

From Law to Politics: The Path to Gender Equality

FOR SEVERAL DECADES ISRAELI FEMINISM FOCUSED ON LAW IN ITS efforts to promote greater gender equality in Israel. The common wisdom was that legal reforms provide the most effective tools for undermining social structures of inequality and empowering women in the public sphere. Over the years this understanding motivated numerous legal battles that were aimed at using the law as an agent of gender equality. Starting in the 1980s various female litigants, aided by civil rights and feminist organizations, approached the Supreme Court as part of their efforts to remedy injustices of discrimination. For example, Leah Shakdiel, backed by ACRI, was a pioneer in the 1980s in securing women the right to equal membership in municipal rabbinical administrations;¹ Neomi Nevo headed a feminist effort to amend retirement policies in Israel and eventually guaranteed women the right to retire at the same age as men;² Alice Miller's efforts to become a military pilot a decade later initiated major legal reforms in military policies toward women that enabled them to serve in various combat roles.³

Similarly, various feminist organizations successfully promoted affirmative action plans in the 1990s for women in the public sector, hoping to increase the number of women in positions of power and influence in the labor force.⁴ Finally, in the 1980s and '90s feminist activists sponsored legislative reforms in parental rights and responsibilities that replaced maternal rights such as maternity leave with gender neutral parental rights that can be exercised equally by working men and women.⁵ Hence, as a matter of "law on the books", equality between men and women in the public sphere and in the private sphere has been secured as a legal principle in the last several decades and the underlying rationale was that legal reforms that implement this principle in various contexts can be significantly helpful for women in overcoming current barriers to gender equality.

This article questions the assumption that law is an effective agent of gender equality. It argues that legal reforms of the last three decades that aspired to promote greater gender equality in Israel have proved to be anecdotal in nature and have not been effective in making real changes in the status of women as expected. Moreover, it appears that in many respects these legal reforms are counterproductive, since they disguise the actual reality of gender inequality that still persists, generating an image of a legal system that is fully committed to the idea of gender equality.

Part I briefly outlines the current state of gender inequality in Israel and provides relevant data in this context. **Part II** focuses on the example of affirmative action and explains why, despite its image as one of the leading tools in the struggle for gender equality, legal reforms in this area have not been successful so far in undermining current structures of inequality. **Part III** argues that it is time to divert feminist attention from law to politics and to dedicate more efforts to mobilize women as a political group with shared interests and a concrete agenda. The final conclusion is that a real breakthrough in the struggle for gender equality can be achieved only by political means and by significantly increasing the political power of women.

GENDER INEQUALITY IN ISRAEL

The most recent Global Gender Gap Index introduced by the World Economic Forum in 2012 evaluates Israel's performance in the area of gender equality as relatively poor.⁶ The index benchmarks national gender gaps on economic, political, education, and health-based criteria, and provides country rankings that allow for effective comparisons across regions and over time. Capturing the magnitude and scope of gender-based disparities and providing a detailed country profile, the Index ranks Israel as number 56 out of 135 countries on the size of its gender gap, far behind most Western countries.

This ranking is just another recent reminder of the fact the gender equality still remains out of reach in Israel. In fact, Israeli women have made strikingly little progress in advancing to positions of power and influence in politics or in the workforce. In the former administration women accounted for only 10% of cabinet members; in the newly elected Knesset they hold only 27 out of 120 seats. In the army women are still a negligible minority among high ranking officers⁷ and they are also mostly excluded from positions of power and influence in the workforce.⁸ Despite the fact the Israeli women receive the majority of all university degrees,⁹ they are

still underrepresented in senior roles and earn on average 64% of what men earn—a wage gap that increases with age and education.¹⁰

