 'legal split' which was defined as a collective exit by at least one-third of a party group's MK and in no case less than two. Over the decades to follow the anti-defection law underwent several changes as summarized in the Table below. The history of the various amendments indicates that governing majorities in the Knesset have frequently altered 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 instability, the reverse is 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.

Table 1. Legislative Changes to the Israeli Anti-Defection Law (ADL)

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
Amendment 31 (Knesset Election Law) February 28, 1996	<ul style="list-style-type: none"> • definition of party splits includes at least 2 MKs who leave their party within 90 before next election 	61 vs 1
Amendment 31 repealed, December 20, 2000	<ul style="list-style-type: none"> • above provision repealed 	31 vs 1
The Edelstein amendment, March 15, 2001	<ul style="list-style-type: none"> • splinter parties are eligible for funding only 2 years from last election 	25 vs 0
The Saar amendment, 2004	<ul style="list-style-type: none"> • singleton defection allowed 	42 vs 22
Mofaz law, 2009	<ul style="list-style-type: none"> • legal split requires no more than 7 MKs • splinter parties are eligible for funding after 3 months from last election 	60 vs 43
Governance law, 2014	<ul style="list-style-type: none"> • 7 MKs provision removed • two-year limit re-imposed 	67 vs 0
Amendment 49 (Knesset Law), 2021	<ul style="list-style-type: none"> • legal split requires no more than 4 MKs 	60 vs 54
Amendment 52 (Knesset Law) 2022	<ul style="list-style-type: none"> • Minimum of 4 MK requirement rescinded 	63 vs 51

4. Party Disunity, Party Switching and Government Instability in Israel

Case 1: Ariel Sharon's governments in the 16th Knesset, 2003-6

The general elections to the 16th Knesset took place on January 28, 2003 and initially led to the formation of narrow majority government comprising Prime Minister Ariel Sharon's Likud party (38 MKs), the centrist Shinui (15MKs), and the right-religious National Union (7 MKs) Five days later, the National Religious Party (6 MKs) also joined the government. The size of the coalition government increased further when the 2MK-strong Yisrael Baaliyah party decided to merge with Likud boosting the size of the party's legislative group from 38 to 40 MKs.

The dramatic move that rocked the foundations of Ariel Sharon's first coalition was the declaration of his government's commitment to a unilateral withdrawal of Israeli presence from the Gaza Strip.ⁱⁱⁱ Sharon's decision to pull out the Israeli settlements was a direct and frontal attack on the interests of the key constituency of the National Union and several supporters of the NRP. In order to acquire a majority support for his plan within the coalition cabinet, Sharon fired two of his National Union ministers, Benny Elon and Avigdor Lieberman, which in turn reduced the parliamentary base of his coalition to a bare majority of sixty-one seats, see the Table below.^{iv} Yet, Sharon's position was strengthened by virtue of the support of renegade MKs Michael Nudelman (National Union) and David Tal (Am Ehad). Although due to the prohibition of the anti-defection law neither of these politicians would break away from their parent parties until later in the term of the Knesset, they indicated their commitment to supporting Sharon's leadership and Gaza disengagement program. In sum, Nudelman's and Tal's support lent the government a legislative base of sixty-three seats.^v Shortly after cabinet gave its approval of the Gaza

Disengagement Plan, two of three NRP ministers, including the leader of the party Effy Eitam, leaving Zevulun Orlev as the sole NRP minister.^{vi}

The summer of 2004 brought another latent division to the fore when it was revealed on national television that Yosef Paritzky, MK of the Shinui party and Minister of National Infrastructure in the government, sought to frame Avraham Poraz, a founding member of this own party, with the help of a private investigator.^{vii} Although no police charges were brought against Paritzky, his party effectively ousted him both from the party organization as well as the caucus and called on Prime Minister Sharon to fire him. Sharon complied with the request and replaced Paritzky with Eliezer Sandberg. Although it was a relatively simple matter to remove Paritzky from the executive, his status as an MK was much more difficult to change.^{viii} Since he was only one of fifteen MKs in the Shinui faction, Paritzky clearly was not able to secede without penalty under the one-third rule of the anti-defection law. Although the party called on Paritzky to resign his seat and allow the next candidate from the Shinui list to enter the Knesset, he flatly refused to do so. In an effort to resolve the matter, Shinui even offered Paritzky one million shekels in exchange for his seat, however, but even this offer was to no effect.^{ix} Thus, Paritzky effectively became a single MK faction, voting as he pleased, although formally he would remain part of the Shinui faction. Technically, this move did not yet alter the parliamentary balance between government and opposition, however, this would change dramatically when Shinui left the coalition at the end of the 2004.

