

Duties to promote equality

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Introduction:

Nordic gender equality legislation combines protection against discrimination with active duties for public authorities and employers to promote equality. While protection against discrimination is a right at an individual level, the proactive work is a duty, or obligation, which enterprises and institutions have. In Norway positive action has expanded from gender equality legislation to the other anti-discrimination legislation. In the other Nordic countries, the admittance to positive action is more restrictive in its definition. The Swedish joint and integrated anti-discrimination legislation reserve positive action to gender. The most restrictive opening for positive action is found in the Danish legislation.

In creating this double aim for equality legislation – individual protection and collective duties – Nordic legislators have nevertheless, generally speaking, demonstrated quite strong equality ambitions. Binding regulations on proactive duties can be seen as one way to try to secure that equality work is integrated into the everyday business of enterprises and organizations. Or – to use the common international standard phrase – is mainstreamed. Mainstreaming is – in its official definition – the process of assessing the implications for women and men of any planned action, in any area and at all levels. It is a strategy for making the concerns and experiences of women as well as of men an integral part of the design, implementation, monitoring and evaluation of policies and programs, so that women and men benefit equally and inequality is not perpetuated (ESCOSOC 1997/2)

Gender mainstreaming is thus an idea about proper governance, which has been strongly supported by Nordic political- administrative elites. Although it is common to date the breakthrough for mainstreaming to the UN Beijing conference in 1995, and in particular, to feminist activism (cf. Yuval-Davis, 2005) we would suggest that these Nordic elites have been quite instrumental in securing the success of this idea internationally. In Norway for instance, we date the idea back to a conservative cabinet's gender equality plan in the middle of the 1980s. In Sweden, we guess that it occurred at about the same time. Based on this, we would also suggest that researchers concerned with the development and implementation of equality policies should take special care to investigate the effect of mainstreaming at home. In this article, we report the results of one such investigation in Norway.

Another famous export article from Nordic countries to the international community is various variants of gender quota policies – or as we prefer to call them, parity schemes. By “parity” we here simply refer to policies aimed to further gender balance through means which seek to implement distributive targets. Parity schemes may be included in a mainstreaming policy, or they may develop quite independent of a mainstreaming policy.

From the 1970s onwards, various forms of parity policies have been established in all the Nordic countries to promote and regulate the gender composition of decision-making assemblies. Voluntary electoral quotas have been introduced by some political parties in all the Nordic countries. Norway stands out with five of seven parties practicing party quotas (Freidenvall, Dahlerup & Skjeie 2006). Legal gender quotas for public commissions and boards exist in Norway, Finland and Iceland; Denmark has a less specified gender balance law, while Sweden relies on voluntary measures (Niskanen, 2011). In the Nordic context, Norway stands out with the strongest emphasis on gender quota measures to promote gender equality (Teigen, 2011)

In Norway, parity schemes have formed an important part of gender equality policies over the past 25-30 years. In this article, we concentrate on schemes which are explicit 40-60, or 50-50, distributive rules. Most common then, are min.-max. 40-60 percentage rules. Such apply to the composition of different collective bodies on different areas of governance.

- All public appointed commissions on state level, and a series of commissions on municipal levels, is composed according to a min.-max. 40-60 rule. This is regulated by law, for state commissions since 1988.

- All boards of public and public limited companies are composed according to a min.-max. 40-60 percentage rule. The distributive rule is set by law, and was adopted by Parliament in 2003.
- Most political parties have – since the early 1980s - practiced internal 40-60 or 50-50 regulations for the composition of internal party bodies and / or election lists. Election lists are then mainly composed in a “zipper” system. ¹

None of these regulations have been part of a general mainstreaming policy. By this, we mean that they have been proposed and implemented as separate, independent equality tools. In Norwegian equality policies, mainstreaming turns out to be one kind of equality strategy, parity schemes quite another.

In this article, we make four major claims. Firstly, that parity schemes have been highly effective in achieving their aim, i.e. parity in distribution. Secondly, that this is all they achieve. Thirdly, that parity schemes are far better implemented than mainstreaming policies. And finally, that both would probably benefit from better combinations of the two.

