Laws Against Party Switching, Defecting, or Floor-Crossing in National Parliaments

Kenneth Janda

Northwestern University

k-janda@northwestern.edu

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Abstract

Many western scholars may be surprised to learn that parliamentary members who switch parties during the session may be expelled from parliament because they violate the law in their country. This paper studies such "anti-defection" laws. It investigates the extent of such legislation; why and how often legislators switch parties; how this phenomenon has been studied; why some scholars favor banning party switching; why politicians have legislated against party defections; and the consequences of such bans for political parties and party systems. It reveals that anti-defection laws are rare in established democracies but common in nascent democracies, where anti-defection laws are often defended as temporary measures to consolidate a chaotic party system. However, many nations enshrine anti-defection provisions in their constitutions, which are not depositories for temporary legislation.

Party law differs systematically between established and nascent democracies (Janda, 2005a). One of the most peculiar differences lies in the existence of laws against party switching, defecting, or floor-crossing in national parliaments. Laws that expel members who change parties are often called "anti-defection" laws, but they have other names. In Malhotra's 1,200 page treatise on the topic, said that in different parts of the Commonwealth the phenomenon of defecting from a parliamentary party

> is known by different nomenclatures—such as "floor-crossing," "carpet-crossing," "party-hopping," "dispute" and "waka [canoe]-jumping" (2005: 15).

Note also that "crossing the floor" sometimes refers merely to voting with the opposition, not to changing party affiliation (Australian Parliamentary Library, 2005). Outside the Commonwealth in what Mershon and Shvetsova describe as "a small but still-growing body of research" (2008: 99), changing parties is more commonly called party "switching." Typically, however, Western scholars of party switching do not study countries that have anti-defection laws.

Malhotra observes that in some countries party defections "are a non-issue and not perceived as a problem," whereas in others the practice threatens government stability and is taken as very serious. The latter countries tend to legislate against parliamentary party defections. India, for example, enacted different variants of anti-defection laws in 1973, 1985, and 2003. The 2003 law provides that a person can be disqualified from serving in parliament for "voluntarily giving up the membership of his original party" (2005: 965). Furthermore, the Indian law permits parliamentary expulsion simply for voting (or abstaining from voting) "in the House contrary to any direction issued by the political party to which he belongs" (2005: 970).

Malhotra's massive work undertakes to review and analyze "the established laws, rules, practices and procedures and conventions" in 40 Commonwealth countries, with brief references to anti-defection laws in 25 other nations (2005: 15). His data show that laws in 23 of the Commonwealth countries (58%) penalize deputies with parliamentary expulsion for changing parties and that 7 of the 23 also prescribed expulsion simply for voting against their parties (2005: 76-110). Only 7 of his 25 non-Commonwealth nations (28%) had anti-defection laws and none cost members their seats for voting against their parties.

Malhotra, who was Secretary-General of the Indian Parliament, issued his study as a government document that assessed India's experience with anti-defection legislation. He concluded that the law has "succeeded, to some extent, in checking the menace of defections in India's body politic," but that "comprehensive legislation" was needed to make the law more effective (2005: 996-997). This paper aims at expanding research on anti-defection law beyond the Commonwealth countries and at linking such legislation to the comparative analysis of political parties

more generally. It begins by reviewing the extent of anti-defection laws across nations.

The Extent of Anti-Defection Laws

Laws against crossing the floor (a phrase often used for party switching or defections in developing democracies, not just for voting with the opposition) are sometimes not mere "laws," they are often enshrined in national constitutions. To illustrate the nature of anti-defection legislation, Table 1 reports constitution provisions in eight nations.

Table 1: Protecting Parties with Anti-Defection Provisions in the Constitution

Belize, Article 59. Tenure of Office of Members

(1) Every member of the House of Representatives shall vacate his seat in the House at the next dissolution of the National Assembly after his election.

(2) A member of the House of Representatives shall also vacate his seat in the House—

(e) if, having been a candidate of a political party and elected to the House of Representatives as a candidate of that political party, he resigns from that political party or crosses the floor.

Namibia, Article 48. Vacation of Seats

(1) Members of the National Assembly shall vacate their seats:

(b) if the political party which nominated them to sit in the National Assembly informs the Speaker that such members are no longer members of such political party.

Nepal, Article 49. Vacation of Seats

(1) The seat of a member of Parliament shall become vacant in the following circumstances:

(f) if the party of which he was a member when elected provides notification in the manner set forth by law that he has abandoned the party.

