

Gender, the State and the Politics of Affirmative Action.

The Story

In March, 1993, the 13th Knesset passed amendment 6 to the Government Companies' Act (1975) which changed the process for appointing directors. The main thrust of the amendment was to depoliticize the boards of some 170 government-owned companies, and improve the quality of the performance of their directors by rationalizing the process of director selection and replacing particularistic considerations with universal and "relevant" criteria. In other words, the Knesset sought to compel government ministers, those authorized to appoint the directors, to appoint only those persons most qualified for the position. The amendment specified prerequisites based on professional qualifications and managerial experience, defined which "political" involvements and relationships with the respective ministers that disqualified candidates from becoming board members. and established an independent committee headed by a retired judge to approve candidates. All this was done, as explained those who proposed the law explained to the Knesset, :

"to assure the existence of a proper (standardized) appointment procedure for directors that should be based on relevant considerations only and related to advancing the welfare of the company and the suitability of the candidate to serve in this role, . to secure appropriate guarantees that the selection of candidates will be detached, as much as possible, from political tendencies of personal obligations" (13th Knesset, 26.10.92)

A similar bill brought to the 11th and again to the 12th Knesset had each time been opposed both by the finance committee and the minister of finance authorized to approve all board appointments. The right to appoint the some 2000 directors in government-owned companies was a valuable resource in the patronage system which ministers used to repay their supporters. and one they were understandably not willing to give up. In 1990 some 65% of directors were members of the central committee of one of the major political parties, the body that elected the ministers.

From the mid 1980s mounting pressure to depoliticize the boards of government owned company came from a number of directions. In 1985 an opinion granted by the legal advisor to the government stated that "the appointment of employees of government owned companies should be made only on the basis of the consideration of the needs of the company, efficiency, savings, suitability of the candidate and the like and not to mix considerations of membership in the party or party ties of the of the candidate or other foreign considerations." (qf comptroller general report 41, p. 595.) In 1986 the report of the Gabai commission, appointed by the legal advisor to the government and headed by the former director general of the Department of Justice underlined the need to establish objective and relevant criteria for the director selection process. "In principle, Israel requires a government service of excellent professional level that operates according to relevant considerations only." (qf comptroller general 1988, 39: 628) Both the 1989 and 1991 annual reports of the comptroller general devoted a chapter to the problem that "it is not the .best person that necessarily gets the position." (1989 p. 595)

*27/10/98
Dance Riley
Am 9
the name*

Of special interest to this paper, and the focus of the analysis, is the fact that this same amendment which aimed at establishing a norm and practice of universalism and rationalism, also included an affirmative action clause mandating ministers to explicitly take sex into account in its selection of directors. Clause 18a of amendment six to the government-owned companies' act states that:

- a. In the makeup of the board of directors of a government owned company, suitable expression will be given to the representation of both sexes.
- b. Until that time as the said suitable representation is achieved, ministers will appoint, as is possible under the relevant conditions, directors from the sex which is not suitably represented at that time on the company board..

Although the apparent contradiction between the proclaimed goals of the legislation - to eliminate irrelevant considerations in director selection and between the mandate to make sex explicit and to prefer one sex over did not go unnoticed by a few members of Knesset, the law passed with a large majority.

Clause 18a represents a significant departure from previous legislation regarding the status of women in the public sphere in two senses: First, whereas previous legislation, requires government to refrain from discrimination (formal equality of opportunity), the new law requires government to take some positive action to promote equality (substantial equality of opportunity). Second, following Theodore Lowi's typology of domestic policy(cf Boneparth, 1982:11), whereas previous gender related legislation was primarily regulatory or distributive (instructing the government to make special distributions to women as women, such as maternity grants and tax credits), the new law was redistributive in its immediate consequences. Since there are a fixed number of positions on government owned company boards, securing some for women means fewer opportunities for men and thus involves a redistribution of resources or a sharing of power.

