1. The political process behind the gender balance law

Morten Huse

The story of how Norway developed and implemented the law on gender equality on boards is presented throughout the book. In this chapter we focus on those individuals and groups who were instrumental in the conception and development of the law, that is, the Norwegian politicians who initiated the formulation of the law, promoted its passage through the political and legal system, and ultimately facilitated its implementation.

We reflect in Part I on the debate surrounding the law’s conception in Norway, and on the political processes that shaped its passage. We bring to light the struggles behind the scenes through interviews with some of the core political actors, including the Think Tank participants Laila Dåvøy and Kirsti Bergstø. Laila Dåvøy was the Norwegian Minister of Equality in 2002 at the time that the law proposal was introduced, while Kirsti Bergstø was State Secretary in the Ministry of Equality in 2012. We commence in this chapter with reflections from Ansgar Gabrielsen and past Prime Minister Kjell Magne Bondevik on the announcement of the law. Gabrielsen was the Minister of Trade and Industry who received much of the credit for the law. He has been considered as the father of the law, and has internationally received substantial attention not only for what he did, but also for how it did it. He proposed the law in the press without informing anybody – not the Prime Minister, not the Minister of Equality, nor the leaders of his own political party.

Norway is considered one of the most progressive countries with regards to increasing the number of women on boards, thanks to it being an early adopter of legislation to force companies to recruit women to the boardroom. For many feminists, the decision to legislate for gender equality on boards was the boldest move anywhere to breach one of the most durable barriers to gender equality. In 2003, amendments to the Public Limited Companies Act in Norway included a requirement for a certain minimum proportion of directors from each gender. This has led
to a dramatic increase in the number of women on the boards of Norwegian companies. Other countries that are considering the adoption of an enforced quota scheme are looking at the results from Norway and planning accordingly.

The role of women in society is changing. This is not only in the public and private spheres, but also in the business world. These changes are found in many countries, but the speed and focus may vary. There are various arguments to develop ways to increase the number of women on corporate boards of directors. Corporate boards of directors have traditionally been seen as meeting places for societal and business elites. The boards have been considered as arenas where the interests of the ‘old boys’ networks’ are promoted, and it has been argued that an invisible glass ceiling is preventing women from getting into board and top management positions. Several initiatives for breaking through this glass ceiling have been researched and discussed (Vinnicombe et al., 2008).

Lessons can be learned from Norway about ways to increase the number of women on corporate boards. We will reflect on the results achieved after a law reform was introduced with the objective to have 40 percent of the board members coming from the least-represented gender. In practice, the law forced the largest Norwegian corporations to have at least 40 percent women among the board members. The reflections will consider the effectiveness of various programs or means to increase the number of women on corporate boards, as well as the consequences for businesses and the individual women becoming board members.

BOARDS AND CORPORATE GOVERNANCE IN NORWAY

When describing the Norwegian corporate governance arena it is important to understand the Norwegian history and the main actors. Norway is a small country with only a few large corporations, there are not many people with a long history of being wealthy, and the state and public authorities are important actors. In practice that means that there are few traditional family companies, but that even small companies have had active boards of directors, public policy initiatives have been of major importance, and recent movements of investor activism have received considerable attention.

The Norwegian authorities are clearly key actors in the corporate governance arena. The authorities act as both lawmakers and owners. However, there are also various other actors that define and shape the
corporate governance arena. Norway has a civil law system, and there exist various forms of incorporation.

There are certain particular features that characterize the Norwegian corporate governance system. These include Norwegian traditions and particular corporate governance events, the division between ASA (publicly tradable) and AS (private limited) companies, the concentrated ownership of the Oslo Stock Exchange, the importance of governmental and municipal ownership, the compulsory delegation of executive tasks (a two-tier system), and corporate co-determination. In 2008 there were 414 ASA companies and 224 of them were listed on the Oslo Stock Exchange. The number of ASA companies is about 0.1 percent of all registered companies in Norway (Rasmussen and Huse, 2010).

Employee-elected board members are part of the industrial relations system in Norway. This dates back to 1935 when the Basic Agreement was concluded between the main employee federation (LO) and the main employers’ federation (NAF/NHO). This agreement laid down collaboration rules, specifically the rights to collective agreement in the workplace, the right to strike and the labor peace guarantee, and the right to elect shop stewards (Hagen and Huse, 2007, p. 162). This collective (basic) agreement has been considered as ‘the constitution of Norwegian working life’. The notion of what corporations are in reality, and that employee participation and co-determination are important tools in business development, may be traced back to the first collective (basic) agreement.