Nigeria, Article 68. Tenure of Seat of Members

(g) being a person whose election to the House was sponsored by a political party, he becomes a member of another political party before the expiration of the period for which that House was elected:

Seychelles, Article 81. Vacation of Seats

(1) A person ceases to be a member of the National Assembly and the seat occupied by that person in the Assembly shall become vacant—

27(h) if, in the case of a proportionally elected member—

(i) the political party which nominated the person as member nominates another person as member in place of the first-mentioned person and notifies the Speaker in writing of the new nomination;

(ii) the person ceases to be a member of the political party of which that person was a member at the time of the election;

Sierra Leone, Article 77. Tenure of Seats of Members of Parliament

(1) A Member of Parliament shall vacate his seat in Parliament—

(k) if he ceases to be a member of the political party of which he was a member at the time of his election to Parliament and he so informs the Speaker, or the Speaker is so informed by the Leader of that political party;

Singapore, Article 46

(2) The seat of a Member of Parliament shall become vacant—

(b) if he ceases to be a member of, or is expelled or resigns from, the political party for which he stood in the election;

Zimbabwe, Article 41. Tenure of Seats of Members

(1) Subject to the provisions of this section, the seat of a member of Parliament shall become vacant only-

(e) if, being a member referred to in section 38 (1) (a) and having ceased to be a member of the political party of which he was a member at the date of his election to Parliament, the political party concerned, by written notice to the Speaker, declares that he has ceased to represent its interests in parliament.

SOURCE: Janda (2005a: 13)

It is difficult to determine exactly which nations had anti-defection laws and which still had them as of 2007. Malhotra's list of 23 nations provide a useful start, but two of his countries rescinded their laws and other countries show up in different surveys. Subramanian's list (2008) of twenty-nine nations overlaps with Malhotra's but deviates somewhat. The International Institute for Democracy and Electoral Assistance (IDEA, 2006) uncovered more nations in its survey of party officials in 64 developing democracies, who were asked: *Is it possible for a member of parliament to leave the party with which s/he was elected and join another party or become an independent MP (floor-crossing)?* Data from these sources and reports from the Council of Europe (2005) and Breeveld (2007) are combined in Table 2, which identifies 41 nations with laws against parliamentary party defections and groups them by type of democracy, as classified by Norris (2005) based on data from Freedom House (2007).

Table 2: Nations with Laws Against Parliamentary Party Defections

Type of democracy, 2007	Number of nations	Those with floor-crossing laws	Nations with floor-crossing laws
Older democracies	36	5 (14%)	India, Israel, Portugal, Trinidad & Tobago
Newer democracies	54	13 (24%)	Belize, Bulgaria, Ghana, Guyana, Hungary, Lesotho, Mexico, Namibia, Romania, Samoa, Senegal, Suriname, Ukraine
Semi-democracies	58	19 (33%)	Armenia, Bangladesh, Fiji, Gabon, Kenya, Macedonia, Malawi, Mozambique, Nepal, Niger, Nigeria, Papua New Guinea, Seychelles, Sierra Leone, Singapore, Sri Lanka, Tanzania, Uganda, Zambia
Non democratic	45	4 (9%)	Congo (Democratic Republic), Pakistan, Thailand, Zimbabwe
TOTAL	193	41	

Accepting Table 2 as reasonably accurate as of 2007, we learn that about only 14 percent of established democracies require parliamentary members to forfeit their

parliamentary seats if they change political parties. (Two democratic nations—New Zealand and South Africa—once had but abandoned such laws.) In contrast, floor-crossing laws are present in 33 percent of nations classified as semi-democracies. While only 9 percent of non-democratic nations ban party defections, many do not even allow political parties, rendering moot this statistic. Notably absent from these lists are the established democracies of Western Europe. In sum, laws that ban party defections are more common in nascent democracies than in established democracies.

This finding fits with Karvonen's study of statutory Party Laws (not constitutional provisions) enacted explicitly by 39 nations to govern political parties. Of these, he writes

> The general impression is that, in certain respects, the degree of democracy is clearly associated with the occurrence of restrictions on political parties. The most important line of demarcation seems to run between established democracies and other states. Established democracies display few restrictions on parties, all other groups of states considerably more (2007: 445).

Although Karvonen does not specifically address anti-defection laws, they can be interpreted as restrictions on party politics that are seldom imposed in established democracies.

The Extent of Party Switching

Separate from studies of anti-defection laws is the literature on party switching, most of which is (understandably) written about countries that lack anti-defection laws. In part because the political act of changing parliamentary parties goes by so many different terms, studies of party switching are difficult to track down and have yet to acquire status as a subfield in party politics. McElroy (2003: 2) writes, "As a phenomenon party switching has received surprisingly little attention in the canon of political parties," and Desposato (2006b) says, "One oft-overlooked window on party systems is switching by politicians." He elaborates:

> While switching is relatively rare in most countries, it has been common in many countries, including South Africa, Japan, Bolivia, Ecuador, Nepal, Russia, the Philippines, France, Italy, and Brazil. Such behavior is usually dismissed as an indicator that "parties don't matter," but I

> argue that party switching warrants study for at least three reasons. First, frequent switching makes it clear that parties do matter—otherwise politicians would not bother to switch. Second, and more importantly, switching provides a unique window on politicians' underlying preferences, including their incentives for belonging to political parties. . . . Finally, switching poses a normative problem for representation in mass democracies. Parties are the primary mechanism linking voters and politicians in modern mass democracies. (p. 62-63)

Some authors regard party switching as an issue limited to new, developing, or non-Western democracies. Comparing the party systems of Brazil and Chile with those in Finland, Ireland, and Italy, Mainwaring (1991: 32-33) notes: "In these European countries, relatively few politicians change parties. This situation creates stronger bonds between politicians and parties, for the fate of politicians depends to a greater extent upon the success of their parties."