The final vote on the Disengagement Plan was held in the Knesset on October 26, 2004 and it passed with a comfortable majority of sixty-seven versus forty-five.^x In spite of the strong margin, the vote brought to the fore many of the divisions both in the coalition and the opposition parties that had marked parties ever since the election: The Likud faction was split with a narrow

majority of twenty-three MKs voting in favor and seventeen against the Plan; all National Union MKs except for Nudelman voted in favor; and David Tal abstained even though his two co-partisans in Am Ehad voted also in favor. Although all six NRP MKs voted against the Plan, Orlev suggested in the aftermath that the party may still remain in the coalition if Sharon agreed to one of the following conditions: a) to hold a referendum on the issue; b) to call early elections before the evacuation of the settlements would start; or c) to put a freeze on the implementation of the Plan altogether.^{xi} When Sharon rejected all of these options, the NRP followed the lead of the National Union and quit the coalition on November 11, 2004. As a result of the departure of the NRP, Prime Minister Sharon's government lost its formal majority in the Knesset since it was now reduced to two coalition members: a divided Likud of forty MKs and Shinui of fifteen MKs. Prime Minister Sharon's first coalition government in the Sixteenth Knesset finally collapsed when its budget bill failed on its first reading on December 1, 2004. Since Sharon sought to send the UTJ a credible message of cooperation the budget allocated a generous sum for the religious educational institutions under the UTJ's tutelage. However, this allocation was not acceptable to the secular Shinui, which, therefore voted against the budget of the government that it was still technically a part of. Immediately, the Prime Minister fired the five Shinui ministers from their position and a week later his party concluded coalition agreements with Labor and UTJ to set up a new government.^{xii}

On January 10, 2005 Prime Minister Ariel Sharon presented members of his new government for their investiture vote in the Knesset. Although the investiture of the new ministers was passed with 58 votes in favor to 56 against, it required the help of the opposition Yahad and Am Ehad party groups, abstentions by six Arab MKs, and two other MKs, Yosef Paritzky of Shinui (*Change*) and Michael Nudelman of the National Union, whose parties had left Sharon's previous

coalition government and were now in the opposition. Above all, the formation of the new government was extremely unusual because thirteen Likud MKs, just ones less than what would have been required to satisfy the one-third rule of the anti-defection law's condition for a legal split, voted against the new government prompting veteran Likud MK Reuven Rivlin to note that for all intents and purposes, if not formally and legally, Likud was split and that fresh elections were inevitable.

It would take until the end of the year before the formal split within the Likud ranks was complete: on November 8th Sharon announced the formation of a new political party under the name *Achrayut Leumit (National Responsibility)* soon to be changed to Kadima. At the same time, Sharon also announced that he was asking the Knesset to vote for its early dissolution vote so that fresh elections could be held to what was by most accounts one of the most tumultuous Knesset terms in Israeli political history. In splitting from Likud, the Prime Minister was joined by thirteen other Likud MKs, including five other ministers and six deputy ministers, as well as David Tal who immediately merged his Noy party with the new formation. It is worth noting that once again the size of the splitting faction was the absolute minimum required under the one-third rule.

Table 2. Summary of changes in Ariel Sharon's governments in the 16th Knesset

Events	Coalition status	Effective size of coalition composition (total 120 seats)
Likud (38)+Shinui (15)+National Union (7)+National Religious Party (6)	MWC	66 seats
Yisrael Baalayah (2) merges with Likud (40)	OS	68 seats
National Union ministers fired, party quits coalition	MWC	61 seats
MKs Nudelman (National Union) and Tal (Am Echad) support government	MWC with additional locked-in supporters (2)	63 seats
2 National Religious Party ministers quit government	MWC with additional locked-in supporters (2)	61 seats
National Religious Party quits government	MIN	57 seats
Shinui quits government but one of its MKs (Paritzky) remains in support	MIN with additional locked-in supporters (3)	43 seats
Labor (19) and United Torah Judaism (5) join Likud in national unity coalition...	MWC with additional locked-in supporters (3)	67 seats
... but 13 Likud MKs vote against new ministers!	Effective MIN	54 seats

Case 2. Benjamin Netanyahu's government in the 18th Knesset (2009-13)