So why is it that after years of numerous feminist struggles so little has been gained and where is the law in all of this? These are the questions that I explore in the following section. My central argument is that the law's failure in this context relates to the fact that most feminist legal reforms in Israel have been targeting the symptoms of gender inequality rather than the in-depth causes of the problem—the actual factors that feed and maintain the current power structures. What has been left untouched is an array of social perceptions that hierarchically distinguish femininity and masculinity. In other words, in our culture femininity and masculinity are not simply biological terms. These terms still reflect normative perceptions that differentiate femininity and masculinity and also portray the masculine and its traits as something that is inherently more valuable and especially more suitable for positions of power, influence, and leadership in the public sphere.¹¹ These perceptions powerfully dominate law and society in Israel and are the primary explanation for the ongoing marginalization of women in the public sphere and especially in senior positions in the workforce and in politics. Under these circumstances specific legal battles that are aimed at securing similar treatment for women or even preferential treatment whenever they resemble men are not only ineffective in promoting gender equality—they even perpetuate women's marginality and legitimize their exclusion from management and leadership positions.

AFFIRMATIVE ACTION AS AN EXAMPLE OF A COUNTERPRODUCTIVE LEGAL REFORM

One of the major problems of gender disparity in the workforce is that women are significantly underrepresented in senior and prestigious positions. In an effort to alter this power imbalance and promote greater equality for women in the labor market, feminist activists effectively promoted legislation that implements the principle of affirmative action for women.¹² This legislation sets the goal of achieving “appropriate representation of both genders” in the public sector and provides that when a man and a woman have “similar qualifications” the underrepresented gender will be given preference in the appointment process.

On the face of it this principle addresses the problem of gender imbalance in senior roles and presents a proper legal mechanism for change. Yet, it turns out that in its numerous years of implementation, affirmative action

legislation has not been successful in promoting a real change in this context. The relevant data presented above indicate that women are still mostly excluded from positions of power and influence in the workforce. In fact, women have made strikingly little progress in advancing to the boardrooms and the executive suites, and consequently there is an ongoing gap between the formal legal rule that provides a guarantee of gender equality and the actual impact on women. In my opinion, the key explanation for this situation lies in the legislation itself, which does not challenge the manner in which “similar qualifications” are defined and the underlying gendered perceptions that feed this definition.

The case of Yael Aran clearly demonstrates this problem. Yael Aran competed for the role of general director of the Anti-Drug Authority and lost the job to a man. Represented by the Israel Women’s Network she appealed to the Supreme Court twice. In its first decision the Court determined that the Prime-minister who was initially in charge of the appointment process failed to properly consider the principle of affirmative action for women as part of the decision-making process.¹³ Highlighting the importance of affirmative action plans and their contribution to gender equality, the Court ordered the prime minister to reconsider his decision to appoint a man to the job. The prime minister delegated his discretion in this matter to the minister of internal affairs. As instructed by the Court, the minister reconsidered Aran’s appointment, this time giving due attention to the principle of affirmative action for women. Yet the ultimate result remained the same. The minister and his general director who handled the reevaluation process also preferred the man and explained that affirmative action legislation has no bearing on the issue since the two candidates do not have “similar qualifications”. The Supreme Court embraced this conclusion. In its second decision the Court affirmed the final appointment decision and concluded that the man was simply more suited for the job.¹⁴

The case of Yael Aran is not a well-known case. On its face it is a non-significant Court decision about a woman who was not good enough for the job. The cases that are usually referred to by scholars and by activists of gender equality as the landmark Court decisions in the context of affirmative action for women are the first two cases litigated by the Israel Women’s Network in the 1990s.¹⁵ In these cases the Court outlined the theoretical foundations of affirmative action plans for women and explained how affirmative action serves and promotes gender equality. Yet, a closer study of all affirmative action cases reveals a gap between the decisive rhetoric of the Court, especially in the first two “landmark” cases, and the actual impact of the litigation on women employment. While the Court stresses

the importance of affirmative action and calls for proper implementation of the relevant legislation over and over again, women are hardly benefiting from the practice.¹⁶ Thus the case of Aran deserves closer analysis because it reflects in a more precise manner the actual impact of affirmative action on women's professional lives.¹⁷ As such it can also highlight the actual factors that hinder the successful implementation of affirmative action plans for women.