Other authors, however, see a good deal of party switching in some European countries—including Italy (Mainwaring notwithstanding). Heller and Mershon (2005: 546) found that "Almost one-fourth of the members of the lower house in Italy, the Chamber of Deputies, switched parties at least once between 1996 and 2001." Traditionally, according to McElroy, party switching was "generally viewed as an aberration or an indicator of a weak, ill formed party system, a phenomenon associated with newly emerging democracies or unstable ones," but "recent research has challenged the conventional wisdom that switching is an exceptional occurrence," for it is relatively common in many democracies (2003: 2). In fact, McElroy's own study of the Third European Parliament (1989-94) found that 71 members (almost 15 percent) moved to a different party from that at entry (2003: 4).

Even in the United States, with its stable two-party system, Nokken (2000: 421) identified 20 members serving in the House and Senate from 1947 to 1994 who changed their parties while in office—16 switching from Democratic to Republican. This steady erosion of Democratic representation helped the Republicans—the decided minority party in Congress following World War II—gain strength until they won control in the 1994 election. In a celebrated reversal of the trend, one moderate Republican Senator (Jim Jeffords of Vermont) switched to independent in 2001 when the Senate was equally split between the parties. He then voted with the Democrats to choose the Senate's leaders, giving the Democrats control of the chamber under

Republican President George Bush. After Nicolas Sarkozy defeated the Socialist candidate in the spring of 2007 and became President of France, several high-ranking Socialists (not all were deputies) left their party to become officials in Sarkozy's center-right government led by his Union for a Popular Movement (UMP). An Internet encyclopedia (Wikipedia, 2009) even offers lists of British and Canadian legislators through history who have crossed the floor. So party switching occurs in western democracies, even in modern times.

Why Do Members Switch Parties?

Parliamentary research recognized long ago that personal incentives motivated the votes of legislative deputies. Deputies usually derive value from supporting their parties, but sometimes that incentive is weak. Presumably, the link between personal advancement and party loyalty is strongest within established and stable parliamentary party systems, and weakest within new and volatile party systems. But even then, as Montgomery found, deputies in one transitional system (Hungary in 1994) soon learned "that parties are a key to fulfilling their private goals" (1999: 517). Observers of another fluid party system (Ukraine since 1994), however, found that "bad policy outcomes" could "create an electoral incentive for legislators to switch parties prior to an election" (Slomczynski, Shabad and Zielinski, 2008: 92).

Various scholars have discussed motivational conflicts confronting deputies in their parliamentary behavior. Heller and Mershon see four factors in a legislator's decision to switch, which is "some function of her ideal policy, her party's policy position, her party's ability to influence outcomes, and her contribution to that influence" (2008: 912). Subramanian describes the primary conflict simply and succinctly between two choices, which he calls the "Legislator's Dilemma":

> Legislators face the following options when voting on policy decisions. First, they can choose to support their voters and stand a good chance of re-election. Second, they can consistently support their party and vote with their party on policy issues, thereby ensuring their ability to rise in power in the party, attain nomination for the next election and seek other benefits as a virtue of their loyalty and status in the party (2008:39).

Subramanian focuses on the conflict that occurs when legislators believe that their constituents' wishes deviate from their parties' positions. A different conflict occurs —especially given single-member districts—when legislators' personal beliefs clash with their constituents' opinions, regardless of their parties' positions. It harkens back to Edmund Burke's famous 1774 speech to his electors of Bristol: "Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion" (Payne, 1990). That classic conflict between a legislator being a "trustee" (as described by Burke) or a "delegate" (as prescribed by democratic theory) is usually not central to the issue of party switching, however.

A quite different conflict that is very central to party switching is also not captured by Subramanian's legislative dilemma. More likely in nascent than established democracies, it arises when deputies are tempted to defect from their parties in return for appointments in another party. Defections in such instances can provide the votes necessary to create a new government—and positions in the government party. In India during 1967 and 1968, Malhotra saw the obvious effect of "the lure of office" in decisions of legislators to defect in the fact that "out of 210 defecting legislators of various states, 116 were included in the Councils of Ministers which they helped to form by defections" (2005: 5).

So legislators might be tempted to vote for themselves, defecting to another party for personal gain. Against this temptation, governments may enact anti-defection laws in order to promote party stability. Malhotra says that the Indian law on defection "seeks to provide safety measures to protect both the government and the opposition for instability arising out of shifts of allegiance" (2005: 5). However, parliamentary party leaders may value anti-defection laws for a darker purpose—to bolster control of their members. Backers of anti-defection laws rarely point out this consequence.

In the special case when anti-defection also laws threaten legislators with expulsion simply for voting against their party (as in India), Hirschman's exit-voice-loyalty framework (1970) may apply. If party leaders demand absolute *loyalty* in voting, they deny legislators all *voice* (dissenting opinions) and thus tempt frustrated

legislators to *exit* the party (Subramanian, 2008: 6-7). If exiting the party also means exiting parliament, exit removes the motivation to become a minister by helping an existing party form an alternative government. However, other political calculations may induce legislators to voice their opinions at the cost of losing their seats. If they think that many voters share their opinions, they can start a new party, hoping to appeal to those voters. We will explore all these options below and conclude by presenting some evidence of the effects of anti-defection laws on party defections.

