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Women on Board for Change: The Norway Model of Boardroom Quotas As a Tool For Progress in the United States and Canada

Anne Sweigart

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Anne Sweigart[*]

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[*] Candidate for Juris Doctor, Northwestern University School of Law, 2012; B.A., Stanford University, 2008. Many thanks to the *Northwestern Journal of International Law and Business* staff for their valuable contributions during the editing process. For her editing assistance and her unwavering encouragement and support, I would like to thank my sister, Emilie Sweigart.

Across Europe, quotas for female membership on corporate boards have been generating interest, and in a few countries, these quotas have been passed and are awaiting implementation. The quotas are designed to rectify the extreme gender imbalance on corporate boards, which persists despite female advancements in education and workforce participation. In the European Union, women represented just 9.7% of the board members at the top 300 companies in 2008.[1] The lack of progress in women's corporate leadership is not a European problem alone: in the United States, women make up fewer than 15% of all Fortune 1000 directors.[2]

Since January 1, 2008, Norway has enforced a gender quota requirement for corporate board membership at all public limited liability companies.[3] For most of these companies, the quota requires 40% female board membership.[4] While it is too early to tell exactly how this quota has impacted Norway, the positive effects associated with women on corporate

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[1] Julia Werdigier, *In Britain, a Big Push for More Women to Serve on Corporate Boards*, N.Y. TIMES (Feb. 24 2011), http://www.nytimes.com/2011/02/25/business/global/25board.html.

[2] Sylvia Ann Hewlett, *Corporate Boards: Shifting From Aging Men To New Generation Of Women?*, FORBES ONLINE (Jan. 6, 2012, 1:56 PM), http://www.forbes.com/sites/sylviaannhewlett/2012/01/06/corporate-boards-shifting-from-aging-men-to-new-generation-of-women/.

[3] Aagoth Storvik & Mari Teigen, *Women on Board: The Norwegian Experience*, FRIEDRICH EBERT STIFTUNG 4 (2010), http://library.fes.de/pdf-files/id/ipa/07309.pdf; *Representation of Both Sexes on Company Boards*, MINISTRY CHILD., EQUALITY & SOC. INCLUSION, http://www.regjeringen.no/en/dep/bld/Topics/Equality/rules-on-gender-representation-on-compan.html (last visited Feb. 10, 2012). Norway's Companies Act, amended in 2003, now reads:

> § 6–11a. Requirement regarding the representation of both sexes on the board of directors
>
> (1) On the board of directors of public . . . companies, both sexes shall be represented in the following manner:
>
> 1. If the board of directors has two or three members, both sexes shall be represented.
> 2. If the board of directors has four or five members, each sex shall be represented by at least two.
> 3. If the board of directors has six to eight members, each sex shall be represented by at least three.
> 4. If the board of directors has nine members, each sex shall be represented by at least four, and if the board of directors has more members, each sex shall be represented by at least 40 percent.
> 5. The rules in no. 1 to 4 apply correspondingly for elections of deputy directors.

Lov om allmennaksjeselskaper [Public Limited Liability Companies Act] 19 des 2003 nr. 120, § 6-11a (Nor.), *translated in Norwegian Public Limited Liability Companies Act*, SCHJØDT (Feb. 26, 2009), http://www.oslobors.no/ob_eng/Oslo-Boers/Regulations/Acts (click Norwegian Public Limited Liability Companies Act).

[4] Public Limited Liability Companies Act § 6-11a (Nor.).

boards indicate the value of increased gender diversity. Quotas like the ones passed in Norway are the most viable means for increasing board diversity and, ultimately, adding value to firms in other countries as well.

Part I discusses the background of the Norway boardroom quotas and their impact to date on board management and firm value. Part II compares Norway to the rest of Europe in terms of gender equality in the workplace. Part III reviews and comments on the success of alternative approaches for increasing the representation of women in the boardroom. Part IV then discusses the potential benefits of increasing female board representation in the United States and Canada, and Part V proposes that the quotas, implemented in Norway and under consideration throughout Europe, be considered in those countries as well. Part VI reviews the potential drawbacks to implementing quotas, incorporating sociological and feminist theory. Part VII evaluates the factors that made quotas successful in Norway and assesses whether these factors could help quotas work in the United States or Canada. Finally, Part VIII addresses the impact that these quotas have had on additional public policy proposals in Norway, and concludes that the quotas provide a significant means of advancement for women in Europe and should be strongly considered in the United States and Canada as well.

I. OVERVIEW OF NORWAY'S QUOTAS AND THEIR IMPACT

While the initial proposal of quotas in Norway caused an uproar, female board membership reached the required 40% threshold by 2009.[5] The quotas were initially voluntary, but firms overall achieved little progress in female board membership.[6] In 2006, the targets became mandatory so that publicly listed companies had to implement 40% female board membership by 2008.[7] Even though all publicly listed firms now in operation comply with the quotas for board membership, the number of female CEOs in Norway remains fairly stable.[8] This result has come about because many of the most qualified women, known as the "Golden Skirts," now sit on several boards, leading to a smaller than predicted increase in the overall number of women on corporate boards nationwide.[9]

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[5] Storvik & Teigen, *supra* note 3, at 8.

[6] Siobhán Dowling, *Norway's Experience Shows Compulsory Quotas Work*, SPIEGEL ONLINE INT'L (July 8, 2010), http://www.spiegel.de/international/business/0,1518,705209,00.html.

[7] *Id.*

[8] Nicola Clark, *The Female Factor: Getting Women Into Boardrooms, by Law*, N.Y. TIMES (Jan. 27, 2010), http://www.nytimes.com/2010/01/28/world/europe/28iht-quota.html (reporting that while the number of woman directors in Norway has increased six-fold, this reform "has not yet brought any real rise in the number of women as chief executives").

[9] *Id.* One Norwegian executive, Mai-Lill Ibsen, now sits on 179 boards and chairs three Norwegian companies and one Danish company. THE BRIDGE: A FOCUS ON GENDER

The gender quotas in Norway have, by most measures, made only marginal improvements to the bottom line of corporations, a disappointing finding for supporters of the quotas.[10] However, it may be too early to measure the impact of the quotas. A University of Michigan study found that the increased presence of women on boards in Norway led to slight losses in companies' bottom lines to date.[11] This may be because women on boards tended to have less upper management experience, which has been linked to increased firm performance.[12]

Despite these findings, there has been some advancement in firms' human capital as a result of the quotas, which may result in increased profits in the future. The presence of more women on Norwegian boards has corresponded with a higher overall education level on boards.[13] Furthermore, Norwegian scholars have found that the presence of more women on boards has led to more focused and strategic decision-making, increased communication, and decreased conflict.[14]

II. WOMEN'S CORPORATE BOARD MEMBERSHIP ACROSS EUROPE

Norway implemented its quota for female corporate board membership in an effort to change both the low number of women on boards and the slow increase in female board membership. Prior to the enactment of the quotas, stagnant growth in the number of women on boards had remained even though other measures of women's equality in Norway were strong.[15]

DIVERSITY (Deloitte Australia), Nov. 18, 2010, at 2 [hereinafter THE BRIDGE], http://www.corpgov.deloitte.com/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/AuEng/Documents/Diversity/The%20Bridge_Interview%20for%20Issue%206_Interview%20and%20Case%20Study%20FINAL.pdf. However, 79% of women board members hold only one directorship. *Id.*

[10] Marit Hoel, *What Norway Learned, Room for Debate*, N.Y. TIMES (Mar. 22, 2010, 6:09 PM), http://roomfordebate.blogs.nytimes.com/2010/03/22/using-quotas-to-raise-the-glass-ceiling/.