This amendment represents Israel's first affirmative action legislation for women (Radai, 1995). (Footnote: I use the term affirmative action in the very general sense as "...attempts to make progress toward substantive, rather than merely formal, equality of opportunity for those groups. such as women or racial minorities, which are currently under-represented in significant positions in society, by explicitly taking into account the defining characteristics - sex or race - which have been the basis for discrimination." (Mullen, 1988:244 from Crosby, 1994:15)

The Questions:

I have three related purposes in this analysis: First, I wish to analyze the process of the social construction of affirmative action for women as social policy in Israel. How did the issue of affirmative action get onto the public agenda? Why did the law take the form it did? How was the inclusion of a particularistic criterion in an amendment designed to establish norms of universalism justified? Who were the dominant actors and how did they justify opening the doors to the centers of power to women, or to more women than had been allowed access in the past? And why only to women and not other disadvantaged groups?

Second I use this case to examine the interplay of gender relations and state dynamics in Israel. What can we learn from this case about the relations between women and the state and the assumptions about gender which are embedded in the policy making process, about the relationship between civic organizations and state agencies, and about the strategies for using the state apparatus to change gender relations.?

Following Lorber, (1994:1) the analysis is based on the view that gender is a social institution "that establishes patterns of expectations for individuals, orders the social processes of everyday life, is built into the social organizations of society, such as the economy, ideology, the family, and politics, and is also an entity in and of itself " As defined by Joan Wallach Scott (1988:42), "Gender is a constitutive element of social relationships based on perceived differences between the sexes, and gender is a primary way of signifying relationships of power."

Israeli sociological analyses of the state and state bureaucracies have been remarkably gender blind (for a feminist critique of gender blind state theories see Savage and Witz) (See Hana Herzog article- gender blind There are few gender analyses of state policy and most focus on issues related to welfare policy (see for example, Eilam, 199; Amir, 1996. For an exception see Berkovitch, 1996). With few exceptions (see Hazelton, 1977; Davis, 19, Herzog, 199).

The present study uses the case of the legislation of affirmative action to highlight the practices of gender in the political domain. The state is an important actor, a strategic object for women's pressure groups. As Connell notes, the state is the main organizer of the power relations of gender and is therefore, the focus of interest group formation and mobilization. Those wishing to change the gender relations of power, cannot avoid the state. From this perspective the state is viewed not merely as neutral actor representing the interests of class or regulating the relations between groups, but as an actor or set of actors with its own interest and pursuing its goals. Furthermore, the state is not assumed to be a monolithic or even coherent structure - but rather an arena of many sectors sometimes working at cross purposes, with different interests and perspectives and open to different pressures. Pringle and Watson (1983:237) have referred to the state as "the site of competing discourses, practices and struggles" (Pringle and Watson, 1983:237) distinguishable but not sharply distinct from civil society nor from the domestic sphere.

Third, this study analyzes the potential of such legislation for promoting gender equality and undermining the patriarchal character of the state. In contrast to Marxist and Socialist feminist theorists who view the state as inherently or essentially patriarchal., my own tendency is to use the term "patriarchy" in the sense suggested by Connell (1994:) as ".. a serviceable term for *historically* (my emphasis) produced situations in gender relations where men's domination is *institutionalized* (emphasis in the original)."

"That is to say, men's overall social supremacy is embedded in face-to-face settings like the family, and the workplace, generated by the functioning of the economy,

reproduced over time by the normal operations of schools, media, [the military (D.I.)] and churches".

It is also embedded in the structure, culture and the of the state
It is not only the fact that most of the powerful state actors are men which renders the state patriarchal, but the fact that concrete social practices of the state systematically, although not necessarily nor even always, reflect or are connected with men's interests. These practices form part of the unquestioned and unquestionable world taken for granted The paper reflects on the possibilities this law opens for undermining patriarchal assumptions concerning women's participation in public life.

The Theoretical Frame: How issues become public policy.

The analysis of this case draws from the theory of issue cultures developed by Gamson and Modigliani (1987, 1989) to explain public discourse. It is adapted and used to analyze the development of affirmative action policy. the resource-organization political perspective developed by McCarthy and Zald and the institutional perspective developed by DiMaggio. Each adds an important element to this attempt to explain how affirmative action got into public policy, why it took the form it did and its implications for gender equality.