How Party Switching Has Been Studied

For stylistic reasons, most authors use synonymous terms (switching, defections, crossing) when writing about party changes, some favor one term over others, and there is a relationship between the terms researchers use for changing parliamentary parties and their theoretical objectives. Usage usually hinges on whether they treat the act as a *dependent* or *independent* variable.

Switching as a dependent variable: Those who primarily favor party "switching" often focus on the act as a dependent variable, seeking to explain why parliamentary members do or do not change their party affiliations. This tendency appears in studies by Cox and McCubbins (1994), Samuels (2000), Castle and Fett (2000), McElroy (2003), Mershon and Heller (2003), Shabad and Slomczynski (2004), Heller and Mershon (2005), and Desposato (2005 and 2006b). Desposato's study of Brazilian legislators, for example, found that legislators changed parties "in search of national and gubernatorial pork," when "ideologically alienated within their own party," and because election is "easier in some parties than others" due to Brazil's election laws (2005: 8). Castle and Fett determined that switchers in the U.S. Congress were less likely to have supported their original party and more likely to switch from the minority to the majority (2000: 236-238). McElroy's statistical analysis showed that members of the European Parliament were significantly more likely to switch to a larger party from a small one, that newer party members were more likely to switch than members with more seniority, and that parties holding the executive were more likely to attract switchers (2003: 21).

Some of these studies also treat party switching as an independent variable, theorizing about the political consequences of party switching at the micro level—that is, its effects on members who switch parties. Such micro-level studies typically focus on two types of results for individual switchers—their subsequent voting behavior and their likelihood of reelection.

Switching's effects on parliamentary members—voting: Following this line of research, Desposato (2005) found that Brazilian legislators who switched parties voted with their new party 75% of the time after (versus 60% with their old party)—almost a complete reversal of their voting patterns prior to switching. Nokken, who looked at roll call voting of party switchers in the U.S. Congress also found, "In each instance, members who changed party affiliation showed big differences in their roll-call behavior after switching" (2000: 440).

Switching's effects on parliamentary members—reelection: The other line of research on individual switchers concerns their reelection rate. In their study of inter-party mobility among parliamentary candidates in East Central Europe, Shabad and Slomczynski found that party switching usually carried costs for reelection, and that partisan loyalty was usually a better route to reelection (2004: 171). Samuels discovered the same result for party switchers in Brazil: "deputies who switched parties in both legislatures had much less success at winning reelection" (2000: 491). On the other hand, Reed (1997) found that Japanese legislators who defected from the ruling LDP during a wave of political reform prior to the 1993 election tended to fare better in reelection with new parties than incumbent LDP members. Note, however, that Reed used the term "defectors" not "switchers." The different terms suggest a different dynamic underlying the party change. "Switcher" may imply an opportunistic motivation for changing parties; "defector" may imply departure for policy reasons—at least when numerous members change their parties about the same time.

Party switching is an independent variable in another body of studies that examine effects on the *party system* rather than on the switchers. Often, these studies favor the alternative terms of "defection" and "crossing the floor." Such macro-level

studies typically focus on two types of results for the party system—change in government and party system instability.

Defections' effects on party systems—change in government: Some researchers focus on major changes in a nation's party system wrought by defections of a few party members. As mentioned above, the Democratic Party gained control of the United States Senate in 2001 after only one Senator defected from the Republican Party. Studying the Japanese Liberal Democratic Party's loss of status as a hegemonic majority party after the 1996 election, Kato and Laver said, "Every defection from another party into the LDP, and especially from the NFP to the LDP, brought the LDP closer to majority status" (1998: 249). Speaking about party systems in general, they say that sometimes "even small-scale strategic defections can make all the difference in the world, which of course offers far greater incentives for them actually to take place" (251). Of course, party defections that occur on a large scale obviously have governmental implications. According to Montinola, this happened in the Philippines, where "parties were constantly vulnerable to mass defections":

> For example, 24 of the 74 Nacionalistas in what was then a 106-member House of Representatives switched to the Liberal party immediately after the 1961 elections. After the 1965 elections, 15 of 62 Liberal representatives switched to the Nacionalista party. In both instances, the defectors who were switching to the incoming president's party gave a legislative majority to a president originally elected with only minority support in Congress (1999: 134).

Similarly Kamath (1985) described the governmental consequences of parliamentary party defections in India, while (Rakner and Svåsand, 2004) documented the election of the Speaker of the Zambian Parliament through defections.

Defections' effects on party systems—instability and ineffectiveness: Most writers concerned with the effects of party defections on the party system, however, cite deleterious effects on system instability and ineffectiveness—two concepts often merged in describing a dysfunctional party system. Here is Montinola's assessment of mass defections from parties in the Philippines:

> The parties' lack of political consistency and unbridled party-switching by politicians understandably reinforced the notion among voters that parties were neither robust nor meaningfully differentiated. In fact, parties were merely temporary electoral and legislative alliances designed to maximize the election chances of individual politicians (1999: 135).