In this, we build on work carried out by the Norwegian Equality Commission, to which both of us belong. The evaluation of Norwegian mainstreaming policies is reported in NOU 2011:18 *Struktur for likestilling* (Structure for equality).² The evaluation of parity schemes will be reported in the Commission’s next – and final – report , which will be handed over to the government in august 2012.

The Equality Commission – a brief presentation

The commission was appointed by the Norwegian government in 2010, on a mandate to report on Norway’s gender equality policy, and the status of this policy with regard to

¹ Another type of parity scheme sets enterprise- specific targets in the form of development goals. Typically, they formulate minimum goals such as “By the year xxx, the percentage of women/men in xxx positions should be at least xxxx.” Within the public sector, development goals have for instance been set for respectively the proportion of women in leadership positions in the state bureaucracy and the proportion of men in kindergartens. Both educational institutions, and private and public enterprises, apply such schemes, mainly with regard to leadership positions/proportion of women.

² The full report can be downloaded on <http://www.regjeringen.no/nb/dep/bld/dok/nouer/2011/nou-2011-18.html?id=663064> or http://kilden.forskningsradet.no/c79332/artikkel/vis.html?tid=79449&strukt_tid=79332. Brief English summary can be downloaded on <http://kilden.forskningsradet.no/binfil/download.php?did=8242>

intersections of gender, class and ethnicity. The commission is a so called “expert commission”, which means that it is composed of researchers. We are, by the way, twelve members, 40-60 gender balanced, and four are born – or have parents who were born – in other countries than Norway. In October 2010 the commission was asked to prepare a separate report on the equality machinery – the existing organizational framework for public efforts to promote equality. This included both the central, regional and local public authority levels, and furthermore, the system set up to monitor compliance with the equality laws: The Equality and anti-discrimination Ombud and the Equality Tribunal. The analysis can be read as an investigation into the success or failure of a mainstreaming policy, on both national and local implementation levels. In this, it is probably the most comprehensive mainstreaming evaluation carried out to date. This proposal has undergone an extensive public hearing, and is currently under consideration by the government. Controversy raged over the Commission’s extensive proposals and no further news are expected before – at earliest – mid 2013. In the meantime, politicians claim that they are waiting for the second report from the Commission, i.e. before they are ready to make up their minds about the first.

Parity policies

Generally speaking, parity schemes are motivated by reference to arguments about democratic representativeness and the greater good/profit provided through diversity. Such arguments are more common than for instance structural discrimination arguments. There is no uniform right-left party political divide on parity programs. Parity policies have been developed by both conservative- centrist and left-centrist governments over the past 20-30 years in Norway. A social democratic cabinet proposed the first 40-60 regulations for public commissions in the 1980s, but a conservative-led government proposed the business board scheme in the early 2000s. There is often (close to) cross party agreement in Parliament on specific forms of parity policies.

The following section will describe and discuss the effects of existing parity schemes for public bodies, corporate boards and in party politics.

Publicly appointed bodies

Three of the Nordic countries, Finland, Iceland and Norway, have introduced parity schemes to regulate the gender composition of publicly appointed bodies. In Norway, since 1981 a parity scheme has regulated the gender composition of publicly appointed boards, councils and committees, through section 21 in the Gender Equality Act. A regulation of representation of at least 40 per cent of each gender has been the ruling since 1988 in the Gender Equality Act and since 1992 in the Municipal Act. Although there are important variations, the total distribution of men and women in public bodies meet with the requirement of minimum 40 per cent of each gender, which has been interpreted as an indication of full compliance.

From 1993 to 2011 the gender composition of state bodies increased from 39 to 47 per cent women. An evaluation of the parity requirement in the Gender Equality Act showed that although the average 40 per cent demand is fulfilled, as much as one-third of the boards, committees and councils appointed by ministries do not comply. However, the duty to apply for dispensation is seldom practiced, and there is no sanction system attached to the parity rule (McClimans & Langvasbråten 2009).

Nonetheless, the latest average numbers from 2011, divided across sector ministries, show that only two ministries (defense and trade & industry) have not reached the 40 per cent target. The present tendency of full compliance is probably due to a strengthened enforcement following the introduction of parity legislation to regulate the gender composition of corporate boards.