In their study of the changing culture of affirmative action, Gamson and Modigliani (1987: 143) state that "every policy issue is contested in a symbolic arena" and the ideas, interests, and interpretations that these symbols represent are organized in 'packages'. "One can think of the complete set of packages that are available for taking about the issue as its 'culture' " (ibid) A package becomes culturally available when it has a sponsor - that is individuals, groups or organizations that promote it. "At the core of a package is its *frame*. A frame is a central organizing idea of story line that provides meaning to an unfolding strip of events ibid)". The frame provides the organization for thinking about the idea and generally also implies some course of action or what should be done about it.

Sponsors use opportunities - some of their own making and some of their own taking - that arise in the environment. Crises, investigative commissions, open up a social space for the issue to get on the agenda.

"Each package," according to G & M "has a career. Some packages may be prominent in the beginning and gradually decline; others may rise to prominence out of nowhere: still others may languish throughout their careers. New packages may be constructed from elements of pre-existing packages whose components have become familiar - Once constructed packages can be used to advance many interests not only those substantively related to the package. The central task of a theory of public discourse, is to explain package careers. (ibid: p. 143-4)

Packages are more likely to get through the political process when they have powerful sponsors and when their frames resonant with a dominant cultural theme. G&M do not discuss the politics of group mobilization, how groups organize to

become powerful sponsors which is an important theme in the work of McCarthy and Zald, nor how ideas become embedded in institutions to produce dominant cultural themes as discussed by DiMaggio.

If I recast my questions in the rhetoric of G&M - the purpose of this paper is to analyze the career of the affirmative action set of packages in the Israeli context.

According to Francis Radai, noted Israeli legal theorist, (qf Maza judgment p 30) the concept of affirmative action [as a basis for legal action (*D.I.*)] is almost unknown in Israel". Sociologically, however, we may trace the origins of the affirmative action package and the embryonic stages of its career to the issue of participation or partnership in the emerging Jewish collective in relation to which women mobilized and pressed their claims.

Jewish collective and the politics of representation.

The issue of their participation in the emerging Jewish collective mobilized women from the early part of the century. No one questioned that the construction of the new Jewish homeland in Eretz yisrael required the participation of both men and women - but the men and women pioneers had different visions of what women's roles would be in this process.

In her study of the utopian Zionist literature from 1880-1927, Rachel Elboim observes that in the Zionist utopias (all written by men), women had virtually no place in the public sphere. Although in the new society, they envisioned the Jewish male transformed into a new cultural identity, and at the level of ideology, sex equality was even endorsed, - at the level of the practice of everyday life, the new Jewess remained in the confines of her home where she devoted herself to raising her children and domestic duties. These utopian visions informed the taken for granted gender division of labor the early pioneering collectives. The social revolution stopped at the point of redefining gender roles. Tradition and utopian visions were re-enforced by the gendered image of the halutz which glorified masculinity.

Women's claim for more equal participation in the valued activities of national reconstruction, a precondition for more equal partnership in the emerging Jewish collective, is a continuous theme in "herstory" of the yishuv. Couched in the rhetoric of the "duties discourse" of the period, the women pioneers in the second and third aliyot demanded to be permitted to share in the burdens of agricultural, construction, defence and other work defined by men as valuable for the collective.

Ironically, it was Golda Meir who is quoted as saying she failed to understand why feeding the animals was considered more important than feeding the members. The reason was cause that was men did it and men defined what counted as valued work.s. Women's demand for representation in the emerging social organizations of the yishuv was a demand for recognition of their membership in the collective.