[11] Amy Dittmar, *The Norway Numbers, Room for Debate*, N.Y. TIMES (Mar. 22, 2010, 6:09 PM), http://roomfordebate.blogs.nytimes.com/2010/03/22/using-quotas-to-raise-the-glass-ceiling/ (revealing that firms experienced a loss in value when the Norway quota law was announced, and further losses once the law was implemented).

[12] However, the management experience for Norwegian woman executives will change in future years of the quota regime. *Id.*

[13] Hoel, *supra* note 10. Of course, the increase in education level could have resulted from other initiatives such as increased higher education attainment nationally.

[14] Sabina Nielson & Morten Huse, *The Contribution of Women on Boards of Directors: Going Beyond the Surface*, 18 CORP. GOVERNANCE: AN INT'L REV. 136 (2010).

[15] For instance, in Norway, women lead five out of the seven political parties, and comprise 60% of college graduates and 70% of the workforce. Mary Teresa Bitti, *Bringing Women Onto Boards, by Quota*, FIN. POST (Nov. 5 2010, 5:03 PM), http://www.financialpost.com/related/topics/Bringing+women+onto+boards+quota/3783705/story.html.

An international comparison reveals that in other wealthy democratic countries, women also remain behind when it comes to corporate board membership.[16] Many factors indicate that women's participation in the workforce is strong in Europe. Their overall participation in the labor force is around 45%.[17] The gender pay gap is closing in Europe, especially in the 25 to 54-year-old range.[18] Additionally, the overall education level of women is on the rise in Europe. Female attainment of post-secondary degrees has even surpassed that of men in the thirty to thirty-four-year-old age range.[19]

However, gender differences in employment remain across Europe, particularly at upper levels of management and on corporate boards. At each level of educational attainment, women's employment levels are lower than men's; that is, women with low, medium, or high levels of education are less likely to be employed than men with low, medium, or high levels of education, respectively.[20] This is particularly disconcerting in light of the fact that women are more likely than men to participate in continued job-specific training.[21] Additionally, a survey that measured the number of "leaders of business" in the European Union, analyzing the gender ratio among European directors, chief executives, and managers of small enterprises, put women at around 33% of these groups.[22] Only 11% of overall European corporate board membership is comprised of women.[23] And in Norway, while women have an extremely high rate of workforce participation, they are often isolated in certain sectors of the workforce and find little mobility outside these industries, which include service industries and the education and healthcare fields.[24]

Among the countries with more women on their corporate boards, such as Norway, Sweden, and Iceland, it is possible to discern a few trends about

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[16] *See* Siri Terjesen & Val Singh, *Female Presence on Corporate Boards: A Multi-Country Study of Environmental Context*, 83 J. BUS. ETHICS 55, 55 (2008).

[17] *Employment*, EUR. COMMISSION (Feb. 3, 2012), http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/background/employment/index_en.htm.

[18] FRED RAMB, EUROSTAT, STATISTICS IN FOCUS ISSUE NO. 99, EMPLOYMENT GENDER GAP IN THE EU IS NARROWING: LABOUR MARKET TRENDS 2000-2007, at 1 (2008), http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-08-099/EN/KS-SF-08-099-EN.PDF.

[19] MARTA BECK-DOMZALSKA, EUROSTAT, STATISTICS IN FOCUS ISSUE NO. 130, THE NARROWING EDUCATION GAP BETWEEN WOMEN AND MEN 1 (2007), http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-SF-07-130/EN/KS-SF-07-130-EN.PDF.

[20] *Id.* at 3.

[21] *Id.* at 10.

[22] *Leaders of Business*, EUR. COMMISSION (Feb. 3, 2012), http://ec.europa.eu/justice/gender-equality/gender-decision-making/database/background/leaders-businesses/index_en.htm.

[23] GEORGES DESVAUX ET AL., MCKINSEY & CO., WOMEN MATTER: GENDER DIVERSITY, A CORPORATE PERFORMANCE DRIVER 5 (2007), *available at* http://www.europeanpwn.net/files/mckinsey_2007_gender_matters.pdf.

[24] Bitti, *supra* note 15.

overall gender equality. Unsurprisingly, the countries with more women on corporate boards also have more women in senior management positions.[25] Similarly, European countries with smaller pay gaps between men and women are also more likely to have more female board members.[26] This seems to indicate that in societies with the most egalitarian attitudes toward placing women in power, more women will be on corporate boards.

However, countries that have longstanding traditions of political power allotment for women frequently have fewer women on corporate boards. Gains for women on boards are more often seen in countries where women have only recently become politically empowered.[27] For example, former Soviet-bloc countries Croatia, the Czech Republic, and Slovenia each have more than double the number of women on boards than Ireland, Denmark, and the Netherlands.[28] This suggests that countries that have not gone through political and social upheaval, and, therefore, have more entrenched gender roles are those least likely to support female board quotas.[29] This paradoxically presents a challenge for women seeking to join corporate boards in countries that have long valued gender equality and the contribution of women in the workplace.

Terjesen and Singh offer two competing theories as to why female political representation correlates negatively with the number of women on boards. It is possible that women in countries like Norway have long been developing political power and, thus, strategically decide to pursue careers in politics over business.[30] Alternatively, countries with many women in politics may "have become complacent, with a subsequent stagnation of equality promotion efforts to remedy the unequal playing field in the competition for business leadership positions."[31] The complacency theory would suggest that women would not have strenuously backed the Norway quota proposal, but women's groups and female politicians did in fact support the boardroom quotas.[32] For this reason, it seems likelier that their first theory is true—that women seeking ambitious and powerful careers have pursued politics rather than business, where they see a relatively smaller chance for advancement

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[25] Terjesen & Singh, *supra* note 16, at 61.
[26] *Id.*
[27] *Id.* at 60.
[28] *Id.*
[29] *Id.*
[30] *Id.* at 60–61.
[31] *Id.* at 61.
[32] *See infra* Part VI.

III. ALTERNATIVE APPROACHES TO FEMALE BOARD REPRESENTATION

The Norwegian model for female board quotas is catching on in other European countries, and not only in the countries with similar economies and demographic profiles to Norway's. At the European Union level, Justice Commissioner Viviane Reding has intimated that if the member states cannot achieve greater boardroom gender equality by 2015, she may consider implementing a quota requiring that 30% of corporate board membership be female.[33] More recently, Reding strengthened her position, calling on public companies in the European Union to voluntarily commit to 40% female board membership by 2020.[34] Reding clarified that the public companies should aim to meet this benchmark by March 2012 without formal incentives so that "regulators do not have to become creative" in legislating a boardroom quota for women.[35]

Laws mandating the increased presence of women on boards have already been passed in Spain, France, Iceland, the Netherlands, Italy, and Belgium.[36] The French quota, which will require 40% female supervisory board membership by 2017, is unusual in that the quota will be applied to all firms with more than 500 employees or with a yearly turnover of €50 million or more.[37] Similar quotas are under discussion in other European countries including Britain and Sweden.[38]

However, elsewhere in Europe, quotas have been discussed but ultimately dismissed by government officials. In Germany, quotas are derided by the federal government and are not favored amongst the general public. German Family Minister Kristina Schröder had long maligned the idea of such quotas, and recently proclaimed, "[A] quota always amounts to a failure of politics."[39] The German Corporate Governance Code was

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[33] Nicola Clark, *For Women in the Workplace, an 'Upgrade Problem'*, N.Y. TIMES (Jan. 26, 2011), http://www.nytimes.com/2011/01/27/world/europe/27iht-women27.html.

[34] Moira Forbes, *How to Add More Women to Corporate Boards*, FORBES ONLINE (Mar. 7, 2011, 7:59 PM), http://blogs.forbes.com/moiraforbes/2011/03/07/how-to-add-more-women-to-corporate-boards/.

