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Contents

The Norwegian Gender Balance Law: A Reform that Failed?

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ABSTRACT

The Norwegian Gender Balance Law (GBL) was proposed in June 14th 2003, made into a law on December 9th 2005, and implemented from January 1st 2006 with a two-year grace period. The law mandates at least 40% board representation for both gender in PLC companies. The government gave two main promises, one that gender equality would increase with the law, the other that companies' financial performance would improve. I review research literature and add descriptive long-term developments on these dimensions. This essay concludes that the promises were not fulfilled, and that the corporate governance consequences that did follow are mostly negative. Companies attain the 40% female director target, but besides this, the law does not bring more female managers or CEOs, and the gender segregated labour market remains segregated. Today, the law applies to about 500 women, half of the number at its maximum. An unintended consequence of the legislation is the mass exodus of companies from the PLC register. I find it difficult to compare results from research on financial performance. Researchers perform before-and-after study, a natural experiment, but the reform has a long gestation period and attrition of companies from the PLC register. I conclude

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that the law should be repealed. In a wider context the experiment casts doubt as to the usefulness of legislation to promote gender equality in the boardroom and in society at large.

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Introduction

During the 2000s the Norwegian political authorities enacted the Gender Balance Law (GBL), requiring the public limited companies (PLCs) to have at least 40% of each gender on the board of directors. If the company did not comply, it would be dissolved. The legal process commenced in July 2003 and ended with the full implementation on January 1st, 2008. The law applies to listed and unlisted PLCs. The objectives for the law was first and foremost to achieve more gender equality in leadership positions in private companies. The proposition made the promise that the compulsory gender representation would set in train the appointment of more women in top management positions, in particular more female CEOs. A second promise was that the resulting increased gender diversity would improve firm performance. The law was imposed upon PLC companies from outside, that is, for the companies concerned this was an exogenous event. From a regulatory standpoint the law was an experiment in corporate governance.

The question here is whether it is possible to regulate one's way to a more gender equal society, or on a smaller note, whether quota laws are the best means to achieve gender equality in leadership positions. Of course, governments and international bodies regulate and

promote aspects of corporate governance in order to achieve less power concentration to the CEO ("Cadbury committee", 1992), or to achieve greater transparency and independence among actors important to owners and markets, such as the Sarbanes-Oxley Act (2002) (SOX). Using regulations in the board room in order to achieve political goals outside the domain of companies' corporate governance appears to be a different matter. The danger is that the GBL reform only touches surface problems and does not address underlying social structures. Chief among the latter is the gender segregated labour market, the very unequal attachment to the labour market that men and women exhibit. One aspect of this is the setback in a woman's career path with the onset of motherhood, especially among the highly educated women (Cools *et al.*, 2017, Hardoy *et al.*, 2017), from where one expects female leadership talent to emerge.

The official rationales for the GBL are mainly political. The central government document presented to the Parliament as the law proposition is Ot.prop. no 97 (2002–2003). From the proposition three main rationales for the GBL emerge. First, it is maintained that a low female representation on the boards is a sub-optimal resource utilisation. The proposition states emphatically several times that there is no lack of competent women to fill board seats, stating equality in education levels and business relevant experience. The claim that no lack of competent women exists constitutes a "basic presupposition" for the proposition. Second, the GBL would bring about greater gender equality and democracy by improving women's participation in business and societal decisions. The reasons for low representation at the time was put down to "traditional ideological and cultural conditions". The proposition avoids the word "discrimination", but this is clearly the lawmakers' underlying opinion. It was thought that a quota would open the eyes of owners to the valuable resource that women are, and thus, increase the number and percentage of women in other leadership positions besides board directorships. Third, the proposition makes a business case for female representation in the boardroom, assuming that the GBL would improve the firms' profitability. The proposition states that "increased board diversity, not only related to gender, but also age and background, can contribute to better strategic choices,

more innovation, faster restructures, and through this to increased profitability" (Ot.prop. no 97, 2002–2003, p. 10, my translation). To back up this claim, the proposition cites a student dissertation, but no international literature on the subject. The proposition further notes that the break-up of small networks and close ties among members will improve business decisions.

To repeat, the proposition makes two promises, one for greater gender equality in leadership positions in private companies, and one for improved firm performance. We call these *GBL promise 1 and 2*. The intended greater equality concerns both equality in the board of directors, but also a spillover to other top management positions. The promises are built on the "basic presupposition" that able women for directorships are easily found, as the companies have not accessed the full talent pool of candidates, but mainly the male part.

In this survey article I review the two promises in light of academic literature on the GBL together with long-term descriptive statistics before and after the regulation. In order to fully evaluate the reform I also include unintended consequences that follow from the reform and that the lawmakers did not foresee. The most important is what I call the withering of the PLC company. The number of PLC companies coming under the law was drastically reduced starting with the first signal that a compulsory law would come in 2002 and is, in fact, still ongoing. We look at easily accessible descriptive statistics and selected research that try to establish if the reform has been beneficial or not. I do not discuss the very large literature on the pros and cons of diversity in the board of directors. A good overview is Ferreira (2011) and the overview of Adams (2016). It turns out that the question if the reform has generated improved firm performance meets with a host of methodological problems (Ferreira, 2015). Much of the discussion will be on methodological choices that various researchers do.