Yael Aran was the chairman of the Jerusalem branch of a feminist organization (Na'amat). She was also the general director of the Israel Construction Center, head of the board of directors of the Israel Consumer Council, head of the budget committee in the Israel Tourism Company, and the manager of the Jerusalem branch of the Open University. Her rival, on the other hand, was a Colonel in the army in the Education Corps, who after retiring from active service was appointed to the job of managing director of the Israel Association of Community Centers.

In comparing these two resumes one cannot ignore the fact that both careers are colored by the gender of each applicant. While Yael Aran had a more feminine career, the career of her rival Yair Geler was clearly affected by the privileges of masculinity in Israeli society. Becoming a Colonel in the army is still a masculine privilege even in non-combat units such as the Education Corps. Similarly, turning your military career as a high ranking officer into a benefit that can guarantee an easy passage from the military to a senior and prestigious position in the private or public sector is also a typical privilege of Israeli men. Hence one problem that emerges with regard to the requirement of "similar qualifications" is that as long as current barriers to women's full integration in the workforce are still in place, women will very seldom be in a similar position to men with regard to their ability to acquire the relevant professional qualifications for the better jobs.¹⁸

A second and even more troubling problem that comes up in this context relates to the process by which the value of different professional qualifications is determined. The general director of the Internal Affairs Office who interviewed both applicants and evaluated their qualifications for the job, concluded in his summary report that Yair Geler, the male candidate, has significantly better skills for the job and the Court found no ground for questioning this conclusion. Yet one can argue that the very judgment that the male career is superior to the female career is just another manifestation of inherent gender biases. As explained above, these biases automatically and often unconsciously associate the masculine as opposed to the feminine with added value and perceive masculine life stories as more relevant than feminine life stories to senior positions of management

and leadership. Hence as a result of an implicit gender-biased definition of worth, professional skills of women like Yael Aran are destined to be devalued.

In sum, in overlooking the complex gendered aspects of the case and embracing the conclusion that the individual woman was simply not good enough for the job, the Court decision legitimizes the current reality of women's marginalization in the workforce and portrays it as just and inevitable. It also perpetuates old gender biases and strengthens current barriers to gender equality. Rather than solving the problem of underrepresentation of women in senior roles, it appears that law has become ineffective in promoting the cause of gender equality.

BEYOND LAW: SHIFTING THE FOCUS TO POLITICS

So how do we get out of this vicious circle? In my opinion a key factor for women's future ability to overcome their current marginalization in the public sphere is greater political participation and representation. To achieve this goal feminist activists need to divert their focus from law to politics and to mobilize women as a group with shared interests and a concrete agenda. Thus individual legal battles like the one carried out by Yael Aran cannot be effective without a more structural change in the visibility and dominance of women in the public sphere. This broader structural change can only be carried out by political means.

To clarify this argument and to outline my vision of possible change, I want to introduce into the discussion three new terms—*gender gap*, *different voice*, and *critical mass*. The *gender gap* in politics refers to differences between men and women in political attitudes and voting choices. In some Western European countries and especially in the United States, a gender gap has been apparent since the 1980s in voting behavior, party identification, evaluations of performances of recent presidents, and attitudes toward some public policy issues.¹⁹ Thus a gender gap in voting is an interesting manifestation of women's *different voice*.²⁰ Among many issues where gender gaps have been observed,²¹ polls in the United States found that compared with men, women are:

- More likely to favor a more activist role for government
- More often opposed to U.S. military intervention in other countries
- More supportive of programs to guarantee health care and meet basic human needs

- More supportive of affirmative action and efforts to achieve racial equality

Moreover, in the United States in every presidential election since 1980, a gender gap has been apparent, with a greater proportion of women than men preferring the Democrat candidate.²²

The existence of a clear gender gap in American politics has two immediate important consequences for women. *First*, it makes American women an identified political group whose interests are counted and considered as part of the general political agenda. The 2012 presidential race exemplified this point. Today, it is clear that the battle for women's votes has shaped this election and forced both candidates to pay greater attention to women's needs and interests.²³ *Second*, gender gap increases the chances of American women to be elected to political office. Relevant research suggests that women tend to prefer women with liberal agendas to men with similar agendas. This tendency explains why Hillary Clinton was able to attract more votes among women when she competed against Barack Obama for the Democratic nomination for president in 2008.²⁴ Yet when she withdrew from the race, most of the votes of her female supporters were given to Obama and not to McCain, despite the fact that the latter appointed a woman—Sarah Palin—as his candidate for vice president. Hence the presence of a Republican woman in a race does not eliminate the gender gap or reverse its direction.²⁵