In 1909 a group of women stormed a meeting of the farmers' union of the galilee, protesting their exclusion. In 1911 a group of women pioneers, members of the labor movement, met at the Kineret farm and comparing notes concerning their exclusion from the valued activities of the new collective farms, discussed strategies for

change. This turned out to be the founding meeting of the first wave feminist movement in Palestine. Among the strategies formulated was that women would agree to join only those men's farming collectives that accepted a minimum number of women so that they could rotate between the less valued domestic chores of kitchen and laundry and the highly valued agricultural work in the fields. In 1916 a group of wives of leading members of the Shomer - the new Jewish self defence organization, sent their famous letter threatening to withdraw their support if they continued to be excluded from full membership of the collective and were not made party to its secrets. Throughout the 1920s and 1930s women, especially in the kibbutzim, pressed for the right to participate in the self defence units. At the founding convention of the Histadrut in 1920, a group of leading women from the newly formed women workers' movement protested women's underrepresentation among the party delegates and threatened to contest election to the Histadrut in a separate women's list. The women's organization was consequently granted two representatives in the central committee of the Histadrut. This marks the beginning of the institutionalization of the construction of women as a distinct sector and of a quota system representation on the basis of sex within the new Jewish institutions of the yishuv. Following the definition of citizenship proposed by T.H. Marshall as 'full membership in the community' (cf Lister) the Histadrut decision represented women's incorporation as second class citizens into a collective where their status as members was predicated on their subordination.

After the establishment of the state the issue of women's representation continued to be negotiated within the parties of the left. In 1971 the women's caucus in Mapai succeeded in getting the party convention to pass a 20% quota for women the kneset - a commitment that was never honored. In 1979 the Histadrut convention, facing criticism regarding the use of funds, established a committee to examine and make improvements in the constitution with regard to the election and performance of workers' committees. Within that context of general changes in the constitution, the women in the Histadrut succeeded in passing a decision mandating representation of at least one woman on workers' committees in work places where women constituted a specified minimum percentage of the workforce. No mechanism for the implementation of the decision was established and it too was more honored in the breach.

Women as directors on government-owned companies

The Prime Minister's Commission on the Status of Women, established at the end of 1975 in the context of the U.N decade of women, provided a site for the identification and formulation of issues and their translation into claims on government. Given the mandate to examine gender inequality in all walks of life, the various committees of the commission did just that. The work of the committees both created a demand for information on problems and strategies for action from Europe and North America and supplied the media with information. The commission's report also raised the issue for the first time of women's representation on the boards of government owned companies (1978:321). The issue, however, does not appear to have had high priority for the committee. Whereas, women's under-representation in the foreign service, in political parties, and at the higher echelance of the civil service are discussed in some detail in the report with accompanying data on the proportion of women in the respective bodies, the only reference to government

company boards, is found in recommendation no. 14 of the committee report which dealt with Representation and Involvement in Public Life. It states that "the government should initiate the appointment of women to such bodies as: boards of government owned companies, public councils and committees and investigative committees. This should apply to the local level of government as well (Committee, 19780:)." Government owned companies is listed as one of a string of government controlled bodies. The injunction "to initiate the appointment" is general; it does not specify a quota nor does it mandate affirmative action.

The commission however, also supplied the rhetoric that was later critical for making the affirmative action clause palatable to different relevant constituencies - namely the phrase *yezug holem* (suitable/apropriate/fitting representation). Regarding women's representation in the elected bodies of the trade unions the committee concerned with women in the labor force recommended that "it should be aspired to [achieve] *yezug holem* (suitable/apropriate/fitting representation) of women on the elected bodies of trade unions and in places of work where women are employed (Committee, 1978:)". At a later stage, the phrase "of women" was dropped and replaced by suitable representation of both sexes - transforming this particularistic reference into a gender neutral universal one. The committee's recommendation was divided between the majority who recommended that such suitable representation (*yezug holem*) of women be achieved through the introduction of quotas and the minority representing the manufacturers association, who favored restricting action to educational means only.