The Equality commission has recently carried through an update on the gender composition of elite stratas in Norway. The update repeat a mapping done in 2001. Top management in a total of ten sectors are included in these surveys (The Equality commission/Teigen, 2012). The update shows that there is a parallel tendency of development in direction of gender parity in the composition of top management within public administration. According to data from the elite study the male dominance among top civil servants has decreased from 81 to 64 per cent from 2001 to 2011.

The general impression is that the parity scheme for public bodies works relatively well, although the knowledge is limited because of the lack of a monitoring system. Nonetheless, the main impression is that on the state level the distribution of members of public bodies by gender is surveyed by the ministries, at least as a part of their duty to report to the Ministry of

Government Administration, Reform and Church Affairs. It is unclear whether there exists any similar survey procedures at the local level, and whether there exist any kind of follow up of non-compliance. Thus we do not really know whether individual bodies comply with the regulation, or whether the average about 40 per cent representation within public bodies hides large variation in compliance. Furthermore, there exists no real monitoring of dispensation practices. And there is no sanction system to secure enforcement. On both these points the parity scheme for public bodies differ significantly from the parity scheme attached to corporate boards. On the other hand, for corporate boards, there exists no dispensation system.

Corporate boards

In 2003 Norway was the first country to introduce a mandatory parity scheme for corporate boards. The law regulates a minimum representation of at least 40 per cent of each gender in the boards of public limited companies, inter-municipal companies and state-owned companies, and was extended to apply for cooperative companies in 2008 and for municipal companies in 2009. In recent years, parallel laws have been introduced in Spain, Iceland, France, the Netherlands, Belgium and Italy, and intensely debated on the European level and within several countries of Europe (Teigen 2012).

In Norway, which is the only country that yet has implemented the parity scheme, the regulations have been effective. The representation of women on the boards of the public limited companies, which includes the stock-listed companies, have in a decade increased from about 5 to 40 per cent. Parity is met as well for the other types of company boards affected by the regulation. However, the 40 per cent target was in closer reach.

The introduction of a parity scheme for, especially the public limited company boards clearly had a wider aim to promote gender parity in the economic sector. Analyses of the wider ripple effects of corporate board parity are limited, however. There are for instance few signs of a spread of gender parity to company boards not affected by the scheme. In the early 2000's the representation of women on company boards increased for both limited liability and public limited companies. When it became clear that only public limited company boards would be the target for legislation, however, the development stagnated for the limited liability company boards.

Similarly, there are few signs of gender parity diffusion to top management of business enterprises. The recent update of the Norwegian elite study from 2001 showed only a moderate decrease in the male dominance within the business sector (96 to 87 per cent men). Gender parity developments pace slower in the business sector, compared to other male dominated elite sectors (The Equality commission/Teigen, 2012).

Party politics

Throughout the 1970s and the 1980s the presence of women increased in elected assemblies from 10 to above 30 per cent. From the middle of the 1980s the development stagnated, and the presence of women in parliament or in municipal councils (on average) has never tipped above 40 per cent. Norway differs in this respect from the other Nordic countries where women has had a stronger representation in decision-making assemblies (Niskanen 2011).

In Norway parity schemes have been introduced by five of the seven major political parties.³ The Conservative and the Progress Party have not instituted any such schemes. The Liberal Party applies a parity scheme only for the internal party organization. The Socialist Left Party, the Labor Party, the Center Party and the Christian Democratic Party practice a zipper principle for the composition of election lists and minimum representation for the party organization (50/50 or 40/60). A major weakness attached to the zipper principle concerns the effects of the top listings, this applies particularly for the smaller parties where often only one candidate is elected from each constituency. Among the parties represented in parliament that practice the zipper principle, the representation of women in the party group in parliament varies from 27 to 100 per cent.⁴

Male dominance in access to top positions within parliament continues, however. For the present parliamentary period (2009-2013) five of six within the parliamentary presidency are men, only three of the twelve parliamentary committees are led by a woman, and the committee structure tends to be gender segregated. The finance committee, commonly recognized as the most influential parliamentary committee, men dominate profoundly (78 per

³ The Red Party, not represented in parliament, has instituted a 50 per cent parity scheme for the party organization, and a zipper principle for election lists.

