Quotas and the Issue of Women’s Representation: a Proposed Electoral Reform

Introduction

The issue of women’s representation in the United Kingdom is one that has remained paramount to the study of social sciences for many years. The striking dearth of women elected to the House of Commons is a persistent concern for many, most importantly because efforts to increase their number have been slow, and have done little to reduce the overwhelming majority that men hold in the legislative body of the government. Therefore, this essay proposes to reform the current electoral law, by introducing a statutory quota of women that parties must meet when putting forward their candidates for election. This will arguably make a significant difference in redressing the imbalance that is currently present in the UK Parliament.

A Necessary Reform

Though heavily criticised, all-women shortlists have had a significant effect of the number of women in Parliament. Prior to the 1997 General Election, only 13 percent of the seats in the House of Commons were held by women. After Labour implemented all-women shortlist in the run-up to the election, this increased to 20 percent after 1997, with the 7 percent leap the largest ever experienced. Women currently, as of the 2010 election, hold 23 percent of the seats. This success had now been recognised by both the Conservative Party and the Liberal Democrats, with both Cameron and Clegg issuing their support for their parties’ use of positive discrimination to try and fill the void in women’s representation. This, for some, is where the conversation on all-women shortlists ends. The endorsement by all three of the main political parties, along with the steady increase of women into the House of Commons is seen as a sufficient solution to the problem of women’s representation.

It is clear however, that the current situation is inadequate. In global terms, the UK Parliament ranks 74th out of the 188 countries included in the Inter Parliamentary Union’s international rankings. The figure of 23 percent, though impressive in comparison to previous Parliaments, is reprehensible when we consider that the actual percentage of women in the UK is over 50 percent. Labour’s use of all-women shortlists did have an impact on the gender balance of

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1 House of Commons Library (2013)
2 ibid
3 ibid
Parliament, but the increase of only a few percent in elections since suggests that something more drastic is needed if we are to truly make a difference to the way women are represented in the UK. Therefore, this essay proposes to introduce a statutory quota, which stipulates that political parties must put forward a certain number of women, in order to increase the number of seats that they hold in the House of Commons.

A Desirable Reform

In order decide whether a gender quota is desirable, we must first assess some leading theories of representation that underline the importance of a gender balance in the House of Commons. Burke played a significant role in shaping the representation debate, and many of the ideas that Burke espoused remain relevant today. Burke argued that the main feature of representative government was not to have MPs simply regurgitate the wills and demands of their constituents, but rather to use their own initiative and rationality in the decision-making process. This meant that it was perfectly legitimate for MPs to supplement the views of their constituents with their own views and ideas without continuously consulting them. Scholars such as Ann Phillips have suggested that if this is the case, there are certain issues that will require female MPs to properly address. This suggests that implementing a quota to ensure an increase in the number of women in Parliament is desirable, as women’s representation on certain issues will be better addressed by women.

Theories of representation suggest that a gender balanced Parliament is desirable, but this does raise the question of whether an increase in the number of women does actually increase the representation women receive. It is the contention of this essay that it does. When examining legislatures that have a greater number of women holding seats, it becomes clear that the needs and issues that are specific or more salient in the view of women are being raised and addressed much more, and more effectively, by women, or due to the increased number of women. Studies conducted in Scandinavia and the European Parliament, Rwanda, and Sweden suggest that a more gender balanced Parliament leads to a rise in women’s issues being raised, initiatives for women being launched, an increase in legislation on women’s issues and an

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increased quality in leadership\textsuperscript{9}. A report by the United Nations Division for the Advancement of Women argued that that experts were in agreement that ‘women’s participation in decision making has implications for promoting gender equality’\textsuperscript{10}, and that women have played a ‘key role’ in the formulation and implementation of legislation relating to issues of gender equality, as well as amending existing constitutions that stood in the way of the advancement of women\textsuperscript{11}.

Sarah Childs and Julie Withey, prominent social scientists in the field of women’s representation conducted perhaps the most comprehensive study on the effect of an increased number of women in the British legislature. By assessing the number of Early Day Motions (EDMs) signed by both male and female MPs, they argued that women were much more in favour of women’s issues than men. They found that, looking at the percentage of these women’s issue EDMs that MPs signed from the total number of all EDMs signed, the sex differences between women and men were ‘highly significant.’\textsuperscript{12} This would suggest that for the vast number of women MPs, representing women, or fighting for ‘women’s’ issues, is something of great importance. It is therefore arguable that the implementation of a gender quota is not simply an inequality with no instrumental value; it has tangible effects on the equality of women in society. Therefore, this reform is highly desirable.

