

# Too Important to Leave to Parties: The Case for Constitutionalising Equal Representation

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## Introduction

TWENTY years ago the Hansard Society's independent Women at the Top Commission, chaired by Baroness Howe of Idlicote, concluded that the parlous state of women's political representation in Britain was 'wholly unacceptable in a modern democracy'.<sup>1</sup> In the years since, little has changed at Westminster: women MPs still comprise less than a quarter of the House of Commons. Securing equal representation through the voluntary action of political parties is not working. Such is the miserly nature of progress from election to election that there is now a strong case for moving the focus beyond political parties and instead seeking guarantees in constitutional or electoral law. To do so will require a reframing of the debate about the concepts of equality and political representation with greater emphasis placed in future on democracy rather than meritocracy, and on outcomes as much as opportunities.

## Limited signs of progress

The 2010 general election should have provided a much-needed electoral breakthrough for women. The Speaker's Conference on Parliamentary Representation, held prior to the election, forced all parties to publicly acknowledge and confront the inadequacy of the representation of women in their ranks and commit to improvements in the future.<sup>2</sup> The parliamentary expenses scandal, after which the scale of retirements removed many longstanding incumbents, provided the opportunity for them to do so. The number of women MPs did indeed rise: to 142 (22 per cent)—the highest number ever elected. But this was still only 2.5 per cent more women MPs than in the last Parliament and just under 4 per cent more than won seats in the breakthrough year of 1997. At this rate of

growth (4 per cent every 13 years), it will be another century before parity of representation is achieved.

The under-representation of women in the House of Commons is mapped in the Childs and Evans article in this issue. Without a change in approach, the prospects for any improvement in the short-term are now bleak. The reduction in the size of the House of Commons from 650 to 600 members at the 2015 general election will make it even more difficult than usual for parties to prioritise the selection of women candidates in winnable seats and will therefore limit the possibility of increasing the number of women MPs further. At best, women's representation will flat-line; at worst, it will regress.

Does this matter? Well, in a parliamentary democracy, where the government is chosen from the legislature, more women in Parliament is essential if the voice of women is to be heard at the decision-making table for the purposes of good policy making and good governance. The statistics are sobering, and if elective office were covered by normal employment laws they might well provide a *prima facie* case of discrimination.

At present there are only five female members of the Cabinet and less than 20 per cent of all ministers are women. In the aftermath of the election no women were appointed to the new Coalition Committee or the Coalition Operation and Strategic Planning Group, and of 184 Cabinet Committee and Sub-Committee seats, just 32 were occupied by women ministers. There were no women at all on the Economic Affairs Committee, the Banking Reform Committee and the Public Expenditure Committee (see Annesley and Gains in this issue). It should not be a surprise then that the coalition's austerity measures are deemed to be having a highly disproportionate and damaging impact on women and that consequently the government is perceived to

have a problem engaging with female voters. The results of the latest annual Audit of Political Engagement appear to bear this out.<sup>3</sup> In the event of an immediate general election, only 45 per cent of women report that they would be certain to vote (a drop of 14 percentage points in a year) compared to 51 per cent of men who claim the same. This is something of a recent turnaround as women have generally been more certain to vote than men across the Audit lifecycle dating back to 2004.

We cannot really claim to have a representative democracy when the gender of 51 per cent<sup>4</sup> of the population is reflected in only 22 per cent of the representatives in Parliament. The inequity is too large to be brushed aside when women are not a discrete minority, but the majority demographically. There are some who argue that inequalities in class representation are a more pressing concern. However, the importance of addressing gender inequality is not lessened or ameliorated because other anomalies in representation also exist. That it may be difficult to resolve all the forms of inequality in representation should not prohibit action to rectify one of them.

If one accepts that equality of representation of women and men in Parliament, and by extension in government, is a necessary standard of representative democracy—and the party leaders effectively did so in their evidence to the Speaker's Conference—then having conceded the importance of this outcome it is necessary to will the means to achieve it. It is here, however, that the current arrangements break down: voluntary equality measures adopted independently by each party are not working.

### **Backlash, boom and bust**

Parity is a party choice. Despite the wishful thinking and warm words of the parties there is no evidence that serious progress towards gender equality can be achieved without positive action given the extent of the historic bias towards male candidates and representatives. Yet, there is now a strong backlash against positive action within the parties. Instead of being accepted as an effective corrective or compensatory mechanism, reflecting solicitude for the scale and extent of this historic inequality, most forms of positive action, and quotas in particular,

have become a symbol not of democratic liberation, but of central party control. Rather than being about fair access to power within Parliament and government, the debate too often transforms into one about local constituency party autonomy in which the female candidate is pitched against the local favourite son.

The 2005 case of Peter Law in Blaenau Gwent, who overturned a 19,000 vote Labour majority campaigning on an explicit anti-all women shortlist ticket, powerfully illustrates how fragile the progress in gender representation can be when dissenting voices shake a party's commitment to positive action. Individual cases such as this are held up to media and public scrutiny as evidence of the demonstrable unfairness of quotas, which is of course ironic given that quotas exist purely to ameliorate the *de facto* existence of all-male shortlists across the country.