[35] *Id*.

[36] Clark, *supra* note 8; *EU Mulls Female Quota on Corporate Boards*, CBC News (Mar. 5, 2012, 1:28 PM), http://www.cbc.ca/news/business/story/2012/03/05/eu-women-executive.html.

[37] John Blau, *Smaller Boards With More Women Perform Better, Study Says*, DEUTSCHE WELLE (Mar. 8, 2011), http://www.dw-world.de/dw/article/0,,14896495,00.html.

[38] Clark, *supra* note 8.

[39] *Interview with German Family Minister: 'Women Need to Get Much More Self-Confident and Tough'*, SPIEGEL ONLINE INT'L (Nov. 9 2010) [hereinafter *Interview*], http://www.spiegel.de/international/germany/0,1518,728175,00.html. Schröder continues:

> For me, economics is first and foremost the ability to act freely without state rules. That's why I believe quotas should only be used as a last resort. In fact, I am

amended in May 2010 to encourage the appointment of women to management boards, but this amendment is a mere recommendation.[40] However, Deutsche Telekom recently became the first DAX-30 company to institute a voluntary quota, which will soon require that 30% of board membership be female.[41] In 2008, Siemens became the first DAX-30 company to promote a woman to its executive board, and women now hold two of the board seats, thereby comprising 25% of the corporate board's membership.[42] While it is encouraging to see corporations take up the mantle of fighting boardroom inequality themselves, convincing individual companies to voluntarily adopt reform measures has limited potential to spark nationwide change.

In Finland, female board membership has increased drastically over the past few years, and Finland now trails only Norway and Sweden in the percentage of women on boards.[43] This change was effectuated in part by a public endorsement of women's capabilities by the Chairman of Nokia and Shell, following the release of an influential study that championed the potential contributions of women in the corporate sphere.[44] Finland also has non-mandatory yet popularly supported government targets for female board membership, and a corporate governance code that explicitly and emphatically recommends gender equality.[45] The Finnish experience is currently the only instance of major nationwide change in boardroom gender balance resulting without the threat of official penalties.

Australia has implemented another alternative measure designed to promote gender equality on corporate boards. As of January 2011, all Australian publicly traded companies must disclose not only the number of women serving on their boards, but also the number of women executives

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> certain that we do not need quotas—especially not in a time when we have a growing shortage of qualified workers. Companies are already asking head hunters to find women for top positions.

Id.

[40] See the Corporate Governance Code's amendments to section 4, which now includes section 4.1.5: "When filling managerial positions in the enterprise the Management Board shall take diversity into consideration and, in particular, aim for an appropriate consideration of women." Corporate Governance Kodex [Corporate Governance Code], May 26, 2010, § 4.1.5 (Ger.).

[41] Clark, *supra* note 33. Currently, 181 of the 185 DAX-30 company board seats are held by men. *Interview*, *supra* note 39.

[42] Clark, *supra* note 33.

[43] Leena Linnainmaa, Dir., Cent. Chamber of Commerce of Fin., Address at FidAR-Forum, Berlin (Mar. 15, 2010), *available at* http://www.keskuskauppakamari.fi/site_eng/Media/Speeches/The-Finnish-experience-in-promoting-women-on-company-boards.

[44] *Id.*

[45] *Id.*

and the number of women employed throughout the company.[46] The director of a Canadian networking organization called Women On Board predicts that this obligation to disclose the gender balance of companies will shape the behavior of the companies: "If they don't have women, they have to explain why not . . . . The thinking is that if they have to disclose and explain it, they'll be more likely to think more about it and do something because they don't want to be embarrassed."[47] Transparency has the potential to change the dialogue about gender balance by forcing companies to justify any lack of gender equality; this could be a powerful tool in shifting the discourse on gender quotas.

Norwegian and German scholars argue that without the noncompliance penalties of the Norway quota, companies will not take action to include more women.[48] A violation of Norway's Companies Act, including the gender quotas, is punishable by dissolution of the corporation,[49] whereas lesser penalties may not have resulted in uniform compliance. Thus, while Germany and Finland have implemented alternative measures to promote female board membership, the Norwegian model is the most successful model to date.

IV. BENEFITS OF INCREASING FEMALE BOARD MEMBERSHIP IN THE UNITED STATES AND CANADA

Similar legislation to the Norway quotas has already been suggested for the United States, but only by commentators and not by business or political leaders.[50] This proposal has yet to gain real traction, yet boardroom quotas deserve consideration in the United States and Canada. Existing mechanisms designed to promote the hiring of women have not managed to elevate women into boardrooms; each country has less than 15% women on corporate boards despite women's progress in workforce participation and education.[51]

In fact, studies that survey the behavior of corporations in the United States and Canada have indicated the benefits of additional women board members. Scholarly findings on the impact that women have on boards generally indicate that when corporate boards have more women, certain

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[46] Vanessa Lu, *EU Official Calls for More Women on Corporate Boards*, THESTAR.COM (Mar. 1, 2011), http://www.thestar.com/business/article/947078—eu-official-calls-for-more-women-on-corporate-boards.

[47] *Id.*

[48] *See* Storvik & Teigen, *supra* note 3, at 3.

[49] Public Limited Liability Companies Act, 19 des 2003 nr. 120, § 16-15 (Nor.); Storvik & Teigen, *supra* note 3, at 8.

[50] Sasha Galbraith, *Quota Me on This: U.S. Companies Should Enact Board Quotas*, HUFFINGTON POST (Sep. 11, 2010, 10:47 AM), http://www.huffingtonpost.com/dr-sasha-galbraith/quota-me-on-this-us-compa_b_713156.html.

[51] Terjesen & Singh, *supra* note 16, at 55.

institutional capacities are increased, particularly those related to organization.[52] A study focusing specifically on Canada found that boards with more women develop more strategic protocols and organization.[53] Moreover, the presence of more women on corporate boards has been shown to improve intra-board communication and overall management style.[54] Additionally, a study focusing on British corporate boards confirmed that where women have a greater presence, the boards tend to have better educated members,[55] which comports with the experience thus far in Norway.

A McKinsey study indicated that greater organizational capacities were associated with twofold increases in market capitalization and operating margins and that those companies demonstrating organizational excellence had high numbers of women in their upper management.[56] Relatedly, companies that have better organization and institutional knowledge of their own operations may be more likely to identify a lack of diversity and promote women accordingly. Gender diversity can also improve corporate brand image as well as improve employee motivation and customer satisfaction.[57] Additionally, capital markets and investors are increasingly scrutinizing gender diversity and including gender equality ratings as part of their investment criteria.[58]

Furthermore, a pair of surveys found that in the United States and Canada, the number of women board members correlated positively with the number of women in management so that "it is likely that having female board members results in more female managers."[59] Therefore, given the benefits that have already been demonstrated of having more women on corporate boards,[60] both the United States and Canada should consider implementing Norwegian-style quotas.

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[52] DESVAUX ET AL., *supra* note 23, at 12; *see also* Kate Sweetman, *How Women Have Changed Norway's Boardrooms*, HARV. BUS. REV. BLOG (July, 27 2009, 4:07 PM), http://blogs.hbr.org/hbr/hbr-now/2009/07/how-women-have-changed-norways.html (explaining that women on boards have "characteristics that broaden discussions, reduce unnecessary risks that a corporation takes on, and punish people who would increase foolish risks").

[53] Storvik & Teigen, *supra* note 3, at 11.

[54] Terjesen & Singh, *supra* note 16, at 55.

[55] *See* Val Singh et al., *Newly Appointed Directors in the Boardroom: How Do Women and Men Differ?*, 26 EUR. MGMT. J. 48 (2008).