I write from the vantage point of financial economics, more specifically, from the corporate governance viewpoint. This means that the survey skips much valuable research contributions in other disciplines. The GBL has attracted much scholarly interest. In this paper, I survey papers that deal with firm performance and the withering of the PLC company, but also on changes in other leadership positions (Bertrand

et al., 2018). Research on GBL touches on a series of aspects and includes Seierstad and Opsahl (2011) writing on changes in the network of companies and how female directors acquire "golden skirts", Bøhren and Staubo (2016) study how the GBL induced a more independent board, Ahern and Dittmar (2012), Matsa and Miller (2013), Dale-Olsen *et al.* (2013) study firm performance with different methodologies, while Eckbo *et al.* (2016) is a study that is favourable about the GBL. Smith (2014) gives an international overview of gender representation with an emphasis on effects of quotas, and Gabaldon *et al.* (2016) give an multidisciplinary theoretical overview of women's access to board positions.

The concern for gender equality also in leadership positions in private firms stands well within the Norwegian "state feminism" (Hernes, 1987) tradition, meaning that the government is supposed to have a responsibility to improve gender equality at all levels in society. The policy may be seen as a continuation of what Sandmo (1991) calls the Scandinavian welfare state model, where the state takes an active part in redistribution of income in order to achieve narrow income differentials. The policy of gender equality follows this traditional emphasis on equality and had been implemented in the government sector when gender quota legislation for PLCs was contemplated. The time had now come to the private sector. Presumably, politicians viewed the law as appealing to a large part of the electorate as a token for their concern about gender equality generally. But the consequence is to favour a special interest group, that is, women who aspire to leadership positions in private companies. Persson and Tabellini (2002, p. 160) define a a policy favouring a special interest group as one that has "concentrated benefits and dispersed costs". In the public choice literature this is called *rent seeking* (Mueller, 2003, chap. 15), that is, the appropriation of benefits to one group of society. In this case the costs are borne by especially younger aspiring men and companies potentially coming under the law. As we will argue, the benefits are harder to identify.

Thus, the GBL was exogenous to the companies. It arose at the political level and could not be overturned despite protests. The law infringes upon one of the basic rights that holding a company's share confers upon the owner, namely the right to elect the company's officers

(Hansmann, 1996). But board structure and corporate governance in general "arise endogenously because economic actors choose them in response to the governance issues they face" (Adams *et al.*, 2010). A company in the oil industry differs from a company in the IT services industry when it comes to the governance issues they need to cope with, a small company differs from a large one. Companies find the combination of governance mechanism that suit their situation through a long trial-and-error process. When is a general reform an improvement of the governance arrangement that the company has arrived at spontaneously? Hermalin and Weisbach (2006) discuss requirements for state intervention to be beneficial for the regulated. These arise due to three market failures of individual contracting, namely asymmetric information at the time of contracting, externalities on a third party, and the regulator's availability of punishing mechanisms that private contracting parties do not have, such as incarceration. As we have seen the arguments for the gender law was wholly outside such concerns, and instead geared to win political favour.

Yet, a study Gompers *et al.* (2016) into the success of venture capitalists given personal background might lend support to the claim in Ot.prop. no 97 (2002–2003) that more diversity at the board level can be beneficial for firm performance. They find that venture capitalists tend to form partnerships with others who are alike in education, employment history, ethnicity, and gender characteristics. The authors differentiate between *ability* and *affinity*, where the first is educational attainment, for instance, having a degree from a top university. Affinity is likeness in ethnicity and gender, attending the same school, or having the same employer. They find that affinity variables are negatively related to venture firm performance, but that ability variables are positively related. Thus, it can be argued that firms benefit from having persons with high ability and a diversity of personal characteristics. A rationale for government legislation is then that companies are not able to achieve this on their own due to entrenched and rigid conceptions as to who constitutes a good board member candidate. Adams and Funk (2012) on the other hand find that female *directors* are similar to male directors when it comes to personality traits, and that even the women in the boardroom are less risk averse than men. Thus, even

though personality traits are different between men and women in the population, they need not be in the boardroom (Adams, 2016).

Furthermore, the literature on regulation shows that regulations often have *unintended consequences*, consequences that the lawmakers did not foresee at the time. A general finding is that companies try to avoid regulations if they can, as witnessed for the SOX legislation in the United States. Gao *et al.* (2009) find that small firms have an incentive to stay small in order to avoid the SOX regulations.

In all, I conclude that the GBL is a failed reform. Promises are not fulfilled. On Promise 1 it turns out that the reform is a success in bringing the *percentage* of women on the board up to the 40% minimum target, but it fails in bringing more women in *absolute number* into directorships in PLC companies. The reform has neither increased the fraction of female top management in PLCs. Promise 2 is that greater board diversity will improve firm performance. None of the studies in the review find that firm performance improves. Findings from the studies are either a negative or no reform effect. Furthermore, the reform has had some negative unintended consequences. First of all, the reform coincides with a drastic reduction in the number of PLC companies, a withering of the PLC organisational form. As we will see, Bøhren and Staubo (2014) show that those companies leaving the PLC register in favour of the LTD register have the greatest costs of adapting to the new law. The reduction implies less corporate transparency about the economic situation of the firm, its corporate governance and other aspects. Second, the reform has concentrated many board positions to a minority of female directors at the same time that the network connections have become thinner. Third, Bøhren and Staubo (2016) show that board independence has increased to a level that brings about negative firm performance, and that these effects are concentrated among firms that need independence least. The conclusion of our review is that the GBL should be repealed.

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