As opposed to the United States, gender gap in voting has never been an issue in Israel.²⁶ Israeli women traditionally voted as men and researchers assumed for many years that this is a by-product of the fact that Israeli women still internalize masculine values and therefore not only prefer men as leaders but are also unable to define their needs and interests as distinct from men's. This political reality and the assumption that there is no chance for a gender gap in Israel have marginalized the political power of women even further. As opposed to the United States, where the "woman question" regularly occupies pollsters and affects the manner in which political candidates draft their agenda, in Israel it was never considered important for politicians to know the needs and interests of women. Yet the 2009 election signaled a change in this context. For the first time a clear gender gap has been identified among Kadima voters. Two different polls found that significantly more Jewish women than men voted for Kadima led then by Tzipi Livni.²⁷ A similar gender gap was identified among Arab voters to Balad, which was the first and only Arab party that included a woman (Hanin Zuabi) as number three on its list of candidates to the Knesset in

2009.²⁸ In both cases researchers concluded that the gender gap in voting was directly related to the presence of women among the party leaders.²⁹ It is too early to analyze the gender aspects of the recent election (January 2013) in Israel. Yet some polls published before the election identified a gender gap among voters for parties such as Yesh Atid, Labor, and Meretz that as part of their declared commitment to gender equality in political representation included a large number of women in their list of candidates to the Knesset.³⁰

These developments might signal an important change in Israeli politics. Israeli women are 51% of the population. If they can leverage their size as a group, they can achieve significant influence in the political sphere. Therefore the most urgent task for feminist activists is the formation of a gender gap in voting patterns and political attitudes. A gender gap is crucial not only for making Israeli women more visible and relevant as voters; it also appears to be a potentially important tool in empowering women in the public sphere. One of the consequences of a gender gap is that more women are usually elected. This process does not only alter the formal gender power relations in parliaments; it also has the potential of transforming parliamentary agendas, since it turns out that women tend to be more active in promoting reforms that respond to the needs and interests of women.³¹ Yet a crucial factor in this context is a critical mass of women and here I want to explain the third relevant term—*critical mass*.

A key factor to achieving true transformation across all leadership fields is propelling a critical mass (at least one-third) of diverse women into leadership alongside men. Research has demonstrated that achieving a critical mass of women in leadership is essential to moving forward because of two important reasons. First, it turns out that women make a difference only when they become a critical mass in public bodies. Second, a critical mass of women in positions of power and influence contributes more than anything else to the decrease of gender stereotypes that associate femininity with domesticity and inferiority. This in turn breaks the vicious circle in which gender biases operate as a powerful mechanism for excluding women from management and leadership positions, and then rely on the fact of women's marginality as an objective proof of their incompatibility for senior roles.

In sum, the political mobilization of women and the formation of a critical mass of women in politics can help us move beyond law to a new arena where women are no longer dependent on the law making of others. Instead they can be in a position of making law themselves and adapting legal rules to the needs and interests of both genders. Additionally, and even more importantly, the very presence of a critical mass of women in

all political bodies appears to be crucial for changing gender concepts that currently affect the operation of law and hinder its ability to operate as an effective agent of gender equality.

This conclusion does not intend to suggest that feminist activists should discredit law altogether as a potentially useful tool in the struggle for gender equality. Rather the argument is that if we want to enable women to reclaim the legal arena and use law effectively, a change in the basic normative frameworks within which law operates is required. Thus political action must supplement legal action to facilitate a normative transformation in the way that we define and value the “feminine” as opposed to the “masculine” in our society. This process of facilitating a change in gender concepts can be advanced primarily by political means and not by specific legal battles in court. Yet it is a necessary precondition for making law what it ought to be—a central and important mechanism for promoting gender equality.