\textbf{Current Legislation for Women’s Representation}

As previously mentioned in this essay, there have been attempts to increase the number of women in the House of Commons through legislative means. After the Labour Party began using all-women shortlists in the run-up to the 1997 elections, a number of male Labour candidates, including Peter Jepson and Roger Dyas-Elliott, were unimpressed that they were being overlooked due to their sex, and took their Party to an industrial tribunal. In \textit{Jepson and Dyas-Elliott v. The Labour Party and others}\textsuperscript{13}, the tribunal found that the use of all-woman shortlists was contrary to s.13 of the Sex Discrimination Act 1975. This led the Labour government to implement the Sex Discrimination (Election Candidates) Act 2002, in order to “exclude from the operation of the Sex Discrimination Act 1975 and the Sex Discrimination (Northern Ireland) Order 1976 certain matters relating to the selection of candidates by political

\textsuperscript{9} ibid
\textsuperscript{11} ibid
\textsuperscript{13} [1996] IRLR 116
parties”. This legalised the use of all-woman shortlists, and after the 2005 election the number of women in Parliament proceeded to grow.

At implementation, Section 1 (3) of the Sex Discrimination Act 1975 specified that the act was set to expire at the end of 2015. This date is set to be extended by the Equality Act 2010, which makes exceptions for the use of positive discrimination for political parties in the selection of candidate; a provision now set to expire in 2030. The existing legislation does legalise the use of all-women shortlists, but this, as discussed earlier in the essay is arguably inadequate in redressing the gender imbalance of the UK Parliament. Simply allowing parties to use all-women shortlists will have little effect if they use them sparingly, or like the Conservatives and the Liberal Democrats, do not implement them at all. Therefore, a mandatory quota is the only way to trigger the change really needed to see a difference in the way in which women are represented in the UK Parliament.

An Argument for the Implementation of Gender Quotas

The sections above have addressed the arguments as to why the representation of women in Parliament is important, and why the current legislation is inadequate to remedy the imbalance of the House of Commons. This essay will now put forward a positive argument for the use of gender quotas, considering the success of gender quotas in two countries in which statutory quotas were implemented: Argentina and The Republic of Ireland. In July of 2012, the Irish Parliament passed the Electoral (Amendment) (Political Funding) Act 2012, which introduced a sex quota specifying that in the next general election, at least 30 percent of political parties’ candidates must be female. This number is to rise to 40 percent “seven years thereafter.” The punishment for parties that fail to comply with this is a 50 percent reduction in their annual state funding. The last general election was held in Ireland in 2011, so it cannot be determined whether the threat of loss of funding is great enough to sway the political parties into selecting more female candidates, but it is important to note that the saliency of the issue of a male-dominated legislature is being felt by our neighboring governments.

Argentina introduced a quota law in 1991, which stipulated that both the upper and lower houses of its legislature would implement a quota of 30 percent women. This is seen in both

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14 Sex Discrimination (Election Candidates) Act 2002, Section 2
15 Equality Act 2010 Section 104 (7)
16 ibid, Section 105 (1)
17 Electoral (Amendment) (Political Funding) Act 2012, (Part 6 (42)(4B)(c)
18 ibid, (Part 6 (42)(4B)(a)
the Argentine Constitution, which states that ‘actual equality of opportunity’ for men and women for elective and political party positions shall be ‘guaranteed by means of positive actions in the regulation of political parties and in the electoral system’\textsuperscript{19}, and its electoral law, which states stipulates the 30 percent quota, and that all candidate lists must be approved by an independent judge before parties are allowed to proceed\textsuperscript{20}. The implementation of a gender quota has had a massive effect on the number of women in Parliament; the figure jumped from 6 percent in 1991 to 37 percent in the 2012 election. Furthermore, in 2007, Cristina Fernández de Kirchner became Argentina’s first directly elected female President\textsuperscript{21}. This suggests that gender quotas can have a massive effect on the number of women elected to Parliament.

Electoral law in the UK has, according to the Law Commission, become ‘complex, voluminous, and fragmented’\textsuperscript{22}, and their 2012 Scoping Report stated that electoral reform should work to promote fairness\textsuperscript{23}. It is therefore the contention of this essay that electoral reform is sorely needed to ensure that the UK remains a free and fair society, and it is the duty of the law to provide this reform. Simply legalising gender quotas is not enough, as it has been seen to only have a minimal effect of the gender balance of parliament. To achieve the drastic results needed, we must take example from countries such as Ireland and Argentina and introduce statutory gender quotas to ensure fair representation for women.

\textbf{The Proposed Law Reform}

In order to draft the legislation this essay is proposing, a number of factors need to be considered.