Rakner and Svåsand (2004) report that party defections in Zambia, which led to the election of the Speaker of Parliament, underlie the weak foundations of its party system. Levitsky and Cameron (2003: 2, 6) contend that the creation of an "atomized, candidate-centered system" in Peru under Fujimori created "an incentive for politicians to abandon existing parties and pursue office as 'independents.' These defections decimated an already debilitated party system." Mainwaring, using Brazil as an example, says, "Politicians in some inchoate systems have little party loyalty, and switching allegiance is common" (1998: 79). Fraenkel (2005: 2) writing about party politics in the Pacific Islands, holds that "Fluidity of parliamentary alignments, and the readiness of MPs to 'cross the floor', ensure a frequent turnover of governments, particularly in western Melanesia but also in Nauru and Kiribati." Commenting on East and Southeast Asia, Carothers (2006: 46) writes: "Many parties are little more than fiefdoms of the party leaders and their close associates. Party switching is a further symptom of the pervasive personalism." Other scholars consider party switching a source of political instability in Caribbean nations (Grant, 2004), in Mexico (Barrow, 2007), in Indonesia, the Philippines and Thailand (Ufen, 2008), and in Trinidad and Tobago (Sobion, 2008: 31).

Note that these reports on the negative effects of parliamentary party defections on a nation's party system come virtually exclusively from studies of party politics in developing democracies. Defection from parliamentary parties is not a notable concern of scholars writing on countries with established democratic governments, where party switching also occurs.

Why Some Scholars Favor Banning Party Defections

Scholars who believe that defecting from parliamentary parties contributes to party system instability and ineffectiveness typically favor anti-defection laws that require defectors to surrender their parliamentary seats. Some scholars defend such

laws as improving the practice of party politics in government. Others go beyond the implications for party politics, claiming that party defections in parliament are inherently undemocratic. According to Kamath (1985: 1051), "Political defections attack the very roots of democracy in India."

> Whenever a legislator elected on a party ticket or as an independent changes his party affiliation or joins a party, he commits a breach of faith. In most elections, party identity has more influence on the minds of the electorate than the personal prestige of the candidate. In fairness to the electorate, a defector should be made to seek a fresh mandate from the people.

Montinola (1999: 136) echoes that view for the Philippines, contending that defections impair "party loyalty (the crucial prerequisite to cohesive party organizations), meaningful electoral choice, and democratic accountability." And recall Desposato's argument (writing about Brazil) that party switching "poses a normative problem for representation in mass democracies." He explains:

> Parties are the primary mechanism linking voters and politicians in modern mass democracies. Meaningful and stable party labels enable voters to make identify optimal candidates and cast appropriate ballots. Party switching, however, violates the basic electoral pact and effectively makes party labels meaningless (2006b: 63).

Joubert (2006: 178-179) reports that a member of the South African parliament framed the issue in light of South Africa's electoral system and democratic government:

> There is conflict between the principle of accountability to the electorate and the proportional list (PR) electoral system. Representatives who 'cross the floor' in the current PR system are not answerable to their voters, and this undermines the democratic principle of accountability.

This comment by a parliamentary member indicates that scholars are not the only actors who sometimes favor banning party defections. Despite their public rationales, politicians may want to ban defections for reasons other than democratic theory or the effect of defections on party system instability and effectiveness. Outlawing party defections increases the power of party leaders, for members of parliament cannot protest their leaders' decisions by threatening to leave the party.

Why Politicians Legislate Against Party Defections

Political parties usually shape the behavior of their members by adopting internal party rules. Arguably, the most draconian rule is expulsion from the party. Because this sanction has little effect on a person who threatens to leave the party anyway, internal party rules are ineffective in producing parliamentary cohesion when members are willing to defect rather than submit to party discipline. In this case, politicians can seek help from another quarter, the state, by enacting governmental laws that ban party defections. Typically, such laws cost the defector or switcher his or her parliamentary seat upon "crossing the floor" and leaving the party.

As distinct from internal party rules, which are enforced by and within the party organization, state-based party laws invoke the full enforcement power of the government, including fines, injunctions, and even imprisonment. A topic of growing interest in comparative party politics (see Janda, 2005a; Müller and Sieberer, 2006; and Karvonen, 2007), party law has been defined as any governmental regulations (whether in constitutions, statutes or administrative rulings) that govern "the definition, composition, structure, and activities of political parties" (Janda, 2005a: 4). Enacting state-based law provides a powerful way to shape parties (Müller, 1993). As Carothers (2006: 193) says, "Working directly on party law holds out the possibility of getting at some of the governing structures that determine the shape of parties, and having some effect on all the parties at once." He continues:

> Even when changes in party law are the cooperative project of all the main parties in a country, both those in the government and the opposition, some part of the underlying motivation may not be democracy strengthening, no matter how the project is billed (p. 194).