[56] DESVAUX ET AL., *supra* note 23, at 11.

[57] *Id.* at 10–11.

[58] *Id.* at 11.

[59] Storvik & Teigen, *supra* note 3, at 11.

[60] *See supra* Part I.

V. POTENTIAL BENEFITS OF QUOTAS IN THE UNITED STATES AND CANADA

Quotas are necessary in the United States due to the failure of alternative measures designed to advance women to corporate board positions. Research indicates that progress cannot be effectuated in the United States by merely attempting to change preexisting corporate culture. Even men who claim to support women in business may place their "institutional loyalties" first and conform to pressures to promote from within a predominantly male group rather than to support similarly situated women.[61] Furthermore, women who do advance to boards may nonetheless remain marginalized by corporate "agenda segregation" that places women on public relations and communications boards rather than finance-related boards.[62] A particular focus is necessary to promote advancement opportunities for women of color, but it is possible that sweeping diversity-promoting initiatives will have diluted effects.[63] Therefore, quotas that focus solely on gender, rather than on both race and gender, are advisable.

Enforcing Norwegian-style quotas may have a similarly beneficial impact in Canada. Just as in Europe, female labor force participation in Canada far outstrips the percentage of women in management.[64] While Canadian corporations have not seen some of the most "egregious" gender and racial discrimination that U.S. corporations have experienced, sexual and racial discrimination persist nonetheless.[65] In Canada, women make up just 13% of director positions at Financial Post 500 companies.[66] Furthermore, Canadian companies may actually be taking steps to limit corporate diversity through "unconscious discrimination."[67] This kind of discrimination can manifest within homogenous social, racial, or gender groups by creating unconscious biases that result in cognitive distortion and in-group favoritism.[68]

Canada likely has a better chance of enacting nationwide gender

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[61] Cheryl L. Wade, *Transforming Discriminatory Corporate Cultures: This is Not Just Women's Work*, 65 MD. L. REV. 346, 347 (2006).

[62] *Conference: Closing the Global Boardroom Gender Gap*, NORWAY (Sept. 30, 2010) [hereinafter *Conference*], http://www.norway.org/News_and_events/Policy/Conference-Closing-the-Global-Boardroom-Gender-Gap/.

[63] Wade, *supra* note 61, at 351.

[64] Bitti, *supra* note 15 ("According to Catalyst, a nonprofit organization working with global corporate business partners to help women advance in business, women make up 47.1% of the Canadian labour force, 37.2% of management but only 16.9% of corporate officers and 14% of board members.").

[65] Janis Sarra, *Class Act: Considering Race and Gender in the Corporate Boardroom*, 79 ST. JOHN'S L. REV. 1121, 1122 (2005).

[66] Aaron A. Dhir, *Towards a Race and Gender-Conscious Conception of the Firm: Canadian Corporate Governance, Law and Diversity*, 35 QUEEN'S L.J. 569, 574 (2010).

[67] *Id.* at 581.

[68] *Id.* at 579–81.

quotas than the United States. Senator Céline Hervieux-Payette has proposed a bill calling for improved gender equality to be incorporated into the Canadian Business Corporations Act.[69] Quebec has already implemented gender targets, and should reach gender parity on its public corporate boards by the end of 2011.[70] A positive experience in Quebec could serve as a model for the rest of the nation to mandate gender equality on boards, with the caveat that Quebec's francophone culture may make it uniquely amenable to adopting continental European policies. While Quebec experienced an initial public outcry, with corporate leadership claiming that not enough women were qualified for boards, the bill nonetheless passed in 2006.[71] Significantly, the arguments against the boardroom gender quotas—alleging a dearth of female talent—were the same arguments made before the implementation of quotas in Norway, where attitudes towards these quota laws have since changed dramatically.[72]

VI. POSSIBLE DRAWBACKS TO QUOTAS

Of course, even if the idea of implementing quotas in the United States or Canada took off, these countries would still have to reconcile the quotas with their potential drawbacks, some of which have already surfaced in Europe. Possible resentment toward the "Golden Skirts" in Norway has not been widely reported in the media, but may still remain.[73] In particular, the phenomenon of women serving on multiple corporate boards in Norway may create the appearance that women are only halfheartedly involved, which could be damaging to the impression of women's influence on boards. Moreover, the new female directors tend to have less management experience, something that skeptics and critics have noted.[74]

A serious concern regarding the adoption of quotas is that the comparatively higher paternalism of the European workplace could carry over to workplaces in the United States and Canada if these countries implement laws that effectively encourage promotions for women. European law relating to women's equality in the workplace tends to be

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[69] *Id.* at 618.

[70] Mary Teresa Bitti, *Look Who is Legislating Seats for Women At the Boardroom Table*, CBC NEWS (Oct. 20, 2010, 5:34 PM), http://www.cbc.ca/world/story/2010/10/20/f-bitti-gender-parity.html.

[71] *Id.*

[72] GEORGES DESVAUX ET AL., MCKINSEY & CO., WOMEN MATTER 3: WOMEN LEADERS, A COMPETITIVE EDGE IN AND AFTER THE CRISIS 20 (2009), http://www.mckinsey.de/downloads/publikation/women_matter/women_matter_3_brochure.pdf.

[73] *See* Eric Westervelt, *In Norway, Law Promotes Women in Boardroom*, NPR (Aug. 10, 2009), http://www.npr.org/templates/story/story.php?storyId=111673448.

[74] *See id.*

more paternalistic than the American legal regime.[75] For instance, some European countries mandate maternity leave of a certain length, while in the United States required maternal leave "constitutes discrimination on the basis of sex, violating Title VII and the Constitution."[76] However, the American rejection of paternalism, which would seem to disfavor the concept of quotas for women in boardrooms, may have gone too far in the attempt to downplay gender differences.[77] Perhaps an approach that takes into account the need for remedial measures to promote gender equality would be more effective than an all-out rejection of paternalism:

> [T]he legal regimes that protect maternity [leave] based on gender stereotypes produce higher levels of female labor market participation and a lower gender wage gap than a legal regime that combats gender stereotypes. This should lead us to be more precise about why American antidiscrimination doctrine is so preoccupied with combating gender stereotypes in the first place. The Supreme Court insists that gender stereotypes pose "barriers to the hiring, retention, and promotion of women in the workplace." However, the European experience calls this assertion into question: It suggests that gender stereotypes can boost women's continued employment and reduce inequality.[78]

The boardroom quotas may be unpalatable in the United States if they are perceived negatively as a form of gender stereotyping. Therefore, greater education about the impact of policies that promote women in the workplace is necessary in the United States. This policy will demonstrate that quotas and other measures can be more effective than gender-neutral treatment in the overall promotion of gender equality.

However, certain European social and cultural practices may make it more difficult for women to balance work and home life. The extremely generous European maternity benefits[79] may run counter to the goal of

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[75] *See* Julie C. Suk, *Are Gender Stereotypes Bad for Women? Rethinking Antidiscrimination Law and Work–Family Conflict*, 110 COLUM. L. REV. 1, 52 (2010).

[76] *Id.* at 51; Cleveland Bd. of Educ. v. LaFleur, 414 U.S. 632 (1974) (overturning a school board policy forcing pregnant women to go on unpaid maternity leave).

[77] Suk, *supra* note 75, at 54 ("The American antistereotyping approach attempts to give women the same chance as men to prove their mettle, but fails miserably by ignoring the gendered barriers to their ability to do so. The French and Swedish approaches are less ambitious; they focus on making it easier for women to combine work and family without striving to give women the same opportunities in the workplace that are available to men.").

[78] *Id.* at 66–67.