Following the 2009 Knesset election, Likud leader Benjamin Netanyahu formed an oversized majority coalition government. However, one of the members of the coalition, the Labor Party, showed deep divisions with regards to government participation. Several prominent Labor politicians, such as Yuli Tamir and Shelly Yachimovich, demanded that the party leadership should make it clear that Labor would have no share in a right-wing coalition government that also included Yisrael Beitenu, which they regarded a dangerous and racist organization.^{xiii} Two days after the election the leader of the Labor Party, Ehud Barak polled the membership of his newly

elected Labor party group and found that four other former Labor ministers from the previous government (Amir Peretz, Ophir Pines-Paz, Eitan Cabel, and Benyamin Ben-Eliezer) also took the view that the party should go into opposition. Over the next several weeks two further MKs Daniel Ben-Simon and Avishay Braverman also joined this group, which came to constitute a majority (seven out of thirteen) of the party's legislative contingent.

Despite the sizable opposition to joining a Likud-led coalition, Barak appointed a negotiating team and started to explore the conditions under which Labor might enter the new government. His decision was supported by the favorable outcome of the Labor Central Committee vote on March 24, 2009 which supported Barak's preferred course and enter the new coalition. Notwithstanding the decision of the Central Committee, five of the seven rebel MKs maintained their adamant opposition to joining the government. Indeed, although the Netanyahu government was voted into office with a comfortable majority of sixty-nine votes in favor and forty-five against, the five Labor Party rebel MKs (Amir Peretz, Opher Pines-Paz, Eitan Cabel, Shelly Yachimovic, and Yuli Tamir) defied their party and the coalition by abstaining from the vote^{xiv} while the Labor MKs who supported Barak were handsomely rewarded as the party received five cabinet portfolios and two deputy ministerships.^{xv}

Following the investiture of the new government, the same five Rebels also voted against the new budget, which the government sought to have approved for a two-year period. Following incessant criticism by the Prime Minister, Barak eventually seized the initiative and by rallying his closest allies in the Labor party group he split the party under the provisions of the anti-defection law. In the morning of January 17, he held a press conference announcing the formation of a new party called Haatzmaut ("*Independence*") together with four other Labor MKs (Matan Vilnai,

Einat Wilf, Orit Noked, and Shalom Simhon), who thus amounted to one-third of the party's Knesset faction.

Case 3. Naftali Bennet's government in the 24th Knesset (2021-2)

The most recent case of a 'representative lock-in' occurred at the time of the formation and investiture of Naftali Bennet's government in the summer of 2021. The incoming Prime Minister was also leader of a new party group, called Yamina, that won merely 7 seats in the general elections that were held in March of the same year. Although ideologically Yamina clearly situated itself in the conservative bloc of parties, it decided to join a broad coalition of political parties that were united in their joint desire to displace Likud's Benjamin Netanyahu from political leadership. Yamina's decision was not endorsed by all of the party's MKs. In particular, Amichai Chikli argued that Bennet's decision to lead a broad anti-Likud government was nothing short of betrayal of the public trust and the electoral mandate that the party received from its right-wing electoral supporters.

Thereafter, Chikli maintained his steadfast opposition to the formation of the new government by voting against its investiture as well as its subsequent policies. Although the party leadership demanded that Chikli should give up his seat if he could not support the party line, and in fact the party tried to brand him as a defector so that he could be penalized under the anti-defection law, the renegade MK stayed his course. Formally, Yamina remained a party group of 7 MKs in the Knesset, however, for the rest of the government's duration the Prime Minister could only claim to have the backing of 6 of his party's MK. Given an already tight balance between

government and opposition (62 vs 58), Chikli's behavior brought the coalition extremely close to, i.e. only one seat away from, a situation of 'crucial shrinking'.

5. The Implication of 'Representative Lock-in' for Counting Governments

The cases that were described in the previous section bring to light three important problems with regards to the proper identification and measurement of government formation, composition, and termination. The first has to do with counting the number of parties that constitute the governing coalition. The phenomenon of 'representative lock-in' shows that while a political party may be represented in the government by one or multiple ministers, which is the conventional way of counting coalition members, such a party may not be united in its support of the government. The cases of Amichai Chikli in the 24th Knesset or the Labor Party dissenters in the 18th Knesset provide relevant examples.

The second problem is that given the ambiguity of a party's coalition membership, it may be difficult to identify the government's coalitional status, i.e. whether it is a minority, minimum winning, or oversized coalition. Clearly, the determination of the coalition type and status assumes party unity. However, when dissenters are locked-in, the size of the party group they formally belong to but effectively no longer support may result in incorrect counting and specification of just exactly how many seats the governing coalition has under its control. Finally, given the above considerations it also becomes problematic how to specify and determine the exact endpoint of a coalition, which in turn makes the determination of government and coalition duration very complicated. For example, when 13 Likud MKs voted against the investiture of the new ministers in Sharon's second coalition, that Likud was formally still the largest member of, and the new government could take office only thanks to the active support it received from parties in the formal

parliamentary opposition (!) the lines of division between government and opposition became extremely blurred.