Janda argues that party law in different nations follows different policy models, for nations vary in their desire to *proscribe*, *permit*, *promote*, *protect*, or *prescribe* parties and party activities:

> These policy models are conceptualized as pure forms; nations may not follow any one of them exactly in making party law. Nations tend to follow these models, but specific laws may fit different regulatory policies, reflecting the complexity of the law-making process. In general, nations that *proscribe* parties by law forbid them from operating entirely; nations that *permit*

> parties allow them to operate freely; nations that *promote* parties actively support them; nations that *protect* parties favor certain ones over others; and nations that *prescribe* for parties seek to mold them to fit an ideal (2005a: 8).

Banning parliamentary members from defecting tends to serve the *protection* model of party law by centralizing power within existing parties. As Müller and Schreiber (2006: 437) write, "Party law can provide additional incentives that tie those elected under a party label to that party. The most drastic means to do so is to enforce automatic resignation of defectors from parliament."

Although anti-defection laws fit the protection model, they may have merit for the political system by centralizing power in existing parties that are weak and decentralized. Indeed, such ineffective party systems are what Kamath (1985) abhors in India, what Mainwaring (1991) laments in Brazil, what concerns Montinola (1999) in the Philippines, what Pottie (2001) writes about in South Africa, what Levitsky and Cameron (2003) critique in Peru, what Rakner and Svåsand (2004) note in Zambia, what Fraenkel (2005) opposes in the Pacific Islands, and what Salih and Nordlund (2007) worry about in Africa. On the other hand, some scholars contend that such laws may create more problems than they solve. That corner includes Kreuzer and Pettai (2003), Mershon and Heller (2003), Rahman (2005), Booysen (2006), and Joubert (2006).

So there is some dispute among scholars about anti-defection laws. As Booysen states it:

> The international debate on floor-crossing focuses primarily on the measures to limit floor-crossing, strategies to bypass the limitations, the electoral system within which the floor-crossing practices are manifested and the impact of floor-crossing on the inter-party balance of power (2003: 729).

More properly put, the "international debate" is limited to scholars who write about party politics in developing democracies. Most students of party politics in developed democracies are probably unaware that nations even have laws against crossing the floor, and they are even more likely to be unaware of the debate over the issue. As

Mershon and Heller state, “the writings on switching in new democracies and those on switching in established democracies largely speak past each other” (2003: 5).

Some Consequences of Anti-Defection Laws

On the surface, two general consequences—one voiced and the other *sotto voce*—promise to flow from banning party defections in parliament. The voiced expectation is to preserve the party divisions formed after an election throughout the life of parliament. By keeping legislators in their original parties, laws against crossing the aisle presumably would

- prevent larger parties from gaining control of government through seducing members of smaller parties with promises of governmental or financial gifts,
- reduce party fragmentation from members leaving to create new parties, and
- bolster the 18th century definition of party by Edmund Burke as “a body of men united, for promoting by their joint endeavors the national interest, upon some particular principles in which they are all agreed."

In other words, by banning parliamentary party defections, there would be less corruption, more party stability, and more meaningful party labels with less personalism in politics.

The *sotto voce* expectation is that banning party defections would increase the power of party leaders. This might provide for more centralized (and thus more coherent) party policy and greater cohesion among party members in parliamentary voting. Most party scholars would regard these implications as important traits for any legislative body and especially important in parliamentary systems. In fact, these party traits support the three bullet points above. Notwithstanding the merit to this line of argument, calls to increase the power of party leaders rarely fare well among citizens and party members. So the *sotto voce* expectation is appropriately muted when proposing or defending legislation to ban party defections.

Considerations against anti-defection laws: Because most old and new democracies do not ban parliamentary party defections, such laws appear to conflict at least with the practice of competitive party politics—if they are not “undemocratic” in

principle. Nations in developing democracies should consider why they need party laws that seem unnecessary in established democracies. Studying party switching in Poland and the Czech Republic, two new democracies with histories of party volatility, Shabad and Slomczynski, conclude that party switching helped, on balance, to institutionalize the party systems:

> But it makes a difference for party-system institutionalization where these political nomads move to. Despite high levels of overall inter-party mobility, our findings with respect to patterns of candidates' movements indicated that the external and internal boundaries of the Polish and Czech party systems had become more firmly drawn by the end of the 1990s. With time, experienced candidates as well as novice politicians became increasingly inclined to compete on the ballots of 'old', established parties rather than on the lists of new political formations, thus making it more difficult for new parties (with the notable exceptions of Solidarity Electoral Action and the Czech Freedom Union) to gain entry into the political market or to become significant players within it (2004: 170-171).

Studying party switching in Estonia, Latvia, and Lithuania—new democracies with their own histories of party volatility—Kreuzer and Pettai allow that party switching can consolidate a party system:

> The degree to which such party switching consolidates a party system depends on whether switchers hop from smaller to larger parties and on whether they remain affiliated or continue to switch to whichever party has the best winning prospect (2003: 82).