\textit{The merits of existing systems}

Both the Irish and Argentine systems of statutory gender quotas have merits and flaws that affect their suitability for a model for UK reform. The Irish Act is the most straightforward, as it is one Act that simply modifies existing legislation. The system of state funding however, does not apply to the UK, as political parties receive most of their funding from private donors and other means. Therefore, a threat of a cut in state funding does not hold the same weight as it does in Ireland. The Argentine system is more complicated, with modifications to both the constitution, and to electoral law. It is a well-known fact that the UK constitution cannot simply

\textsuperscript{19} CONSTITUTION OF THE ARGENTINE NATION, Article 37 (2)
\textsuperscript{20} CODIGO ELECTORAL NACIONAL, Article 60 [3]
\textsuperscript{21} The first non-elected female President was Isabel Martínez de Perón
\textsuperscript{22} Law Commission, Electoral Law
be modified, as it is “uncodified”, and does not exist in one simple document. Therefore, this essay proposed a two-part reform; the first part a short Act, which, like the modification to the Argentine constitution, stipulates that gender equality is to be achieved in the House of Commons, and that party lists must be reviewed by an independent adjudicator. Second, a set of regulations, which specify the precise quota, which can be amended as the number of women in Parliament rises.

The initial quota

Now, the discussion must focus on the initial quota that will be stipulated in the regulations. Both the Irish and Argentinian quotas were initially set at 30 percent. This is arguably a good starting point, as the percentage of woman currently in the House of Commons is 23 percent. Therefore, in the 2020 elections, parties must put forward a list of candidates with at least 30 percent women. Like the Irish legislation, the percent needed for a list to be approved should rise with every election; in every subsequent general election, the percentage should rise by 5. Therefore, by the 2040 general election, a gender balanced Parliament should be reached.

Potential expiry

Even many fervent supporters of the use of all-women shortlists have argued that they are only a short term solution, in order to familiarise society with the idea that female MPs are just as effective as their male counterparts. This was perhaps the reasoning behind the ‘sunset clause’ in the Equality Act 2010, rendering the legality of all-women shortlists expired after 203024. A problem that could be foreseen with a proposed gender quota is that if the quota reached 50 percent, and the percentage of women in Parliament was a great deal larger than this, some male candidates may find that the Act was giving woman an unfair advantage in being elected to the House of Commons. This is therefore why the proposed reform would also include an expiry clause, repealing the legislation in 2050, unless Parliament choses to extend it.

The proposed reform

The Act itself might read:

24 Sex Discrimination (Election Candidates) Act 2002 (chapter 3)
The equality of men and women put forward by political parties for election to the House of Commons, shall be ensured by the use of positive action and regulation of the political parties by an independent adjudicator.

For the purposes of this act, Section 104(7) of the Equality Act 2010 shall apply, and remain applicable for the same duration of this act.

Appointment of the Independent Adjudicator

The independent adjudicator shall review the candidate lists put forward by political parties, to ensure they comply with the Regulations.

The adjudicator shall-

a. Be appointed by the Speaker’s Committee on the Electoral Commission; and

b. Be subject to the same standards and restrictions as the Electoral Commission, set out in Part I (7) of the Political Parties and Elections Act 2009.

Expiry

This Act will expire on 1st June 2050, unless this section is amended by both the House of Commons and the House of Lords.

The regulations would then read:

For the purposes of Section (1) of the Act, “equality between men and women” is taken to require the introduction of a gender quota to readress the gender imbalance of the House of Commons.

The Gender Quota

For the purposes of Section (3) of the Act, the initial quota will be-

a. 30 percent of candidates put forward by political parties in the 2020 general election must be female.

The quota will then increase to-

a. 35 percent in 2025
b. 40 percent in 2030
c. 45 percent in 2035
d. 50 percent in 2040
(4) For the purposes of this act a “political party” applies to a registered political party putting forward more than 10 candidates

**Exemptions**

(5) Exemptions will be considered by the independent adjudicator for those whose registered gender is not female, but consider themselves to be so. Each decision is for the discretion of the adjudicator

**Conclusion**

This essay has argued for reform of the electoral law of the UK to instate statutory gender quotas. These quotas are necessary to ensure the equal representation of women in the House of Commons, and consequently improve equality between men and woman in British society. These reforms are not long term solutions, but they aim to encourage the participation of women in politics, and to normalise the idea that women are just as capable of running the country as men. Furthermore, it could be argued that better representation of women leads to better legislation for women. Improving the representation of Parliament is a highly salient issue, and it could be argued that further reforms could be considered with regards to improving representation for ethnic minorities, LGBT+ individuals, and those with disabilities.

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