Of course shifting the focus from law to politics and creating a united power base among women is not an easy goal to achieve. Feminists will have to deal with many obstacles on the way before a real gender transformation in Israeli politics occurs. Just to mention some difficult questions that come up in this context: How do we mobilize women as a group? How do we recruit women to their own cause? How do we overcome the diversity among women and establish a shared agenda? In sum, how do we promote a steady gender gap in Israeli politics?

If Israeli feminists can find an answer to these queries, this will be the most significant milestone on the road to gender equality.

NOTES

I wish to thank Arianne Renan-Barzilay, and Pnina Lahav for their very helpful comments, and Inbar Roth-Snir for her excellent research assistance.

1. HCJ 153/87, *Shakdiel v. Minister of Religious Affairs* [1988] IsrSC 42(2) 221. English translation: http://elyon1.court.gov.il/files_eng/87/530/001/Z01/87001530.z01.pdf.

2. HCJ 104/87, *Nevo v. National Labor Court* [1990] IsrSC 44(4) 749. English translation: http://elyon1.court.gov.il/files_eng/87/040/001/Z01/87001040.z01.pdf. See also, Male and Female Workers (Equal Retirement Age) Law 1987, S.H. 48.

3. HCJ 4541/94, *Miller v. Minister of Defense* [1995] IsrSC 49(4) 94. English translation: http://elyon1.court.gov.il/files_eng/94/410/045/Z01/94045410.z01.pdf. See also Women’s Equal Rights Act 1951, S.H. 248, 6D. This subsection, entitled

“Service in the Security Forces”, was added to the law in 2000. Specifically, it provides: (A) any woman candidate for service in the security forces, or in active service, has an equal right to the right of a man to fill any role, or be placed in any position; it shall not be seen a violation of this right if this is required by the essence or the nature of the job.”

4. Government Companies Law 1975, S.H. 235, 18A. See also State Service Law (Appointments) 1959, S.H. 86, 15A. For the first Supreme Court decision in regard to the implementation of the Government Companies Law, see HCJ 453/94, *Israel Women's Network v. Government of Israel* [1994] IsrSC 48(5) 501. English translation: http://elyon1.court.gov.il/files_eng/94/530/004/Z01/94004530.z01.pdf. Additionally, for the first Court decision in regard to the implementation of the State Service Law (Appointments), see HCJ 2671/98, *Israel Women's Network v. Minister of Labor and Social Affairs* [1998] IsrSC 52(3) 630.

5. For detailed review and analysis of these reforms see Noya Rimalt, “Good Mother, Bad Mother, Irrelevant Mother: Parenthood in Law between the Ideal of Equality and the Maternal Reality,” *Mishpatim* 31.3(2010):573–632 [Hebrew].

6. Ricardo Hausmann, Laur T. Tyson, and Saadia Zahidi, “The Global Gender Gap Report,” *World Economic Forum* (Geneva, 2012), accessed 21 February 2013, http://www3.weforum.org/docs/WEF_GenderGap_Report_2012.pdf

7. According to the information provided by the Israel Defense Forces for 2011, women comprise 13% of those ranked Lieutenant Colonel, 4% Colonel (in numbers there are only 26 women), and only 3 women are ranked today as Brigadier General. Similarly, there is only one woman ranked Major General in the IDF. *The Committee on the Status of Women* (2011), “Protocol number 121: Religious Extremism in the IDF and its impact on Gender Segregation and Violation of Women's Rights.” [Hebrew] 27 December, accessed 30 October 2012, <http://www.knesset.gov.il/protocols/data/rtf/maamad/2011-12-27.rtf>.