The commission report led to the appointment of an advisor on the status of women - a position, however, that had none of the accompanying trapping of power or prestige: it had a shoe string budget and virtually no clout. Whatever influence the position carried depended in large measure on the network of personal ties of the person in the job with gatekeepers in the government bureaucracies. As Nitza Libair - explained Mankal of the OPM - *mati shmulevitch* was a personal friend from common social background - we had common friends and met socially. He gave me many things I would not have succeeded in getting for myself. He got me the budget to put out a periodical publication, my own stationery,

In april 1985, the advisor on the status of women succeeded to persuade the prime minister to sign and get approval for a government decision declaring the intent to introduce equal opportunity in the civil service. Of the 8 clauses the first four called for increasing representation of women in senior positions, as directors on government boards on all personnel tender committees

The rhetoric used of the women's representation frame contained a new element - new emphasis on women's human capital, their educational and professional accomplishments. In the explanatory note accompanying the decisions and prepared by Dr. Libai. the decision was justified as follows: It represented the implementation of the recommendations of the commission on the status of women submitted in 1978 to the prime minister "who promised to work for their implementation". Women constituted 51% of the employed in the civil service. and had much to contribute. Their human capital was not less and even greater than that of the men in the service. Nonetheless they were greatly under-represented in the higher levels of the civil

service. They comprised only some 2 % of the directors on government own companies. Equal opportunity was an expression of the principle of equality between man and women and this decision comes to affirm the government's commitment to equal opportunity for women at all levels of the civil service.

Lip service: June 1986 Peres establishes vaadat kuberski to improve service of sherut hamedina. There is the main ctee of all men and one women (renana gutman of the treasury) and a subctee of women and miyutim. The women object and demand a separate ctee and hibner ismade chair. Vaada leinyan shel maamadam shel nashim beshherut hamedina vehazibur Ctee report is dated Aug. 1989. It p. 263 recommendation - to implement the decision of April 28 1985 of the govt. - and statement re the need for affirmative action - to change stereotypes etc..

Jan 1990 Government accepts in principle the recommendations of Vaadat Kuberski lekidum nashim beshherut hamedina. The terms of reference was to utilize the human capital of the women. Women originally part of miyutim sub ctee and insulted and demanded to be dealt with separately. Check when ctee established

Shdula forumaltes law and gives to Zaban. in 1991.

1993 June - Shitrit creates ctee to implement recommendations of Kuberski ctee

July 92 Burg puts it in Knesset. Jan. 93 Libai as minister of justice says govt decided to reject hatzaa because of wording. that it means only one woman - he bring Norway with 4% women - purpose is to rraises it - Libai supports principle of "yezug holem" in keeping with the recommendation of Kuberski. but wants another nisuach.

1989 Zaban Oron and Faris - the three mapam members - in oppostition present hazaa to have at least one woman on public owned (not govt companies . Show that women only 2% of damatzim- discussed in Knesset in july 1991 and buried in ctee - vaad huka hok mishpat- Meridor was minister of Justice.

June 1992 Avram Burg brings private member bill to have at least one woman member on each board. Jan. 1993 Kriya Tromit. Recommends addition to clause 17

2. Women's orgs. play active role in putting issue on the public agenda. In 1974 - demise of Bebe Idelson quota in left wing parties - quota to look after the interests of a small no. of women. At end of 1970s - part of changes in takanon on vaadei ovdim - included clause about women's representation - quota. Principle women entitled to representation - continuous neogitation - rarely get what promised and women fight to keep what got. (term used - Havtachat Yezug)

1984-86 ichud maarach in power

1984 shdulat hanashim and the keren hadasha

1984 - women press Shachal who is chair of veida - maza mifleget avoda he later brings proposal for yezug AA on govt boards - few women political appointees

1985 - Nitzza Shapira Libai - yoetzet - Ichud govt - maarach in power get govt decision (hachlata memshala) that all govt bodies should adopt a policy to improve the balance in representation of women and men .

1988 Vaadat Kuberski - Arabs and women - women demand their own

12th kneset 1988 Mapam separate party - special relations with many civil orgs- including women's orgs. - these now have professional staff to assist in drafting.