Studying party switching in South Africa, Booysen notes that South Africa's party system had partial stability so it did not "suffer the type of disruption that resulted in Zambia and Malawi. There, floor-crossing was used to construct new parties to take over the government." In South Africa, however, "defections prevailed in the context of consolidation and entrenchment of a dominant-party system" (2006: 733-734). She continues:

> The dual-mechanism of alliances and defections therefore appears to have constituted an intermediary step to the stabilization of South Africa's evolving party system. Defections and alliances accelerated the process of dissolution of the NNP. Intermediary, between-election outcomes probably helped prompt voters to accept and further advance the new directions in party politics (p. 742).

These three studies of new democracies—Poland, the Czech Republic, Estonia, Latvia, Lithuania, and South Africa—all accept parliamentary defections as part of competitive party politics and contend that it can benefit party system consolidation and institutionalization. Let us now review some opposing arguments.

Considerations favoring anti-defection laws: Lengthy sections above report scholars' assessments of negative effects from parliamentary defections, claiming bought government majorities and party system instability and effectiveness. Their contentions will not be recounted. Instead, here are excerpts from the report of a 2006 public forum on floor-crossing held in South Africa, whose 1996 constitution prohibited the practice until amended in 2002 to permit limited windows for switching parties, an amendment upheld by the Supreme Court. The forum reviewed floor-crossing at the national and municipal levels and heard from speakers who criticized the practice. According to the forum summary:

> Dr. Daniel, Research Director at the HSRC [Human Science Research Council] in Durban, vigorously opposed the practice of floor crossing, and commentated that floor crossing is a perversion of the democratic process in South Africa. It undermines it, very damaging, he added. He argued that the damaging impact of floor crossing is reflected on the ever increasing voter apathy and declining respect for parliament and its institutions. There is probably no other piece of legislation passed by parliament which has done more harm to our emerging brand of democracy than this floor crossing legislation, he added (Democracy Development Programme, 2006: 9).

The summary concludes:

> The overwhelming majority of the participants shared the same sentiment that floor crossing weakens our emerging democracy, and does not lead to competitive democracy, but rather encourages corruption and should be scraped [sic] with immediate effect. The majority of participants representing various opposition parties and NGOs felt that the floor crossing legislation was introduced too soon in the development of our democracy and thus far has not yielded any plausible results (p. 9).

Although these excerpts do not present much evidence concerning the negative effects of floor crossing, they do convey the strong emotions held by many

opposed to party defections. Some people look to the enactment of anti-defection laws as strong medicine against corruption in forming governments, instable parties, and meaningless parties. As political realities, these emotions need be considered.

Two democracies that abandoned their anti-defection laws: Is defecting from one's elected party incompatible with democracy? Or are anti-defection laws themselves undemocratic? Miskin (2003: 25) dispassionately reviews the key arguments pro and con without taking sides. Reasonable cases can be made for both points of view. As mentioned in the discussion of Table 2, two democracies—South Africa and New Zealand—abandoned their anti-defection laws. Both cases merit closer attention.

Despite the emotional opposition to parliamentary defections expressed above at the public floor-crossing forum in South Africa, dispassionate scholarly analysis of the 2002 legislation that relaxed the strict anti-defection provisions in South Africa's 1996 constitution has been generally favorable. Consider Joubert's 219 page thesis on representation and floor crossing in South Africa, which concludes, "Seen from an historical perspective floor-crossing has had more positive than negative results and in its present form it has a tempering effect on the stronghold political parties have over their members (2006: 199). Booysen, who writes about the break from the constitutional prohibition against floor-crossing, supports his analysis:

> Thus resulted a period in which South African political parties joined many of their international counterparts in the contest of freedom to defect versus imperative mandate. Comparative literature indicates that, internationally, there are numerous and continuous struggles to limit defection on the basis of likely contravention of the mandate of original election. Equally, comparative studies are clear that the efforts to restrict defection frequently end in travesty (2006: 742).

In contrast to South Africa, New Zealand had no anti-defection law until it passed one in 2001 on a "sunset" basis to expire after two elections. Writing before the law expired, Miskin described it as an "unworkable" law that "failed within a few months of it being implemented" (2003: 32). In fact, the law did lapse after the second election in 2005, and the New Zealand Solicitor-General advised that a bill to

restore the act infringed on the constitutional freedoms of expression and association, saying

> In summary, the Bill does not protect what I have described as "legitimate dissent" in the House by an individual member concerning his/her party or its policies. Rather, it accords to the party and its leader a very wide discretion. The question is whether that means that the limitation on rights contained in the Bill is not "proportionate", and therefore that the Bill is not BORA [Bill of Rights Acr] consistent. (Arnold, 2005: paragraph 42).

Do anti-defection laws discourage party defections? There is little systematic cross-national research on the effectiveness of anti-defection laws other than studies by Malhotra (2005) and Subramarian (2008). Malhotra's study of anti-defection laws in 65 parliaments was based on questionnaires circulated to officials of Commonwealth parliaments and to officials at the 2004 Inter-Parliamentary Union Conference in Mexico (2005: xi). He does not reprint the questionnaire, but he does classify parliaments as whether or not they had "experience with political defections" according to their responses. Although Malhotra does not report his data in this format, Table 3 shows the cross-classification of the presence of anti-defection laws and experience with political [party] defections:

TABLE 3: Party Defections by Anti-Defection Laws

Experience with Party Defections	No Anti-Defection Laws	Laws against Party Defections	Totals
No	7 (20%)	3 (10%)	10
Yes	28 (80%)	27 (90%)	55
	35 (100%)	30 (100%)	65

A simple chi-square test of the data in Table 3 shows no significant relationship between reported experience with parliamentary party defections (whatever that may mean) and the presence of anti-defection laws.