⁴ The Labor Party, 64 representatives, 32 women and 32 men; The Progress Party 41 representatives, 10 women and 31 men; The Conservative Party, 30 representatives, 9 women and 21 men; ; The Socialist Left Party 11 representatives, 3 women and 8 men; The Centre Party, 11 representatives, 7 women and 4 men; The Liberal Party, 2 representatives and 2 women and 0 men.

cent), while women are represented by more than half in committees such as Education, research and church affairs, Labor and social affairs, etc.⁵

At the municipal level there is similarly a tendency of continued male dominance in the distribution of the political top positions. Currently, 22 per cent of the mayors are women. Party leadership thus constitutes an exempt from the strong tendency of male dominance in political leadership in Norway. At present four of the seven main parties are led by a woman. Again, a dive beneath the main figures of (almost) 40 per cent women in political decision making assemblies reveals continued male dominance in the highest ranked and most influential positions. We understand this as a problematic aspect of parity schemes to emphasize the focus on average numbers and the most visible positions (party leaders). Simultaneously the lack of gender parity in positions not target of the parity schemes becomes obscured. We believe the delimited effects of parity schemes are tied to the overall weak implementation structure for active equality work. Parity schemes prescribe distributive targets within a delimited scope and ripple effects are lacking.

Mainstreaming policies

The Norwegian antidiscrimination and equality legislation combines three strand specific comprehensive laws with scattered prohibitions against discrimination on a series of other grounds. The Gender Equality Act dates back to the late 1970s. In 2006 the Anti-Discrimination Act came into force – covering ethnicity, nationality, language and religion. In 2009, the third comprehensive law – the Anti-Discrimination and Accessibility Act came into force, covering disability. All prohibitions against discrimination are monitored by the same agency: the Equality and Anti-Discrimination Ombud and the Equality Tribunal, a joint system set up in 2006.

The comprehensive laws all combine prohibitions against discrimination with activity duties for employers and public authorities. Activity duties are duties to “make active, targeted and

⁵ More than 65 % men: The Finance Committee: 78 %; Energy and the Environment Committee: 71 %; The Justice Committee: 69 %; The Local Government and Public Administration Committee 69 %; The Transportation and Communication Committee: 69 %. More than 50 % women: Education, Research and Church Affairs Committee: 63 %; Labor and Social Affairs Committee: 54 %; Health and Care Services: 53 % and Family and Cultural Affairs: 50 %.

systematic efforts to promote equality”. For employers, this duty is combined with a duty to report on in annual accounts on the equality status within the enterprise, and on measures that the enterprise has implemented in order to fulfill the duty. Such reporting is to be monitored by the Ombud on her own initiative. This means that the ombud institution might carry out investigations on the reporting of enterprises and comment on how they meet the requirements that have been specified through the monitoring practice of the Equality Tribunal. So far, the Ombud has mainly followed the reporting of municipalities in their capacity as employers, and then mainly based on the activity obligations that follow from the gender equality act.

Public authorities have a duty to make active efforts both as an employer as a public body exercising authority and providing services in its sphere of operations. Duties for employers, both public and private, covers issues such as recruitment and hiring, wages, work hours, and leave periods , but are otherwise not specified.

Duties for public authorities are not clarified at all. Instead, such duties are left to be specified through the initiatives different authorities may plan and act to implement. This is the so called integration strategy that guides the sector specific work of public authorities. Work to promote equality is to be integrated into the organization’s day-to-day work, in all decision making processes, at all levels and in every step of the processes, by those who regularly make decisions within the organization. No specific public authority has an explicit mandate to monitor compliance with mainstreaming processes, or their outcome. The Ministry of Children, Equality and Social Inclusion has an overall responsibility for equality policies, but no fixed authority vis-à-vis other ministries or the municipalities.

The Equality commission investigated mainstreaming initiatives on both national and local political – administrative levels. We did this from the departure point of three strand specific sets of activity duties; regarding gender, ethnicity and religion, and disability. We observed large variations in the scope and consistency of equality work within different government agencies, and even larger variations on local and regional political-administrative levels. In reality, mainstreaming means ad hoc, isolated and project driven equality work, with scarce accumulation of knowledge, and no method development, across administrative boundaries.