[79] Maternity benefits can run up to 64 weeks in Sweden. See, for examples from several European countries, AGAR BRUGIAVINI ET AL., MANHEIM RESEARCH INST. FOR THE ECON. OF AGING, MATERNITY AND LABOUR MARKET OUTCOME: SHORT AND LONG TERM EFFECTS 2 (2010), *available at* http://www.mea.uni-mannheim.de/uploads/user_mea_discussionpapers/1119_222-10%20komplett%20geschuetzt.pdf.

promoting women's presence on boards.[80] At a recent conference entitled "Closing the Gender Gap: Global Perspectives on Women in the Boardroom," the delegate representing the Netherlands called for a change to local culture in order to make raising children while working more feasible.[81] While these maternity policies allow women to take more time off with their children, it may be that the quotas, combined with lengthy maternity leave, lead to the impression of women as "lightweights in the boardroom."[82]

Another potential drawback to the implementation of quotas is the possible appearance of tokenism. Elizabeth Corley, the CEO of Allianz Global Investors Europe, has highlighted the potential consequences of quotas for women in the boardroom, claiming, "Quotas have a disproportionately negative effect because there will always be a question in people's mind that somebody only got onto a board or into a certain position because of a quota."[83] Thus, if quotas lead to a perception of tokenism, it may be very difficult to eradicate these expectations, even after implementing the quotas.

R.M. Kanter's landmark study on tokenism identified three consequences to one's status as a token: visibility, polarization, and assimilation.[84] Visibility may force performance pressure on the "token" as a result of constant scrutiny, and the token may feel uncomfortable succeeding or surpassing the dominant group.[85] Polarization makes it difficult for the token to integrate into the group because the dominant group may feel uneasy around the token and, thus, emphasize their differences.[86] In doing so, it may "exclude tokens from informal networks

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[80] Carrie Lukas, *Surprise: Forcing Corporate Boards to Have More Women Isn't Good for Business . . . or Even for Most Women*, *Corner*, NAT'L REV. ONLINE (Feb. 2, 2010, 12:33 PM), http://www.nationalreview.com/corner/194216/surprise-forcing-corporate-boards-have-more-women-isnt-good-business-or-even-most-wome.

[81] *Conference*, *supra* note 62. Among the obstacles to raising children while holding a senior position, Dutch Ambassador Jones-Bos included "[e]xpensive childcare and limited opening hours at stores, schools, and childcare facilities." *Id.*

[82] Linda Hirschman, *A Glass Ceiling in the House*, *Room for Debate*, N.Y. TIMES (Mar. 22, 2010, 6:09 PM), http://roomfordebate.blogs.nytimes.com/2010/03/22/using-quotas-to-raise-the-glass-ceiling/. *But see* Gillian Lester, *A Defense of Paid Family Leave*, 28 HARV. J.L. & GENDER 1, 1–2 (2005) (offering a normative defense of paid family leave "based on its potential to increase the workforce participation of those who bear the principal obligation of caregiving—women").

[83] Yasmine Chinwala, *Women Find Gender Is Still Barrier to Success*, FIN. NEWS (Mar. 14, 2011), http://www.efinancialnews.com/story/2011-03-14/women-find-gender-still-barrier-to-success.

[84] Beate Elstad & Gro Ladegard, *Women on Corporate Boards: Key Influencers or Tokens?*, J. MGMT. & GOVERNANCE, Nov. 24, 2010, at 1, 4–5.

[85] *Id.* at 5.

[86] *Id.*

where important socialization takes place, and as a result the tokens may experience social isolation."[87] Assimilation leads to stereotyping of the "token" minorities such that they are not seen as individuals.[88] For example, when only one woman is present in a group, she may bear the burden of seeming to represent her entire gender.[89] This can lead others to think of this woman as fundamentally different or as an outsider rather than relating to her as a fellow board member.[90]

Adding just one woman to the board of directors may not have a great impact[91] since generally the presence of three or more women is required to see a change.[92] This "critical mass" allows women to prevent the input of other women from being dismissed, and leads to more open discussions.[93] Ultimately, when three or more women sit on a board, "diversity becomes not a 'woman's issue,' but group responsibility and the critical mass normalizes women's presence as leaders."[94] This may suggest that a drastic change in the composition of some boards would be necessary to see positive effects, which represents a potentially controversial approach. However, if women are phased in gradually, then results may not be appreciable and the initiatives may lose support. Most of the European proposals for quotas demand a 30% or higher gender equality threshold,[95] which is drastic and controversial. Policymakers have tended to prefer approaches that set ambitious goals and prioritize the opportunity for marked differences on boards over more palatable, gradual differences.

The first post-quota evidence on the appearance of tokenism in Norway suggests that women on boards have felt strongly that they have been able to contribute meaningfully to boards, have had access to important information, and have not felt the need to self-censor.[96] The more women on boards, the "greater the level of perceived influence,

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[87] *Id.*

[88] *Id.*

[89] Siri Terjesen et al., *Women Directors on Corporate Boards: A Review and Research Agenda*, 17 CORP. GOVERNANCE: AN INT'L REV. 320, 328 (2009).

[90] *Id.*

[91] Joan MacLeod Heminway & Sarah White, *Wanted: Female Corporate Directors*, 29 PACE L. REV. 249, 258 (2009) (reviewing DOUGLAS M. BRANSON, NO SEAT AT THE TABLE: HOW CORPORATE GOVERNANCE AND LAW KEEP WOMEN OUT OF THE BOARDROOM (2007)).

[92] DESVAUX ET AL., *supra* note 23, at 12.

[93] Terjesen et al., *supra* note 89, at 328.

[94] *Id.*

[95] ROHIDI PANDE & DEANNA FORD, GENDER QUOTAS AND FEMALE LEADERSHIP: A REVIEW 35–36 (2011), http://www.hks.harvard.edu/fs/rpande/papers/Gender%20Quotas%20-%20April%202011.pdf.

[96] Elstad & Ladegard, *supra* note 84, at 13–15. Elstad and Ladegard elaborate: "Overall, these arguments support the notion of women as significant influencers, not as tokens, i.e. women directors do not feel affected by the visibility mechanism in tokenism theory, and this does not vary according to their minority or majority status on the board." *Id.* at 13.

perceived social interaction outside the boardroom, and to some degree, perceived information sharing."[97] Therefore, concerns raised by tokenism theory have, in large part, not borne out. The appearance of tokenism is ultimately a legitimate concern, but in the context of boardroom quotas, tokenism seems to be more of a perceived threat than an actual problem. Thus, the fear of tokenism operates more as a barrier to the passage of divisive legislation mandating higher boardroom participation of women rather than an obstacle to the effectiveness of women once they are situated on boards.[98]

A final potential drawback could manifest if the "Queen Bee Syndrome" plays out in the context of boardroom quotas. This theory posits that in certain cases, women who achieve positions of power hold their younger female counterparts back from professional success.[99] The author of a Max Planck Institute study on the phenomenon found that "[f]emale and older participants showed more prejudice against the (idea of a) female leader than did male and younger participants."[100] The study also found that women in power tended to be harsher than men when both groups evaluated women candidates; the women evaluators viewed the candidates as being less qualified as well as likely to perform worse once on the job.[101]

With Norwegian-model boardroom quotas, the older women would not be able to prevent other women from filling the quotas once implemented, but the Queen Bee Syndrome indicates that women might stand against the adoption of quotas in the first place. Recently, the Queen Bee Syndrome has been criticized; scholars suggest that the "Queen Bee" label is a "sexist, outdated" name used to criticize the decision-making authority of women managers and reinforce traditional gender roles.[102] Evidence from Norway

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[97] *Id.* at 16.

