

## Backing away from the brink

**Yehonathan Tommer\***

**Jerusalem, February 21, 2001:** Israel's electoral reforms four years ago have brought the country to a constitutional precipice, in which a parliamentary majority asked to repeal them, is presented with the choice of backing away from the brink to political stability or hurtling over the edge into political chaos.

Five prime ministers have served Israel in the last six years. None completed their statutory four-year term of office. The last two, Benjamin Netanyahu (1996–1999) and Ehud Barak (1999–2000), fell foul of their fractious multi-party coalitions and, as Cabinet Ministers walked out, both premiers rapidly alienated their parliamentary majorities. Netanyahu's ministry was axed in a no-confidence vote while Barak's, the shortest-lived in Israel's 53-year history, meteorically crumbled, forcing him to the polls.

Throughout the 1980s and 1990s, Israeli governments progressively displayed chronic instability, reminiscent of post-war Italy where ministries barely lasted a year. With successive elections and an incomprehensibly low threshold of 1.5 per cent of the cast ballot, new parties surfaced like mushrooms as established parties splintered. Sixteen political parties, some no more than two members, presently hold seats in Israel's 120-member, single chamber parliament (the Knesset). The country's two major parties, One Israel (formerly Labour), holds 26 seats, while the major opposition party, Likud, holds 19 seats. Less than a decade ago both parties enjoyed almost double the number of seats.

Unlike most parliamentary governments around the world, Israel has a code of Basic Laws, but not a Constitution.

Electoral reform has been a recurring item on Israel's parliamentary agenda since the 1950s. However, chronic political instability accelerated with the law for the direct

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election of the prime minister, enacted in 1992, but introduced with the general elections of June 1996.

Direct elections for prime minister were advocated by a group of Tel Aviv University constitutional law professors to correct the flaws of the previous electoral system of country-wide proportional representation. 'This unique, but problematic method ridiculed in other parliamentary democracies, was a source of chronic instability and caused many Israelis to lose confidence in their democratic form of government,' wrote M.K. Amnon Rubinstein, Chairman of the Knesset Constitution, Judicial and Law Committee and an instrumental proponent of the electoral reforms in a recent article in Israel's leading daily, *Haaretz* (February 20, 2001).

Under this system a small parliamentary faction, and even single Knesset Members (MK), horsetrading for sectarian and individual privileges, could topple a government by threatening to transfer their loyalty to the Opposition, thus precipitating the prime minister's resignation and the Knesset's dissolution.

The direct ballot for prime minister was designed to anchor the executive's powers and authority against a fickle and unruly parliament. Coalition and opposition politicians, riding a populist movement impatient with the country's unstable and unrepresentative coalition governments, helped push it through the legislature.

Formerly, the prime minister and his Cabinet ruled with the confidence of the Knesset. (para 3 of the Basic Law of Government). The amended law states that the prime minister will be elected in 'general, nationwide, direct, equal and secret elections for a period of four years', parallel with the Knesset elections. A second run off is held within two weeks if the first round does not produce a simple majority of the eligible valid votes. An Israeli prime minister can serve a maximum two consecutive four years of office, but longer if he/she wins snap mid-term elections.

The powers of the office are no broader than those under the former system partially modelled on the British parliament. The prevailing amended law, however, allows the incumbent to appoint half the Cabinet ministers (26 by law, excluding deputy ministers and ministers without portfolios) from outside the majority parliamentary party (para 3c). The Knesset still approves the Cabinet ministry, but a majority of 70 Knesset members (MKS) can fire a minister (para 35c) and a majority of 80 MKs is needed to oust the prime minister from office (para 27a).

To expel the government from office only a simple majority of 61 MKs is needed and this automatically dissolves the parliament (para 19a). On the other hand, with the president's agreement and the support of 80 MKs the prime minister can dissolve parliament for fresh elections, and this also ends his/her term of office (para 22a).

These measures were designed to strengthen the institution of prime minister and to stabilise his government against the vicissitudes of a divisive parliament seeking to topple him with repeated no-confidence motions.

The amended law split the ballot in two: a popular, first-past-the-post direct vote for prime minister in which 'the winner takes all'; and a proportional party ballot for the Knesset, in which the entire nation votes as a single constituency for both the executive and the legislature.

From early statehood Israeli prime ministers were automatically elected to office as leaders of the majority party which had won the largest number of Knesset seats. They have also traditionally been leaders of multi-party, European-style parliamentary coalitions, aggravated by Israel's deep social, ethnic and religious-secular divisions.

Mr. Barak's crushing defeat by Ariel Sharon by nearly 25 percentage points in last February's polls came less than 18 months after his own landslide victory of 15 percentage points over the incumbent Netanyahu.

Critics ascribe these dramatic upheavals in part to the continuing domestic tussle over Israel's continued occupation of the West Bank and Gaza territories. Others attribute these sea change reversals to the recently-instituted electoral reforms which distorted and made ungovernable Israel's parliamentary system of government.

According to Dr Arik Carmon, Director of the Jerusalem-based *Israel Democracy Institute*, the law has been constitutionally, politically and socially destructive. 'Dissociating parliament from the executive creates a confrontation between the two branches of government. It sows doubt about the voter's legitimacy and/or the institutions for which the vote was cast and exacerbates their continuing political instability.'