THE CONTROVERSIAL ANNOUNCEMENT OF THE LAW

It is 22 February 2002 and the Norwegian Minister of Trade and Industry Ansgar Gabrielsen sits in his office in the government quarter. His heart probably beats faster this afternoon than usually. He picks up the phone and dials a number. At the other end is a journalist, who is currently unaware that he will soon get the hottest story of the year. ‘Hey,’ says Gabrielsen. ‘I have a great case for you. I can’t say it on the phone, but if you come here to my office then I think that we have something that really will get attention.’

About ten years later, the former Minister is proud when recalling this moment from memory. When it happened, there was no one who was able to stop him. Not even the Prime Minister. ‘It was a very unusual way to contact the media for a politician, and I knew it. But I had acted very nicely throughout my political career. Until then, I had been
minister for three months, and had decided to leave politics when I turned fifty. At this time there were four years again. But before I left, I wanted to do something big. Something that would last throughout my term. I saw the opportunity, and I found out how I was going to do it.’

Ansgar Gabrielsen did not ask his party leader. He did not even consult with his party colleagues, nor the Prime Minister Kjell Magne Bondevik. And the topic was controversial.

‘At six o’clock the next morning the top Secretary at Prime Minister’s Office called’, Gabrielsen says about the event in 2002. ‘She asked, “Have you seen the newspaper?” And I said, “No. Is there anything in particular?” “Well,” she answered, “I’ll read it to you now.” She read out the passage and asked, “Are you properly quoted?” “Yes. I did quote check yesterday, so this is one hundred percent correct.” “And you mean it?” she asked. “Yeah, I mean it.” I said. “I mean it and I stand for it – to my absolute last day in Government!”’ (Source: Dysthe, 2010.)

ABOUT TEN YEARS LATER

We are in Ex-Prime Minster Kjell Magne Bondevik’s office. How did he experience it when one of his ministers in 2002 contacted the journalists and acted this way?

‘It was a kind of coup’, he concedes. ‘And I haven’t yet quite figured out why Ansgar made it that way. But what he has said to me is that in order to get something you have to occasionally resort to unorthodox methods. I think probably the primary reason was that he knew he would face opposition in his own party. The usual procedure when one draws up new legislative proposals, is that of designing a Government memo which goes out for consultation before it reaches the Government conference. But Ansgar would then have been meeting opposition from the ministries governed by his colleagues from the conservative party. He chose instead to coup them, which caused considerable irritation within his own party.’

‘It was reported in the media that you rebuked him?’

‘Yes, I had to do that. There were several that responded and asked if I had cleared his statements. Normally you would think that if a minister goes out in the media in that way, that the Prime Minister had cleared it beforehand. But I had not. And this is neither a common nor a good practice. So I had to rebuke him, not least because of pressure from other Cabinet Ministers. I said, “Ansgar, you know that I share your view on this question, so that is not the problem, but how you proceeded”. The reason why I had to do this was that it too easily could have created a
precedent. If a Minister starts to use such a procedure and does not get any reactions to it, then others will start following the same procedures to achieve fast progress in achieving their objectives. And the Government could not live with such procedures. So I rebuked Gabrielsen to set an example.’ (Source: Dysthe, 2010.)

THE NORWEGIAN AFFIRMATIVE ACTION TRADITION

The history of the Norwegian law on affirmative action to ensure gender balance in boards goes back a long way. In Norway, equality between the genders is an integral part of employment policy and the social dialogue between the government and various parties in the employment sphere, including employer associations and trade unions, and there are many rules about reporting on gender balance. In 1981 Norway made it a requirement, stipulated in and enforced through the Equality Act, that public sector boards, councils, working groups and delegations must comprise 40 percent of the least represented gender, be that male or female. In 1993, parental leave was extended to 42 weeks. Four of these weeks were earmarked for fathers, and they could not be transferred to mothers. In 2009, there was an increase from four to ten weeks for fathers’ parental leave.