8. Data for 2012 reveal that among the 400 biggest private companies in Israel, only 16 women are CEOs. See Tali Heruti-Sober, “400 leading companies—but only 4% have women as CEOs,” *The Marker*, 22 March 2012 [Hebrew], accessed 30 October 2012, <http://www.themarket.com/career/women/1.1669540>. Relevant data for 2010 reveal that only 15% of companies' boards of directors and only 5% of the heads of the boards are women. As CEOs women are scarce, comprising only 5% of all CEOs. Within the 100 biggest companies traded on the Tel-Aviv 100 Stock Exchange, there are only 104 women occupying board seats as opposed to 601 men. See The Israel Women's Network 2011, “Leading Women in Business,” accessed 30 October 2012, http://www.iwn.org.il/_Uploads/dbsAttachedFiles/catalyst.rep.heb.pdf[Hebrew]. In the public sector, women are poorly represented as managing directors of government offices. In the previous administration there were only 4 women occupying this post, as opposed to 24 men. See Dina Gordon, “Orna Hozman-Behor: Running Long Distance,” *Epoch Times Israel*, 21 October 2012 [Hebrew], accessed 30 October 2012, <http://www.epochtimes.co.il/news/content/view/17459/313>. Furthermore, in the public sector, despite the fact that women

account for the majority of workers they occupy primarily low and intermediate positions in this sector, significantly underrepresented at the top. See “Wage differentials between men and women in the public sector,” accessed 30 October 2012, <http://www.knesset.gov.il/mmm/data/pdf/mo2950.pdf>. In Governmental companies the situation is better only at the level of directors. There are 206 women out of 509 directors in these companies, representing 40% of all directors. See Minister of Governmental Companies 2009, “A summary of board of directors on behalf of the state in governmental companies,” accessed 30 October 2012, [http://www.gca.gov.il\[Hebrew\]](http://www.gca.gov.il[Hebrew]). However, at the very top, women’s progress has been stalled. According to information from 2010, there are only three women occupying the post of chairman of the board of directors in governmental companies and only two women serving as Managing Directors. See Knesset, “Fair representation of women on board of directors of governmental corporations and public companies,” accessed 30 October 2012, <http://www.knesset.gov.il/mmm/data/pdf/mo2566.pdf>.

9. According to information from 2010, the majority of students studying for their BA, MA, and PhD degrees are women; they consist of 56.5% of all first degree students, 58.5% of second degree students, and 53% of all doctorate students. See Knesset, “Data on women in academia,” 2 February 2012 [Hebrew], accessed 30 October 2012, http://www.google.co.il/url?sa=t&rc=t=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CCEQFjAA&url=http%3A%2F%2Fwww.knesset.gov.il%2Fcommittees%2Fheb%2Fmaterial%2Fdata%2Fmada2012-03-06.doc&ei=KK-SUKaqPKj34QSg7YCYCg&usg=AFQjCNE_VqMblJLr48f4RNRS2Fueo-gYAA.

10. On average, Israeli men earn 9,526 NIS per month while women earn only 6,280 NIS. See Central Bureau of Statistics, 2010, “Income Survey 2009,” accessed 30 October 2012, [http://www.cbs.gov.il/www/hodaot2010n/15_10_219b.doc\[Hebrew\]](http://www.cbs.gov.il/www/hodaot2010n/15_10_219b.doc[Hebrew]). Moreover, although the level of education of women employees is higher than men’s—32.4% of working women have 16 years of education (or more) as opposed to only 26.1% of working men, more educated women still earn less than men. Women with up to 10 years of education, earn 3,377 NIS on average, while men with similar education earn 5,773 NIS. When we focus on the most educated employees—those with 16 years of education or more—women earn 8,626 NIS per month, while men with similar education earn much more—14,919 NIS per month. Hence, the gender pay gap widens with education and not the other way around.

11. One example is the typical reference to women top executives as the ones “with balls” in their boardroom. Another example is the well-known reference in the 1970s to Golda Meir, Israel’s one and only female prime-minister, as “the only real man in her cabinet”. These references reveal a hidden concept that not only associates femininity and masculinity with different traits, but also perceives masculine traits as more suited for professional work and especially for positions of leadership, power, and influence.