The commission thus concluded that today's political-administrative structure is too weak to realize the ambitions of Norwegian gender equality politics. Public authorities at all levels still fail to sufficiently mainstream equality as a matter of routine in their work as employers, service providers, appropriators of funds, policy-makers and as enactors of rules, regulations and ordinance. The promotion of gender equality is often given low priority, and the efforts taken lack a systematic approach and continuity.

The large scale failure of mainstreaming reported in NOU 2011:18 led the commission to propose a corresponding large scale structural political-administrative reform. Firstly, we proposed amendments to the legal framework which specify in greater detail the obligations of the activity duty. Furthermore, we proposed a new structure to ensure the implementation of equality work on both national and regional political-administrative levels. This should be given the form of a new directorate under the Ministry of Children, Equality and Social Inclusion. The directorate should be comprised of a central unit and five regional offices. The task of the directorate is to maintain the professional responsibility for the implementation of the government's equality policy. This includes the monitoring of public authorities' activity duties, the training, documentation and knowledge accumulation on such work, and the management of funds for equality initiatives.

The establishment of this new political-administrative structure should be coupled with an extensive effort to encourage the development of local equality initiatives. The Equality Commission thus proposed a ten-year development program for local equality work, reserving 200 million NOK per year over the national budget for this program. In this proposal, we were inspired by the large scale mainstreaming program carried out in Sweden from 2007 to 2011 (cf. The Equality commission/Freidenvall 2011) . The future of equality work hinges on active local implementation. But actual implementation demands far more than mere rhetorical commitment to mainstreaming ideas.

Conclusion

In this article we have emphasized parity schemes and mainstreaming strategies as two key components of Norwegian equality policies. This does not imply that welfare state policies oriented towards the reconciliation of work and family life, such as parental leave schemes and state sponsored kinder gardens, have no importance as equality tools. They are simply

different kinds of equality tools. They are distinctive life phase policies, aimed to assist young parents, and then foremost mothers, in overcoming care based barriers to equal participation in working life. Mirror wise, the daddy quota part of the parental leave scheme aims to assist young fathers in gaining a more equal participation in family life. Parity schemes and mainstreaming policies constitute general, that is life phase neutral, forms of equality policies. One is narrow, i.e. only concerned with the issue of gender balance within a given set of positions. The other one is broad, i.e. potentially concerned with all aspects of inequality within an organization.

We have argued that parity regulations have played a central role in Norwegian gender equality policies within different areas of public life, and furthermore, that these schemes for the most part have been quite effective in achieving their aim, i.e. parity in the distribution of powerful and influential positions. They do, however, tend to have very limited ripple effects, and it is thus doubtful whether they contribute to further gender equality in general within the areas where they are introduced. Mainstreaming strategies, on the other hand, have so far been far too weakly implemented – and thus - not effective at all. The Norwegian Equality commission's white paper Structure for Equality concludes that the current political-administrative structure set up to monitor mainstreaming policies is clearly inadequate and should be reformed. On all administrative levels, relevant authorities seem to lack the local mainstreaming tools and / or the local mainstreaming ambitions. They generally do little, or else, nothing at all.

There is thus a peculiar gap between parity and mainstreaming. We would expect successful parity schemes to be followed by other kinds of equality initiatives, located within and implemented throughout the relevant organizational structures. But this is not the case. We still, however, believe that equality policies might benefit from a closer fit between the two. By this we mean that parity schemes and mainstreaming policies should be considered as interdependent strategies and not as two different means to further gender equality. More effective gender equality politics can be constructed through comprehensive combinations of gender balance measures and pro active, organization based, equality work. The two kinds of tools should be introduced, and maintained, in tandem.

To our knowledge, there exist no extensive comparative investigation of these two forms of equality tools – parity schemes and mainstreaming strategies - across the Nordic countries. It

seems to be a suitable common project to take on, for instance, in the form of a Nordic research program. That is, a joint effort by Nordic researchers to investigate what it would take to secure a sound combination of parity and mainstreaming as effective tools in the pursuit of equality. When we consider the global interest in both parity and mainstreaming, it seems safe to assume that such an effort would be of interest across various regions of the world.

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