[98] *See* Christine Toomey, *Quotas for Women on the Board: Do They Work?*, SUNDAY TIMES (June 8 2008), http://women.timesonline.co.uk/tol/life_and_style/women/article4066740.ece ("[B]ack in Norway, the 'tokenism or talent' debate has already been consigned to history. Women just picked up the baton and ran with it.").

[99] Roger Dobson & Will Iredale, *Office Queen Bees Hold Back Women's Careers*, SUNDAY TIMES (Dec. 31, 2006), http://www.timesonline.co.uk/tol/news/uk/article1265356.ece.

[100] *Id.*

[101] *Id.*

[102] Sharon Mavin, *Queen Bees, Wannabees and Afraid to Bees: No More 'Best Enemies' for Women in Management?*, 19 BRIT. J. MGMT. S75, S82–S83 (2008). Mavin suggests:

> To challenge pejorative constructions of women as "best enemies" within popular media and research, we should reflexively question and challenge our own assumptions and use of Queen Bee in our research and everyday lives. Rather than recommending more senior women engage in solidarity behaviour through mentoring and as role models, whilst at the same time "blaming" them for being

suggests that both conservative women and women in parliament supported the quotas broadly.[103] While female executives might bristle at quotas initially, there is a chance that once the quotas are in place and more women fill boardrooms, the "visibility" factor from tokenism will be alleviated and some of the stereotypes that surround perceptions of women mangers may diminish.

Feminist theory suggests that the presence of more feminist thinking and values will benefit corporate boards.[104] A feminist view of corporate boards places value on connectedness, equality, human development,[105] and the social position and bargaining power of each actor.[106] However, a need for feminist thinking does not necessarily call for the presence of more women.[107] Some critics of quotas may respond to feminist concerns by advocating training of existing board members in these values rather than implementing quotas for women. Yet, it may be highly problematic to attempt to measure the impact of feminist thinking independently from measuring the number of women on boards. Thus, the presence of women on corporate boards may serve as the best predictor of the level of feminist thinking.

VII. SEARCHING FOR FACTORS RELEVANT TO NORWAY'S SUCCESS WITH BOARDROOM QUOTAS

A. Factors Influencing the Acceptance and Success of Quotas in Norway Once Imposed

Since Norway currently stands alone as the only country to successfully pass into law and implement boardroom quotas, this type of quota effectively has a sample size of one. Social science research can only estimate where boardroom quotas might be necessary due to women's lack

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> more male than men and not supporting other women, there is a need to focus future action on challenging and changing the overall gendered structures and systems in organization.

Id. at S83.

[103] Storvik & Teigen, *supra* note 3, at 7; s*ee* Beret Bråten, *Norway's Parliament—Not Equal*, KILDEN (Sept. 6, 2005), http://eng.kilden.forskningsradet.no/c52778/nyhet/vis.html?tid=52946; Harriet Alexander, *Norway's Businesswomen and the Boardroom Bias Debate*, TELEGRAPH (Mar. 18, 2012, 7:00 AM), http://www.telegraph.co.uk/news/worldnews/europe/norway/9150165/Norways-businesswomen-and-the-boardroom-bias-debate.html.

[104] Kellye Y. Testy, *Capitalism and Freedom—for Whom?: Feminist Legal Theory and Progressive Corporate Law*, LAW & CONTEMP. PROBS., Autumn 2004, at 87, 107.

[105] *Id.* at 100.

[106] *Id.* at 102–03.

[107] *Id.* at 106 (explaining that "feminist values are not confined to biological females," and arguing that Judge Cardozo's famous proclamation that a duty of loyalty requires "a punctilio of honor the most sensitive" is an example of feminist values).

of advancement.[108] Therefore, while statistics about gender equality and female board participation are readily available for other countries, it may be difficult to discern which aspects of Norwegian business, politics, and culture led the quotas to flourish once implemented. Several possibilities explaining the success of the quotas emerge, including a culture that is accepting of transparency, a history of gender equality in other areas of civil society, and the structure of the Norwegian corporate board system.

i. Transparency

While the United States and Canada can be compared to Europe on the basis of the percentage of female board leadership, the increased Norwegian tolerance for transparency may have helped the quotas function well in a way that cannot be replicated elsewhere. A prime example of transparency in Norwegian society is the national tax list. Since 2002, the income of every taxpayer in Norway has been public knowledge.[109] Not only is this information available to all, it is searchable online by simply entering a person's name and the municipality in which they live.[110] This spirit of openness that is accepted in Norway may not carry over to North America.

Tolerance for transparency matters in putting boardroom quotas in place because public databases were instrumental in Norwegian companies meeting their target percentages of women on boards.[111] One of the major effects of the quota system was to popularize and increase the number of public databases of women employees in Norway.[112] One of these databases is Female Future, run by the Confederation of Norwegian Business and Industry, Norway's largest employers' association.[113] This program is designed to recruit companies to commit to identifying talented women and motivating them to take on management and board positions while Female Future provides training to the women on skills pertaining to board membership.[114] The program is designed to help women sell themselves more assertively, and is known as "pearl diving" because reviewers tend to search for talented female board members among

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[108] *See supra* Part II.

[109] *Norwegians Drool Over Fresh Tax Records*, BBC NEWS (Oct. 7, 2005, 9:22 AM), http://news.bbc.co.uk/2/hi/business/4318382.stm.

[110] *Id.*

[111] *See* Storvik & Teigen, *supra* note 3, at 9.

[112] *Id.* These databases list women who wish to be considered for board positions, as well as information on their work experience. *Id.*

[113] *Id.*; Pilita Clark, *The Accidental Feminist*, FIN. TIMES (Oct. 13, 2005, 10:14 PM), http://www.ft.com/cms/s/0/bd9bb15c-3a0f-11da-8dc4-00000e2511c8.html#axzz15yX8b hV6; see *NHOs Styrekandidatdatabase* [*NHO Board Candidate Database*], NHO (Mar. 26, 2007), http://www.nho.no/female-future/nhos-styrekandidatdatabase-article3010-63.html, for the Female Future database.

[114] Storvik & Teigen, *supra* note 3, at 9; Clark, *supra* note 113.

candidates listed in the databases.[115] While the Female Future program has been lauded in Norway, such an invasive program that makes much employment data public knowledge may not be politically feasible in the United States or Canada.

ii. History of Social Inclusion Through the Use of Quotas

Norway's boardroom quotas, while initially contentious, were not the first quotas introduced in that country designed to promote the advancement of women. Indeed, Norway has a history of gender equality in many aspects of civil life.[116] In 2003, the United Nations Committee on Elimination of Discrimination Against Women called Norway a "haven for gender equality."[117] Norway was among the first countries to enfranchise women in 1913.[118] In 1981, Norway elected its first female prime minister, Gro Harlem Brundtland, who promptly filled eight of her eighteen cabinet posts with women.[119] The Norwegian Cabinet has even established a dedicated seat for a Minister of Children, Equality and Social Inclusion.[120] Norway averages approximately 36% women in its parliament, which is more than double the worldwide average.[121]

All of these pioneering advancements may well have set the stage for Norway to enact the first gender boardroom quotas and, in doing so, to establish a longstanding social norm that gender egalitarianism is a value in and of itself. Aside from increased institutional capacities, the presence of women on boards can be seen as a value itself if a society prioritizes strong examples of upward mobility for both genders. Norway's history as a world leader in gender equality may also be a source of national pride, and a self-imposed national mantle of egalitarianism can encourage innovations in achieving equality.

In Norway, the importance of gender equality and the concept of using

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[115] Storvik & Teigen, *supra* note 3, at 9; Clark, *supra* note 113.