12. See, for example, State Service Law (Appointments) 1959, S.H. 86, 15A; Government Companies Law 1975, S.H. 235, 18A; Companies Law 1999, S.H. 189,

239D; Women's Equal Rights Act 1951, S.H. 248, 6C; Sports Law 1988, S.H. 122, 9A; Senior Citizens Law 1989, S.H. 26, 4B; National Health Insurance Law 1994, 49B; Israel Laboratory Accreditation Authority Law 1997, S.H. 156, 8B(3); Law of the national struggle in road accidents 1997, S.H. 196, 11C; Authority for the Advancement of Women Act 1998, S.H. 171, 9H; National Council for Research and civil development Act 2002, S.H. 52, 4H; National Insurance Regulations (National Council) 1958, K.T. 1052, 2B.

13. HCJ 5755/08, *Aran v. State of Israel* [2009] IsrSC 09(9) 056.

14. HCJ 5158/09, *Aran v. State of Israel* [2009] IsrSC 10(1) 306.

15. HCJ453/94, *Israel Women's Network v. Government of Israel* [1994] IsrSC 48(5) 501. English translation: http://elyon1.court.gov.il/files_eng/94/530/004/Z01/94004530.z01.pdf. Additionally, for the Court's decision in regard to implementation of the State Service Law (Appointments), see HCJ 2671/98, *Israel Women's Network v. Minister of Labor and Social Affairs* [1998] IsrSC 52(3) 630.

16. A similar example is the Court decision on the matter of appointing a woman to the Tirkel committee that was authorized to investigate the IDF attack on the Turkish flotilla to Gaza. See HCJ 5660/10, *Itach v. Prime Minister of Israel* [2010] IsrSC 10(34) 823. While the Court was decisive in its rhetoric and ordered the Government to search for women who could be appointed to the committee, when the government announced after a search of three weeks and after approaching five women, that not a single woman could be identified for the job, the Court affirmed the government decision to have an all men committee.

17. Alarming figures demonstrating the current futility of affirmative action plans were presented to the Court by Aran and her lawyers. In her petition to the Court, Aran provided data indicating that in the three years previous to her petition only two women as opposed to 91 men were appointed to the job of chairman of the board of directors in governmental companies. Similarly, at the same period of time 35 men and 0 women were appointed to the job of general director of governmental companies. See section 45 to Aran's petition to the Court: HCJ 5158/09, *Aran v. State of Israel* [2009] (on file with the author).

18. The managerial history of the Israel Anti-drug Authority proves exactly this point. Ever since its establishment in 1988 it was headed by men, all of them ex high ranking military or police officers. In this important respect the appointment of Yair Geller to the job continued and sustained a gendered appointment policy that has always secured this position to a man. See sections 46–48 to Aran's petition to the Court: HCJ 5158/09, *Aran v. State of Israel* [2009] (on file with the author).

19. See Cal Clark and Janet Clark, *Women at the Poll: The Gender Gap, Cultural Politics and Contested Constituencies in the United States* (Cambridge, MA, 2008); *Voting the Gender Gap* (Champaign, IL, 2008).

20. This term borrows from Carol Gilligan's ground-breaking book that discussed thoughtfully the issue of gender differences in moral judgments and raised critical questions regarding the significance and potential contribution of women's "different voice"; Carol Gilligan, *In a Different Voice* (Cambridge, MA, 1982). For a

general discussion of American women's contemporary different public "voice" and how a united power base among women is changing the nation much more than the two-sided politics of left and right, see Celinda Lake and Kellyanne Conway, *What Women Really Want* (New York, 2010).

21. Center for American Women and Politics, "The Gender Gap, Attitudes on Public Policy Issues" (1997), accessed 30 October 2012, http://www.cawp.rutgers.edu/fast_facts/voters/documents/ggapissues.pdf.

22. Center for American Women and Politics (2008), "The Gender Gap: Voting Choices in Presidential Elections," accessed 30 October 2012, http://www.cawp.rutgers.edu/fast_facts/voters/documents/GGPresVote.pdf. For example, in 2008 female voters contributed significantly to Obama's victory. While leading Republican rival John McCain by a single point among men, the decisive Democratic margin of victory came from women, who supported Obama by 13 points. An even wider gender gap was identified in the recent 2012 presidential election. According to CNN's exit polls, 55% of women voted for Obama, while only 44% voted for Mitt Romney. In total the gender gap added up to 18% and it largely contributed to the president's re-election. See "Gender Gap in 2012 Election Aided Obama Win," http://www.huffingtonpost.com/2012/11/07/gender-gap-2012-election-obama_n_2086004.htm.