The 1997 breakthrough of Labour women MPs coupled with the modest gains across the parties in the years since contributed, to some extent, to a draining of momentum from the gender equality debate. When the level of women's representation was grotesquely low it was a clear injustice that had to be addressed and, as such, key political leaders, nationally and locally, were embarrassed into action. Today, the number of women MPs is no longer bad enough that the embarrassment factor applies in quite the same way; the numbers are just sufficient that many people, in the parties and particularly in the media, have concluded that the job is done and the issue no longer needs to be addressed.

Progress is consequently vulnerable both to change within parties that have adopted positive action measures in the past, as well as to the shifting balance of power between the parties when each chooses to adopt different forms of positive action with highly variable success rates. As long as the backlash against positive action continues, there is thus a risk that there will be a constant 'boom and bust' in female representation—this points to the need to move beyond parties as the guarantor of equal representation in the future.

### **Justification and merit**

The equality debate has also evolved such that women are now required to justify their

political existence in a way that is rarely if ever demanded of male candidates and MPs. To some extent, the direction of the academic study of women's political representation has contributed to this development: women MPs elected in 1997 have been placed under a particular spotlight as their work has been regularly considered through the lens of whether they have 'acted for women', and therefore whether numerical or descriptive representation has translated into substantive results. Yet if women are to have true equality of representation, then their automatic democratic claim to fair access to the corridors of power must be asserted. They should not have to demonstrate time and time again that they have 'made a difference' by their presence in ways that are never required of any male MP during the normal course of political and electoral engagement.

The pressure on women MPs to justify their presence in the House of Commons is intrinsically linked to the broader debate about 'merit' in the selection process. Opponents of positive action, particularly quotas, argue that such a system creates a two-tier class of representatives and specifically facilitates the emergence of unqualified, inferior women MPs whose political legitimacy is questionable due to the preferential nature of their selection. Yet it would be hard to argue, for example, that figures such as Anne Begg (current chair of the Work and Pensions departmental select committee), Natascha Engel (current chair of the Backbench Business Committee), and former ministers Fiona Mactaggart and Maria Eagle are somehow sub-standard MPs, unworthy of comparison with their male colleagues, because all were selected as candidates through Labour's all-women shortlists.

There remains within politics—across all parties—a stubborn insistence that selections are always made on the basis of merit as if no incompetent man had ever been selected. In fact, there has never been a genuine meritocracy in political selections; there has always been a preference for something within the system, usually candidates who are white, male and middle-class professionals with a wife and children. For decades, endemic positive discrimination within parties has favoured men regardless of their individual merit. In beating back these arguments cam-

paigners must become more forceful in demanding that defenders of the status quo explain what particular merit male political activists possess, such that they deserve 78 per cent of the seats in the House of Commons.

## The democratic deficit

The debate about why and how to secure equality of representation thus needs to be re-shaped if progress is to be made in the future. Rather than being about local versus central party control, or merit versus preference, the debate needs to be refocused on the central principle that inequality of representation constitutes a democratic deficit that needs to be urgently rectified. In so doing, there needs to be a new level of honesty about how this deficit can be reduced. If inequality of representation at the national level is to be corrected it cannot be done in a way that always guarantees equality of opportunity in each local constituency. Competing perceptions of equality thus need to be confronted: is it more important to secure equality of representation at the national democratic level within Parliament or equality of opportunity within local constituency party processes?

Hansard Society research suggests that the public value the concept of democracy more than they value party politics; presenting the case for equality of representation through this prism may therefore command greater popular support in the medium-to-long term. The particular role occupied by Parliament at the heart of our democratic system also mitigates in favour of the prioritisation of equality here rather than at the constituency level. As the country's lawmaking body, where it leads others will likely follow. It is not unconnected that in other areas of the political system the representation of women is often as bad if not worse than the situation at Westminster. Nor can Parliament expect to force other sectors of society—for example, the boardrooms of FTSE 100 companies, or the higher echelons of the professions—to increase the representation of women, including by threat of legislative action if necessary, if the political parties are not prepared to do the same in relation to representation in the House of Commons.

## Legislative guarantees

The three main parties have had ample opportunity to demonstrate that their blend of voluntary measures work; we need to move beyond the penumbra of party activity to explore how the law can be used to advance political equality instead. Constitutional or legislative guarantees will not deliver change overnight, but more progress may be made by obliging parties to act through a new framework of legally enforceable rights.

The United Kingdom is a supporter of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which commits all signatories, under Article 5, to taking all appropriate measures to achieve the elimination of prejudices and practices which are based on the inferiority or superiority of either of the sexes or on stereotyped roles for men and women. The Speaker's Conference report points the way: it called for consideration to be given to prescriptive quotas if the political parties failed to make significant progress on women's representation at the 2010 general election, ensuring that all parties adopt some form of equality guarantee in time for the next general election.