[116] Westervelt, *supra* note 73. Anne-Grete Ellingsen, an energy executive who holds several board positions in Norway, posits that "[f]rom the Viking time, the females had to take a lot of responsibility when the Vikings went away. We have a tradition for that." *Id.*

[117] Press Release, Comm. on Elimination of Discrimination Against Women, Norway Called 'Haven for Gender Equality', as Women's Anti-Discrimination Committee Examines Reports on Compliance with Convention (Jan. 20, 2003), http://www.un.org/News/Press/docs/2003/wom1377.doc.htm.

[118] *See* Gregory H. Fox, *The Right to Political Participation in International Law*, 17 YALE J. INT'L L. 539, 546 n.26 (1992).

[119] *See* Kristina T. Geraghty, *Taming the Paper Tiger: A Comparative Approach to Reforming Japanese Gender Equality Laws*, 41 CORNELL INT'L L.J. 503, 534 (2008).

[120] *About the Ministry*, MINISTRY CHILD., EQUALITY & SOC. INCLUSION, http://www.regjeringen.no/en/dep/bld/BLD-arbeider-for-at.html?id=303 (last visited Feb. 17, 2012) (listing as among the Ministry's goals, "to promote full equality of status between men and women").

[121] Clark, *supra* note 113.

quotas to promote women to positions of power have been familiar for decades. By the 1980s, Norway had enacted the Act of Equal Opportunity, which mandated that 40% of both sexes be represented on public boards and committees comprising more than four members.[122] Social policies that favor women, such as the boardroom quotas, may have a better chance at success in countries with longstanding acceptance of other types of quotas and a heavy emphasis on gender equality. It is quite likely that Norway adapted to the boardroom quotas because of its past success with political quotas.

If, however, general endorsement of the importance of gender equality and acceptance of political quotas is isolated, these may not appear to be such useful tools for predicting the success of boardroom quotas. Political quotas, taken alone, do not signify that a nation has reached high levels of equality for women. Countries with political quotas at the municipal or national level include Bangladesh, India, Nepal, Uganda, Eritrea, Tanzania, Belgium, France, and several Latin American nations.[123] These countries have a wide variety of gender policies and gender equality levels,[124] but only one of them, France, has gone on to consider and legislate boardroom quotas. Yet, "[i]n countries like the U.S. and Canada, [political quotas] are not only difficult to implement but are often regarded as unfair because they appear to privilege one group over another."[125] In British Columbia, the

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[122] *Id.*

[123] WOMEN IN PARLIAMENT BEYOND NUMBERS, INT'L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE 146–50 (Julie Ballington & Azza Karam eds., rev. ed. 1998). These political quotas are generally implemented through national legislation, although the political quotas in Denmark, Norway and Sweden have been implemented by political parties. *Id.* at 145. Political quotas "for women entail that women must constitute a certain number or percentage of the members of a body, whether it is a candidate list, a parliamentary assembly, a committee or a government." *Id.* at 141. The quota system "place[s] the burden of candidate recruitment not on the individual woman, but on those who control the recruitment process." *Id.* The core idea behind this system is to recruit women into political positions and to ensure that women are not isolated in political life:

> Previous notions of having reserved seats for only one or for very few women, representing a vague and all-embracing category of 'women', are no longer considered sufficient. Today, quota systems aim at ensuring that women constitute at least a 'critical minority' of 30 or 40 percent . . . . Quotas may be seen as a temporary measure, that is to say, until the barriers for women's entry into politics are removed.

Id. at 142. However, there has not been any discussion yet as to whether the Norway boardroom quotas might be construed as temporary measures.

[124] *See generally* RICARDO HAUSMANN ET AL., WORLD ECON. FORUM, THE GLOBAL GENDER GAP REPORT 42–55 (2010), http://www.weforum.org/en/Communities/Women%20Leaders%20and%20Gender%20Parity/GenderGapNetwork/index.htm.

[125] *Holding Half the Seats*, NEWSWEEK (Apr. 8, 2010, 8:00 PM), http://www.

New Democratic Party attempted to use gender quotas in its last election, but party leader Carole James characterized the effort as problematic; her party is seeking alternative measures to incentivize the election of more women.[126]

Ultimately, political quotas do not predict general levels of gender parity, yet may reflect important attitudes towards the role of women in society that bear on how the public views boardroom quotas. More research is needed to identify how a country's adoption of political quotas for women impacts its likelihood of accepting boardroom quotas.

iii. Corporate Board Structure

Another factor that distinguishes Norway is its single-tiered board system with compulsory labor representation. While continental Europe largely operates with a two-tiered board system with both management boards and supervisory boards, Norway is actually like the United States and Canada in that it has a one-tier system.[127] However, countries such as Spain and the Netherlands that have passed quota legislation have two-tiered systems or may choose between the one-tier and two-tier systems.[128] Thus, a one-tier or two-tier board structure likely does not influence whether a nation's corporations are open to adopting gender quotas.

The other distinct characteristic of the Norwegian boards—mandatory labor representation—may be more significant because this representation tends to influence the activities and the power of the board.[129] Research indicates that employee board representation of up to 50% contributes positively to firm value and is particularly beneficial to the trade, transportation, computer, and pharmaceutical industries because they require sophisticated coordination and communication.[130] Labor representation opens up communication just as the presence of women on boards does; it is possible that boards with labor representation will be more tolerant of quotas of other "outsider" groups and will appreciate to a greater degree the increased communication capacities that women bring.

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newsweek.com/2010/04/08/holding-half-the-seats.html.

[126] Gloria Galloway, *Should Canada Introduce Quotas in Politics?*, GLOBE & MAIL (Oct. 13, 2010, 5:01 PM), http://www.theglobeandmail.com/news/national/time-to-lead/women-in-power/should-canada-introduce-quotas-in-politics/article1755654/.

[127] Storvik & Teigen, *supra* note 3, at 5.

[128] Carsten Jungmann, *The Effectiveness of Corporate Governance in One-Tier and Two-Tier Board Systems: Evidence from the UK and Germany*, 3 EUR. COMPANY & FIN. L. REV. 426, 427 (2006).

[129] Elstad & Ladegard, *supra* note 84, at 24.

[130] Larry Fauver & Michael E. Fuerst, *Does Good Corporate Governance Include Employee Representation? Evidence from German Corporate Boards*, 82 J. FIN. ECON. 673, 703 (2006).

B. Factors Affecting the Political Viability of Quotas

The political landscape in Norway was instrumental to the passage of the boardroom quotas. The political process began in 1999 when Christian Democrat Valgerd Svarstad Haugland, the Minister for Gender Equality, proposed the boardroom quotas as part of an overhaul of the Gender Equality Act.[131] The endorsement of this quota proposal by Minister of Trade and Industry Ansgar Gabrielsen was especially significant in forging support for the quotas, particularly among conservatives.[132] Shortly before the final parliamentary debates on the quotas, Gabrielsen stated in Norway's largest newspaper that he was "sick and tired of the male dominance of business life."[133] This endorsement helped the law pass with widespread support, with only the Progress Party voting against the quotas.[134]

Examining the interest groups that supported the adoption of the boardroom quotas yields a few unexpected loyalties. Conservative women backed the quotas wholeheartedly, as did women's associations within other political parties.[135] The quotas received additional endorsement from the mainstream media, employee's organizations, various ministry representatives, and most trade unions.[136] Curiously, organizations that advocate for women's rights were absent from the supporters of the quotas: Storvik and Teigen theorize that they did not promote the quotas because these groups saw the quotas as "primarily affecting elite women."[137]

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[131] Storvik & Teigen, *supra* note 3, at 7. The quotas were eventually adopted as a revision to the Companies Act. *Id.*

[132] *Id.*

[133] *Id.* Gabrielson elaborated on his motivations later in the British press:

> [D]iversity is a value in itself, [and] it creates wealth.
>
> I could not see why, after 25–30 years of having an equal ratio of women and men in universities and with having so many educated women with experience, there were so few of them on boards . . . .
>
> From my time in the business world, I saw how board members were picked: they come from the same small circle of people. They go hunting and fishing together. They're buddies.