23. Susan Page, "Swing States Poll: Women Push Romney into Lead," *USA TODAY*, 15 October 2012, accessed 30 October 2012, <http://www.usatoday.com/story/news/politics/2012/10/15/swing-states-poll-women-voters-romney-obama/1634791>; Nate Silver, "'Gender Gap' Near Historic Highs," *The New York Times*, 27 October 2012, accessed 30 October 2012, <http://fivethirtyeight.blogs.nytimes.com/2012/10/21/gender-gap-near-historic-highs>.

24. Center for American Women and Politics (2008), "Proportion of Women and Men Who Voted for Hillary Clinton in the Super Tuesday Election Races of 5 February 2008," accessed 30 October 2012, http://www.cawp.rutgers.edu/fast_facts/voters/documents/SuperTuesday_Clinton.pdf.

25. For gender gap data relating to the 2010 races for U.S. senator and governor, see Center For American Women and Politics (2010), "Women Voters Less Likely than Men to Support Republican Women Candidates: Gender Gap Remains a Force in Election 2010," accessed 30 October 2012, http://www.cawp.rutgers.edu/press_room/news/documents/PressRelease_10-25-10.pdf; American Women and Politics (2010), "Gender Gap Widespread in 2010 Elections: Women Less Likely than Men to Support Republican Candidates," accessed 30 October 2012, http://www.cawp.rutgers.edu/press_room/news/documents/PressRelease_11-04-10-GG.pdf.

26. For relevant data on the absence of a gender gap in Israel for the period between 1969 and 1996, see Craig Charney, *Empowering Israeli Women: The Gender Gap, Women Issues and the Vote* (Ramat Gan, 1999) [Hebrew].

27. Einat Gdalia, Hanna Herzog, and Michal Shamir, *Election Expectation? Gender Dimension in the 2009 Elections in Israel 2009*, ed. Asher Arian and Michal

Shamir (Jerusalem, 2010), 231–65 [Hebrew]. This poll, based on a sample of 878 voters, indicates that 28% of all female voters as opposed to 21% of all male voters voted for Kadima in 2009. Another poll that was based on a larger sample of 2400 voters and conducted by the official pollster of Kadima, found that 54.6% of all Kadima voters were women as opposed to only 45.4% men. See Neri Livne, “Elections 2009: So, How Many Women voted for Tzipy Livni,” 20 February 2009 [Hebrew], accessed 30 October 2012, <http://www.haaretz.co.il/misc/1.1246697>.

28. Gdalia, Herzog, and Shamir, *Election Expectation?*, 249.

29. *Ibid.*

30. See for example, Onlife Survey from November 2012. This survey found that 20% of female voters declared that they intended to vote Yesh Atid, 12.9% declared they intended to vote Labor, and 3.9% intended to vote Meretz. <http://www.onlife.co.il/%D7%A2%D7%91%D7%95%D7%93%D7%94/%D7%91%D7%97%D7%99%D7%A8%D7%95%D7%AA/49816/%D7%A1%D7%A7%D7%A8-onlife-%D7%9E%D7%99%D7%95%D7%97%D7%93-%D7%94%D7%A0%D7%A9%D7%99%D7%9D-%D7%9E%D7%A6%D7%91%D7%99%D7%A2%D7%95%D7%AA-%D7%9C%D7%9C%D7%A4%D7%99%D7%93> [Hebrew].

31. For an interesting example of research that discusses the role of sex in judging, see Christina Boyd, Lee Epstein, and Andrew D. Martin, “Untangling the Casual Effects of Sex on Judging,” *American Journal of Political Science* 54.2(2010):389–411. This research analyzes federal appellate sex discrimination suits resolved between 1995 and 2002. It concludes that male judges are less likely to decide in favor of the party alleging discrimination than female judges. Likewise, it finds that men serving on a panel with a female are significantly more likely to rule in favor of the rights litigant.