Carmon opposed the direct ballot for prime minister from the outset, warning against its ruinous political and social consequences. The split vote, he says, 'creates an unbearable conflict between national interests (a vote for the prime minister) and sectarian interests (a vote for the political party). It splinters the major parties, weakens the national agenda, grinds to dust the basis of social integration and undermines vulnerable concepts of collective welfare and the good of the nation. . . . Socially, the split vote has intensified political militancy and hatreds between Israeli social, political and economic strata to excesses previously unknown.'

The original reform bill also proposed constituencies, half to be popularly elected and the other half to be represented by party appointed politicians. But this element, which was designed to improve the Knesset's majoritarian or proportional representative function, was rejected.

'Even so, it would not have healed the schism between the executive and legislative arms of government,' says Hebrew University political scientist Asher Arian. 'Israel's amended electoral law introduced an irreconcilable hybrid presidential and parliamentary system which operates only in France — effectively removing Israel from the family of parliamentary democracies.'

'It is nonsense to take the quasi-presidential system, now in place, and compare it to the American political system,' says Arian. 'Israel is about the size of America's smallest state. It has no federal division of powers with state and other local authorities and, unlike the American Congress, the Knesset does not have the same checks and balances on executive rule.' Instead of devolving Israel's rigidly centralised government, 'the electoral reforms make it even more difficult to separate national from local issues. Israel lacks the experience to innovate new systems of government.'

'Neither Netanyahu nor Barak grew inside the parliamentary party system', says Arian. 'Both leaders crashed because they flip-flopped and zig-zagged roughshod over parliamentary procedures. They behaved like anointed kings, but caved in to coalition

extortion, cynically violated ministerial trust, repeatedly broke their public word, arrogantly sacrificed party loyalty and progressively lost credibility with the Knesset majority that put them in power.'

Carmon and Arian both agree that the only remedy to Israel's present ungovernability is to repeal the direct ballot, reinstitute the previous electoral system and legislate appropriate amendments to improve and refine Israel's representative parliamentary institutions.

A principal amendment would stipulate a 'constructive no-confidence motion' in force in several European countries such as Germany, Belgium and Spain; namely, that a no-confidence motion must be accompanied by a proposal to put in place an alternative candidate for prime minister and parliamentary majority to preserve political stability. The electoral threshold for party representation would also have to be raised to at least 4 per cent of the valid vote.

These amendments would not remove the aberration of the previous electoral system in which small and extorting parties could swing the balance of parliamentary power to bring down a government, warns Rubinstein, who is accused of delaying the legislative repeal. Above all, he says, 'an Israeli prime minister must retain the vital authority (granted him under the present direct ballot) to dissolve parliament and serve as a counter-balance to small, extortionate parliamentary factions threatening to replace a prime minister in mid-term.'

A majority of current members of the Knesset, including Speaker Avraham Burg, support accelerated legislation through the House second and third readings to annul immediately the law for direct elections for prime minister, before other pressing issues supplant it. ▲

### *Postscript*

Since the article was written, the Basic (constitutional) Law for direct elections of the prime minister was repealed by the Knesset on 7 March by an overwhelming majority of 72 against 37 and 3 abstentions.

The annulment coincided with installation of prime minister-elect Ariel Sharon, who was the third and last Israeli prime minister to be elected by a direct popular ballot, and will be implemented with the next Knesset elections scheduled in 2003. General elections can take place earlier, though, if the government falls or the legislature is prematurely dissolved.

Outgoing Knesset Constitution and Law Committee Chairman Amnon Rubinstein, who was among the law's original proponents, voted against its repeal. Israel's President Moshe Katzav, though, added his moral support to the law's repeal, labelling the direct ballot as 'damaging to Israel's political stability.'

With its repeal, Israel abolished the split ballot and has reverted to its previous party proportional electoral system in which the entire nation votes as a single electorate. With its repeal, a number of important modifications were legislated to bolster government stability and parliamentary responsibility — some borrowed from the annulled law and others adopted from European parliamentary experience.

The reintroduced and amended electoral law stipulates, for instance, that a majority of 61 MKs is needed to propose a no-confidence vote in the government along with 61 signatures endorsing an alternate candidate for prime minister capable of putting an alternative government in place ('constructive no-confidence motion').

Furthermore, the Cabinet is not restricted in size (today 26 ministers and 9 deputy ministers — the largest in Israel's history) and the prime minister is empowered, with the approval of the president, to dissolve the Knesset.

On the one hand, Parliament is empowered to obligate the prime minister to attend Knesset debates; but, on the other, it must dissolve itself and go to the polls if the annual State Budget is not approved by 31 March.

The single party ballot vote forces Israeli citizens to weigh the national good against narrower, sectarian interests and will inevitably lead to the disappearance of small parties as voters swing back to Labour and Likud which are already expected to make a lightning comeback with next Knesset elections. These obviously have a better chance of putting more representatives into the Knesset, bearing in mind that the party with the largest number of elected MKs, or most capable of forming a coalition, is called upon by the president to form the next government.