Societal reasons have been the starting point for much of the attention paid to this subject, and it is these reasons that lie behind the most radical initiatives to get more women onto the boards. The societal reasons have been about justice in society, democracy, participation, equality between the genders, human rights and compliance with various conventions of the United Nations and the European Economic Area. The individual-level and career-based arguments have largely been related to the ‘glass ceiling’ discussions. Business is about the reasons why and how women on corporate boards will contribute to improving companies’ performance. These arguments are especially used in contexts where social reasons are not accepted. The most common business case argument relates to the benefits of increased diversity, and that women contribute differently than men.

Although the Norwegian law had its origins in social concerns about gender equality, the subsequent debates in public and behind the scenes also surfaced justifications based on attendant commercial benefits and the individual rights of women. Yet, when it comes to the evaluation of a political initiative, it must be judged against the attainment of its original purpose. If the original rationale is associated with gender balance in society, then the initiative should not first and foremost be evaluated on
the basis of corporate profitability, or based on the career development of individual women. Of course attendant effects, both positive and negative, should not be neglected, but the most important evaluation criterion must be the societal.

VARIOUS NORWEGIAN INITIATIVES TO INCREASE THE NUMBER OF WOMEN ON BOARDS

Discussions have also taken place internationally for over 30 years on reasons for and how to get women into controlling positions in enterprises. Many different initiatives and programs have been reviewed, and these include:

- political debates;
- development of women’s networks;
- funding of research and dissemination of research results;
- courses and seminars to educate and prepare women to work on boards;
- mentorship and sponsorship programs;
- databases and other instruments to find board-qualified women;
- law proposal hearings and soft law recommendations or requirements;
- hard laws and legislation.

The Confederation of Norwegian Enterprise (NHO) established in the mid-1990s a program called ‘Women to the Top’ in cooperation with the Norwegian Confederation of Sports. In this initiative NHO ran seminars for women who were to establish themselves at the top, and also included seminars to prepare women for board positions. The Norwegian Director of Equality, Ingunn Ytten, ran a number of programs to increase the number of women in boards. Among other things, she established in 1999 along with then Labor and Administration Minister Laila Davøy, and Children and Equality Minister Valgerd Svarstad Haugland, registers of women who wished to undertake directorships. Several thousand women signed up and entered their curriculum vitae (CVs) in the female board database. Previous Equality Ministers Valgerd Svarstad Haugland (1997–2000) and Karita Bekkemellem (2000–2001) explored options for affirmative action for getting women on boards. Hearings were sent out on law proposals for consultation that, from Haugland, entailed a 25 percent share of women in all public companies; while Karita Bekkemellem sent out a hearing for the proposal of 40 percent of ASA company
with the Minister of Trade and Industry, Ansgar Gabrielsen, continued
efforts to promote a law proposal for gender balance in boards.

The various initiatives have had different purposes. Some have been
gear towards training and preparing women, some have been aimed at
motivating those who choose board members, and some have had the aim
to simplify the recruitment process. The effects of these initiatives vary
depending on the context and the central actors who are involved.

The ratio of women on corporate boards in publicly listed companies
did not change between 1990 and 2002. During this period it averaged
around 4 to 7 percent, with the only increase in 1994 caused by the
introduction of new types of companies on the Oslo Stock Exchange. The
real change started to take place after Ansgar Gabrielsen’s meeting in
2002 with the press. The law was then introduced in 2003, but it was
introduced as a ‘sunset law’. That means that the law would not come
into effect if the goals of gender balance were achieved in the course of
two years. The work of Children and Equality Minister Karita Bekkemel-
lom (2005–2007) ensured the implementation of the law, and in 2008 all
ASA companies had to have a gender-balanced board of directors, that is,
a minimum of about 40 percent of the least-represented sex. ASA
companies which did not follow the law had to be dissolved or had to
find another form of incorporation. The goal of gender balance in ASA
boards was achieved.

In the remainder of Part I we present two contributions from the Think
Tank in March 2011. They are from Laila Dåvøy and Kirsti Bergstø.
While Ansgar Gabrielsen is often viewed as the father of the Norwegian
gender balance law, many consider Laila Dåvøy to be the mother of the
law. Kirsti Bergstø was State Secretary in the Ministry of Equality in
2011, and she represented the then Norwegian Minister of Equality
Audun Lysbakken.

NOTE

1. The paragraphs in this section are from Rasmussen and Huse (2010).

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