A concluding thought

A possible conclusion that emerges from the preceding discussion is that absent party unity, changes in the partisan composition of a governing coalition should not be included as a criterion by which we identify governments, their stability, duration and terminations. Certainly, when parliamentarians are locked-in their party groups due to the terms of the anti-defection laws, their participation in the coalition, or the opposition, is at best formal and at worst misleading. A more simple and parsimonious way of counting governments such as one that considers only i) changes in the prime minister (due to legislative defeat, resignation, or death) and ii) the holding of a new general election may be less problematic and easily applicable to cross-national research.

REFERENCES

- ⁱ Yael Shomer, Bjørn Erik Rasch & Osnat Akirav (2022) Termination of parliamentary governments: revised definitions and implications, *West European Politics*, 45:3, 550-575.
- ⁱⁱ See, Geddis, Andrew. “Gang Aft A-Gley: New Zealand's Attempt To Combat ‘Party Hopping’ By Elected Representatives.” *Election Law Journal* 1, no. 4, (2002): 557-71 and “Proportional Representation ‘Party Hopping’ and the Limits of Electoral Regulation: A Cautionary Tale from New Zealand.” *Common Law World Review* 35, no. 1, (2006): 24-50.
- ⁱⁱⁱ See Ariel Sharon’s speech at the Fourth Herzliya Conference in December 2003. <http://mfa.gov.il/MFA/PressRoom/2003/Pages/Address%20by%20PM%20Ariel%20Sharon%20at%20the%20Fourth%20Herzliya.aspx> accessed on February 17, 2022.
- ^{iv} Joshua Brilliant, “Sharon Sacks Hawkish Ministers,” *United Press International*, June 4, 2004, available at <https://www.upi.com/Defense-News/2004/06/04/Sharon-sacks-hawkish-ministers/96181086372015/> accessed on February 17, 2022.
- ^v Nina Gilbert and Gil Hoffman, “PM Survive No-Confidence Votes,” *Jerusalem Post*, June 29, 2004, 2.
- ^{vi} Tovah Lazaroff, “PM Loses Majority as Eitam, Levy Quit,” *Jerusalem Post*, June 9, 2004, 1.
- ^{vii} “The Paritzky Affair,” *Jerusalem Post*, July 11, 2004, 13.
- ^{viii} Nina Gilbert, “Shinui Flip-flops on Paritzky’s Fate,” *Jerusalem Post*, December 14, 2005, 4; “Likud Working to Free Paritzky from Shinui,” *Jerusalem Post*, January 19, 2005, 5.

^{ix} Gil Hoffman, “Shinui to Paritzky: Take NIS 1 Mil and Leave,” *Jerusalem Post*, October 12, 2004, 3.

^x “How They Voted,” *Jerusalem Post*, October 27, 2004, 1.

^{xi} Abigail Radoszkowicz, “Rabbis: NRP Can Stay in Gov’t,” *Jerusalem Post*, October 28, 2004, 3.

^{xii} The budget bill failed to pass as forty-two MKs voted in favor but seventy-one against. The former included thirty-seven MKs Likud and five from UTJ. David Tal from Am Ehad broke ranks with his party and abstained. The only other case of indiscipline was Limor Livnat, Minister of Education, Sport and Culture, who championed the Dovrat Commission on unified education, which the budget bill de facto killed by making the generous allocation to the haredi sector. See <https://main.knesset.gov.il/Activity/plenum/Votes/Pages/vote.aspx?voteId=3430> accessed on February 17, 2022.

^{xiii} Shely Paz, “Labor MKs Pressure Barak to Rule Out Serving Alongside Lieberman,” *Jerusalem Post*, February 6, 2009, 4.

^{xiv} Divrei HaKnesset, Thirteenth Sitting of the Eighteenth Knesset, March 31, 2008. See, <http://main.knesset.gov.il/Activity/plenum/Pages/SessionItem.aspx?itemID=322083>

In addition to the five Labor MKs, Ahmed Tibi, also abstained.

^{xv} The Labor ministers in the new government were Ehud Barak, Shalom Simhon, Avishay Braverman, Benyamin Ben-Eliezer, and Isaac Herzog. The two deputy ministers were Matan Vilnai and Orit Noked.