Historically there have been concerns that legislative quotas or similar would fall foul of anti-discrimination or human rights law or European regulations such as the Equal Treatment Directive. In legal terms, however, elected representatives have been deemed to be 'office-holders' rather than employees and therefore not subject to employment law and related anti-discrimination provisions in the same way as other occupations and professions. And six European nations have now introduced some form of legislative quota: Belgium (2002), France (2000), Portugal (2006), Slovenia (2006), Spain (2007) and most recently Ireland (2011–12)—indicating that any legal hurdles can be overcome if there is the political will to do so.

Legislative quotas are not a panacea; they need careful implementation if they are to be successful. But there are lessons to be learnt from these European exemplars that should be borne in mind when shaping a model suitable for the United Kingdom's political culture and electoral system. First, what should the quota target be? Belgium requires

an equal 50 per cent share of women and men on their party candidate lists, while France also adopted a 50 per cent goal for the overall number of party candidates. Generally, however, lower targets have been set. In Spain the target is 40 per cent, in Slovenia 35 per cent and in Portugal 30 per cent. Legislative quotas in a first-past-the-post electoral system are much harder to deploy than in proportional systems that, for example, permit zipping of candidates on a party list. In the United Kingdom, therefore, imposing a 50 per cent target—of either total candidates or elected members—would be incredibly difficult for parties to achieve. In contrast, a 40 per cent target for male and female members would grant the parties some degree of flexibility and allow them to determine within their own particular culture, structures and procedures how they would meet this target.

Consideration should certainly be given to the twinning of constituency selections across the country to enable party members to vote for both a male and a female candidate at the same time. This would serve to take some of the sting, and potential resistance, out of the problem at the local level; the selection of male and female candidates within parties would be rooted in partnership rather than competition. Given their declining membership levels, political parties are becoming hollowed out organisations and the selection of parliamentary candidates based on the votes of perhaps no more than 30–40 members in any one constituency is an increasingly indefensible proposition. Twinning constituency selections would therefore offer considerable organisational and political advantages.

If legislative quotas are to work then it is vital that the sanctions for non-compliance are effective. In many instances, financial sanctions are applied. In Ireland, it is proposed that any party not meeting the 30 per cent target quota will see its public funding reduced, potentially by half. Financial sanctions must be sufficiently acute that parties cannot afford to resist them: in France, for example, the larger parties have been willing to pay the fines rather than meet the quota (see Murray in this issue). In Belgium, the number of candidates can be limited, and in Slovenia and Spain, approval of the candidate lists can be withheld by the electoral author-

ities. Again, given that United Kingdom parties do not all receive significant state funding and there are no party lists to approve, such sanctions would not be suitable. An alternative would be for a heavy fine to be levied on any party that did not meet the quota; perhaps determined as a percentage of the party's annual turnover.

How long would legislative quotas be required? They could be introduced on a permanent basis or for a set number of elections. As cultural, political and organisational change is required, they would probably need to be used in at least four general elections spanning a fifteen-year period and possibly longer. But a sunset clause could be included in the legislation to allow for review after the agreed number of elections with the option to renew the provisions by order if desired.

Finally, and with an eye to the renewed focus on the framing of the equality argument around democratic principles, the word 'quota' should be abolished. Utilising it identifies women as a distinct political category, one that can be set alongside and compared with other political categories that are not men. What is proposed is the selection and subsequent election of women and men on an equal basis, not the separate or preferential treatment of women. The word 'quota' also implies a set contribution or entitlement and is often treated as a ceiling; in contrast the 40 per cent target in this model would be a floor in representation levels for both women and men. In the United States, the Democratic party has utilised the concept of 'equal division' when allocating positions on party committees, and in France, in order to restrain

opposition to the quota legislation, President Jacques Chirac insisted on the use of the language of 'equal access'. A similar form of language should be adopted in the United Kingdom in order to more clearly communicate the underlying purpose of the legislative guarantee.

Such changes to the rhetoric that inspires and the arguments that underpin the case for improved women's representation are now urgently needed if electoral progress is ever to be more than sputtering. Parliamentary democracy has long had its imperfections and politicians have always had to chart a difficult course between clashing interests and the variable needs of different sections of the populace. Resolving the inequity of women's representation in Parliament is no different; the political parties have had their opportunity to put the problem right and have failed. It is therefore time to embrace the reality that the principle of equal representation of women is too important to continue to be entrusted solely to their care.

## Notes

- 1 Hansard Society, *The Report of the Hansard Society Commission on Women at the Top*, London, Hansard Society, 1990, p. 4.
- 2 House of Commons, *Speaker's Conference (on Parliamentary Representation): Final Report*, January 2010, HC 239-1.
- 3 Hansard Society, *Audit of Political Engagement 9*, London, Hansard Society, 2012.
- 4 The figure of 51 per cent is based on the Office of National Statistics' 2010 mid-year population estimate.