In place of Malhotra's "experience with defections," Subramanian's more empirical study used legislative party fragmentation as calculated by the Laasko and

Taagepera formula (1979). Subramanian studied countries with and without anti-defection laws and used several methods to assess the effect of those laws on party fragmentation. Consistent with the data reported in Malhotra, Subramanian too found no evidence that anti-defection laws "consistently increase or decrease legislative party fragmentation" (2008: 103).

Like studying the relationship between the number of city police and the amount of urban crime, these studies show that it is hard to discern the causal relationships between the variables. Does the presence of anti-defection laws reduce parliamentary party defections (or party fragmentation) or does the incidence of party defections lead to the passage of anti-defection laws?

Fitting anti-defection laws to the political system: One clear conclusion emerges from this study of parliamentary party defection—by whatever name the act is called. Changing parties after election is viewed differently within most established democracies versus most nascent democracies. Established democracies value the freedom of individual parliamentary members to switch parties. They regard switching parties as compatible with democratic values and see anti-defection laws as infringements on political freedoms. In general, democratic nations tend to pass laws that permit or promote competitive party politics (Janda, 2006). Because anti-defection laws protect existing parties, such laws are suspect in established democracies, although some democratic nations do favor existing parties through other laws. For example, the United States makes it easier for its two major parties, the Democrats and Republicans, to place its candidates on election ballots (Bennett, 2009). But even in the United States, there is virtually no support for preventing members of Congress from switching parties.

Nascent democracies, however, have (by definition) less developed political systems. Typically, their party systems are in flux as are their norms for parliamentary behavior. Their electorates also are less familiar with political parties and often owe political loyalties to clans, groups, or local figures. These factors make for very different political systems. Perhaps laws that do not fit party politics in established democracies may fit party politics in developing democracies, and perhaps anti-defection laws are a case in point. Mershon and Heller identify this theme:

> A recurring worry expressed in studies of party switching in new democracies is that mobile politicians undermine already weak party organizations, impede the institutionalization of the party system, and complicate processes of policy making and representation (2003: 5).

In his assessment of democratic assistance programs to new democracies, Crothers writes, "There is no set answer to the question of what sort of political party law will most help support democratic party development" (2006: 196). Speaking specifically about anti-defection laws, Miskin says:

> while anti-defection law may suit the circumstances of countries, such as Papua New Guinea where it may help to impose order on a chaotic party system in order to stabilise government, its usefulness in other countries is less clear (2003: iii).

Shaping a party system through legislation is a form of political engineering, and Desposato (2006a: 28) holds that "it isn't clear that strong political parties can or should be engineered through political reform. Parties of the idealized European type receive much of their strength not from electoral rules, but from their large, loyal, and stable support among the general population." Writing on party engineering in Papua New Guinea, Reilly cautions that the desired results (if they are achieved at all) are not realized overnight:

> Inherent in the new party system laws is the expectation that parties can be 'built' to a certain extent, not from the bottom up (as is usually the case), but from the top down, by forcing what are currently shifting coalitions of independents and weak parties into more structured and indeed permanent alliances over the course of each parliament (2002: 711).

Shabad and Slomczynski put it this way:

> Presumably, as time passes and as political elites engage in multiple iterations of the electoral game, a learning process should take place and contribute to the stabilization of the party system. Put simply, party-switching should become less 'normal', the patterns of movement more structured and the consequences of political tourism more costly (2004: 152).

Let us assume that anti-defection laws are functional for achieving stable, competitive party politics in nascent democracies that suffer from unstable and

fragmented parties operating in a corrupt and personalistic political system. If a given law works as intended, then the nation should (after an unstated period of time) emerge as an established democracy. Following the experience of most established democracies, such a law would no longer "fit" its political system and its enhanced regard for the democratic values of freedom of expression and association. Then, as in South Africa, anti-defection laws should be changed. Spiess and Pehlm believe that the role played by anti-defection laws depends on the functioning of the party system and the nature of society:

> So, ultimately, the question whether floor crossing should be allowed or anti-defection regulations should be imposed, rests on the configuration of the party system and the crucial dilemma of what has to be considered more important in the context of nascent democracies and divided societies: regime stability or national integration. (Spiess and Pehlm 2004: 224).

Unfortunately, more nations by far outlaw party defections in their constitutions than through statutory law. Because constitutions are more difficult to change, anti-defection legislation tends to be more permanent than temporary. Outlawing party defections in constitutions invites observers to speculate about the framers' intentions. Was it to produce competitive party systems or to consolidate power within existing parties? It is an important question for nations considering anti-defection laws.

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