Gwladys Fouché, *Quarter of Norway's Firms Face Shutdown as Female Directors Deadline Approaches*, GUARDIAN (Dec. 27, 2007), http://www.guardian.co.uk/business/2007/dec/27/norway.female.director.

[134] Storvik & Teigen, *supra* note 3, at 7 ("In line with liberal economic doctrine [the Progress Party] argued that free market competition is the best protection against discrimination and that a quota regulation itself can be seen as a form of discrimination.").

[135] *Id.*

[136] *Id.* Interestingly, the only trade union not to support the boardroom quotas was the lawyers' association. *Id.*

[137] *Id.*

Concerns about the quotas only aiding elite classes of women were especially prescient in light of the large number of board seats that are held by only a few women. For example, before the quotas, the maximum number of Norwegian boards posts held was approximately four; now women hold around eight to nine board memberships.[138] However, economists theorize that these women will hold fewer board posts in the future, once more and more women are seen as competent and have gained more management experience.[139] Therefore, in order to secure support for quotas among women's organizations, a campaign highlighting the broad-reaching impacts for a larger class of women over many years, not just current gender disparities, may be more effective.

One interesting parallel between the Norwegian and Finnish experience may illuminate the benefits of examining other countries' approaches to increasing the presence of women on boards. In both countries, a man who did not serve in an official capacity designed to promote gender equality championed the proposal for increased corporate presence of women to the media. In Finland, Jorma Ollila—the Chairman of Shell, Chairman of Nokia, and President of the Finnish Business and Policy Forum—publicly encouraged the equality measures.[140] Norway's quotas were supported by Minister for Trade and Industry Ansgar Gabrielsen.[141] At a recent conference on women's boardroom equality in Oslo, panelists agreed that having a conservative male promote the quotas helped the Norway quotas pass in parliament.[142] This suggests that endorsement from a prominent male business leader or government official may lend quotas some clout in the United States or Canada. The Norwegian quota proposals may have been further strengthened by the fact that their male endorser was also a conservative politician, but finding a comparably prominent quota backer in the United States or Canada who is both conservative *and* male may pose too great a challenge.

Which elements of Norway's political schema could be replicated in the United States or Canada? It should be possible to drum up support from nongovernment organizations and certain American and Canadian media outlets, which have already covered the Norwegian boardroom quotas extensively. Moreover, securing support from women's political

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[138] Gerald Traufetter, *Taking Stock of Pioneering Law: Have Gender Quotas Really Helped Norwegian Women?*, SPIEGEL ONLINE INT'L (Feb. 16 2010), http://www.spiegel.de/international/europe/0,1518,745664,00.html.

[139] *Id.* According to economist Cathrine Seierstad, "Before the quota was introduced, no one had more than four board positions. Now the maximum number is eight to nine . . . . At first, it was simply difficult to find suitable female candidates quickly." *Id.* Seierstad argues that the lack of appropriate female candidates is only temporary, and will be resolved as more women advance in business. *Id.*

[140] Linnainmaa, *supra* note 43.

[141] Storvik & Teigen, *supra* note 3, at 7.

[142] THE BRIDGE, *supra* note 9, at 1.

organizations and other women's groups should be possible, especially if the long-term benefits of quotas to a large number of women receive due emphasis. The remaining challenge may be finding an endorsement from a prominent, conservative male politician or businessman. While it is difficult to gauge how Norway's experience with a history of pioneering gender equality, decades of political quotas, transparency, and board structure bode for the adoption of quotas in the United States or Canada, none of these factors seems to present an insurmountable obstacle to the passage of quotas in those two countries.

VIII. ADDITIONAL CONSEQUENCES OF THE QUOTAS IN NORWAY

Quotas provide certain benefits, and these additional gains may not only be felt in the boardroom. For instance, widespread political debate and the resulting heavy media coverage of how to improve gender equality are a benefit to society at large. Furthermore, now that the boardroom quotas have been in place for three years, alternative measures, revisions, and offshoots to the legislation are under consideration in Norway. Currently, the Norway quotas apply only to publicly listed companies, and it remains unlikely that the quotas will ever be mandatory for private enterprises. In fact, as the deadline for implementing the Norway quotas loomed, over 100 companies transformed from publicly held companies to privately held companies.[143] Although that switch is now attributed to another simultaneous change in Norwegian corporate law that financial firms may no longer be public companies,[144] initial reactions blaming the quotas demonstrate how certain Norwegians had been that the quotas would not affect privately held companies.

However, a new proposal under discussion could mandate that state-controlled businesses designate at least 40% of upper and middle management positions to be filled by women.[145] A proposal from the same report advocates "all organizations that receive public support must have boards with at least 40 percent women and 40 percent men."[146] If more women are propelled into upper management, the women who come to sit on corporate boards may be drawn from a more experienced pool of women managers. This enhancement of women's credibility along the pipeline to

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[143] Traufetter, *supra* note 138, at 1.

[144] *Id.*

[145] Nina Berglund, *More Quotas Loom to Boost Equality*, VIEWS & NEWS FROM NORWAY (Sep. 30, 2010), http://www.newsinenglish.no/2010/09/30/more-quotas-urged-to-boost-equality/. This is one of the 136 proposals included in the *Kvinnepanelet*, a report commissioned by the Norwegian government and delivered to the Ministry for Gender Equality.

[146] *Id.*

the boardroom will assuage fears that women are not qualified to sit on boards—one of the most common criticisms of the boardroom quotas.

As these potential changes are themselves speculative, it is entirely presumptive to estimate whether any of these proposals could also result if quotas are adopted in the United States or Canada; notwithstanding this, it will be informative to track the consequences of the adoption of quotas in France, Spain, Iceland, and the Netherlands in the coming years. On the other hand, if women in Norway are successfully promoted to upper management with or without quotas and subsequently find their way into the boardroom, perhaps the boardroom quotas will eventually be phased out.

The duration of the quotas is presumptively permanent in Norway, as the law has no sunset provision; however, since the boardroom quotas are still fairly new, it remains to be seen whether greater experience with the quotas will lead more people to accept them, or whether they will ultimately be seen as superfluous to female corporate board membership. Regardless of how many of these new measures come to pass, the creative energy applied to the problem of gender gaps in business is certainly inspiring to observe.

IX. CONCLUSION

While initially controversial, the boardroom quotas that Norway has enforced since 2008 have been accepted throughout the country, even by those who protested against them. These quotas have raised the presence of women in the boardrooms of publicly listed companies dramatically and have led these corporations to develop new institutional capacities.[147] Already under discussion elsewhere in Europe, the quotas make sense for the United States and Canada as well.

The United States and Canada have similar potential to benefit from having more women in the boardroom, yet do not have formal mechanisms such as the Norway quotas or even informal pressures such as the voluntary measures in Germany and Finland to achieve these benefits. The potential drawbacks to quotas, including tokenism and paternalism, have not been borne out in the context of boardroom quotas and appear to be overstated threats or concerns. Business practices in the United States and Canada differ in significant ways from those in Norway, but none of these differences should be determinative of whether or not quotas will be accepted there. Although the proposal is sure to be divisive, quotas are the only proven method of advancing women into boardrooms in large numbers and, therefore, merit serious consideration in both countries.

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[147] *See supra* Part I.