91 - Nov. : Zaban (20 signatures from diff. parties of the left including Avram Burg..) - submitted to chair of kneset :a directors of one sex will not be appointed to the board of a govt owned co unless at the time of appintment there is at least one director from the other sex. - sent for preliminary hearing in huka and there killed.. Meridor - grounds of efficiency.not inyani Hok Havarot memshaltiyot:

Final stage - women's orgs not active players - explain later

Dec. 1992 - Avrum Burg - same hazaa to 13th Kneset

March 93 - passed part of private member bill Zucker- Oron.

3. Part of wider change of shift from social to economic calculations from patronage to efficiency. AA is a sub clause and hardly the most important in a law geared to increase the efficiency and effectiveness of the control by the board over govt owned companies. Specifically - law geared to depoliticize the board, require that apointees have academic degrees in defined areas, or managerial experience and appointments approved by impatrial ctee headed by a retired judge. In the 1980s over 60% of board were members of merkaz hamiflaga. NB tool in hands of ministers - especially of the treasury to repay political supporters. Modii, Peres - refused tikun. Rising criticism - vaadat Gabai, state comptroller - part of wider change in Israel for companies to serve economic rather thansocial ends. Pressure to replace apparatus run by patronage and used to serve political party interests with professional expertise. Collins suggest such a shift (p. 150) is an attack on a form of masculinity which prized the ability to mobilize constituencies at the polling station, worked through patronage obligations and exclusionary social networks. - displaced by a new form of hegemonic masculinity organized around theme of rationality, calculation, economic expertise. Part of the new era of private enterprise, enterpeneruship and emphasis on profits. Irony - enter AA - privilege group for social considerations.

Since 1970s - women entering public sector and rising as experts - not to the top which filled with political appointees - supply the professional day to day epertsie of running the bureaucracies. Women in the ozar, praklitut - referred to over and over as proof of their entitlement..

I asked not conteradiction between eliminating irrelevant considerations and introducing AA for women. To the contrary - improving quality of board members requires more women - cause they have expertise and excluded until now only because women.

Part of rise of individual rights -

rise in womens interest in careers - rise of women;s self help organizations

5. **Post Zionism** - emphasis on individualism rights (gad barzilai)- demise of the collective which integrated women in a special way as aizer knegdo. post militarism - post doing things for social ends- now profitability - new citizenship based on profits and performance

m Even military less cohesive in the 1980s - from org with mission to bureaucratic
Individualism is subversive to patriarchy

6. **Rhetoric of support for women's issues becomes fashionable** - in. Competition among men to show they support women's issues.

7. **Special circumstances after 1992:** - one thing to get on agenda other thing to get passed: - need support but also to overcome opposition of govt.

1. Meretz first time in coalition.

2. Dedi Zucker chair of vaadat hukim hok umishpat - also person who took initiative on hukim directors (note his hazaa does not include AA).

3. Rhetoric:

-- opposition to quotas - (one is insulting, make system rigid) - yezug holem

-- opposition to making this a woman's law.. - shnei hamanim women not mentioned

-- left loop holes: * which gave leeway to ministers - benesibot hainyan *final appeal if ctee rejects - to memshala, except if appointment illegal. *yezug not defined as official criteria to be used by ctee.

Judgment of Bagatz came as a surprise Women lawyers in office said "higzimu) according to Did lachman. Women lawyers do not see themselves as representing women -they represent the profession - abstract, set of rules - they have acquired knowledge common to men - their being women is an irrelevant fact and therefore there should be no reference to it theoretical 0

8. **Impact:** - very limited: *privilege the elite * tokenism - yezug holem *women who get on anxious to prove they are worthy and not because they are women * Hides sexism of criteria - not questioned (experience in top positions)

They selected for expertise - will want to prove not selected as women, entrench tokenism. Women don't see themselves representing constituency

Reinforce belief that capable can make it.

Note changing name - not comfortable with aflaya.

hides depth to which state linked to men's interests - not just matter of prejudice creates split between elite and working class women

-Judge Dorner - called it peula metakenet - corrective action - not (haadafa metakenet, avachana mekademet)

When promoting equality becomes politically correct and attractive men get involved and can compete with women

Women - get expertise but not power- rise in staff but not line - I say translate expertise into power