

COMMENTARY

Electoral Quotas: Should The UK Learn From The Rest Of The World?

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The Speaker's Conference

UK Prime Minister Gordon Brown would surely love his political legacy to include a significant contribution to constitutional reform. Certainly he inherited, on succeeding Tony Blair in 2007, a substantial agenda of unfinished constitutional business: devolution, House of Lords reform, the electoral system, a bill of rights, a written constitution. Two years on, though, major progress on any of these 'big' topics seems most unlikely before a probable 2010 General Election. Which might mean a rather modest constitutional legacy, based mainly on bringing some prerogative powers under MPs' scrutiny and control, and, in other comparatively minor ways, boosting the role of Parliament. One such low profile, though not unimportant, initiative is Brown's revival of the Speaker's Conference, a constitutional device that many supposed had become extinct with the creation in 2000 of the Electoral Commission.

They were always rare, but there were five occasions during the 20th Century when the Prime Minister asked the Speaker of the House of Commons to establish and chair conferences of selected parliamentarians to reach all-party agreement on reforms to electoral law. The first, and arguably most successful, was in 1916-17, its recommendations resulting directly in the 1918 enfranchisement of women over 30. The 1965-68 Conference played a part in Britain becoming the first West European country to lower the minimum voting age from 21 to 18. The present Conference is the sixth, proposed by the Prime Minister and approved by MPs in November 2008. Chaired by Speaker Michael Martin, its central task is to:

“make recommendations for rectifying the disparity between the representation of women, ethnic minorities and disabled people in the House of Commons and their representation in the UK population at large.”

The Conference is, of course, anything but the first body to address the topic of representational disparity or diversity in UK governmental institutions, but it is the first of such standing whose whole presumed *raison d'être* is to make recommendations for statutory change. Redressing the under-representation of minority groups, the PM appears to be suggesting, requires more than the well-meaning exhortation of party leaderships and the campaigning of interest groups. It may demand reform of the electoral system itself and of electoral law. And, turning to the focus of this commentary, if that is the case for parliamentary representation, why should it not also apply at local level – at least in England and Wales, whose councils are elected by exactly the same plurality or ‘First-Past-The-Post’ electoral system as the House of Commons?

The statistics of representational disparity

The disparity referred to in the Conference’s terms of reference is easily demonstrated. There are a rather extraordinary 646 Members of the UK Parliament’s lower, elected chamber, the House of Commons, 125 or 19% of whom are women. Of the 193 Conservatives, just 17 or under 9% are women, compared to Labour’s 94 or 27% – thanks in part to Labour’s use of all-women shortlists, as described below. The 19% total puts the UK 60th out of the 188 countries in the Inter-Parliamentary Union’s ‘league table’ of the percentages of women in the world’s national parliaments – a table headed by an assortment of countries united only by their cultural, constitutional or statutory commitment to promoting women’s electoral prospects: Rwanda (56% women MPs),

Sweden, Cuba, Finland, Netherlands, Argentina (40-47%), Denmark, Angola, Costa Rica, Spain, Norway (36-39%) (see Game, 2009, p.167).

There are 15 black and minority ethnic (BME) MPs: 13 Labour and two Conservative – 2.3% compared with 8% of the UK population as a whole. The number of known disabled MPs is smaller still – partly because of those who, like the PM himself, blind in his left eye following a teenage rugby accident, simply don't regard or declare themselves as impaired. Even with this qualification, though, the true figure would most likely be well below the 9.5% of adults describing themselves in the 2001 Census as having “a long-term illness, health problem or disability” that limited their daily activities or the work they could do.

On all three characteristics, local councillors are more reflective of their electorates than are MPs, although especially in the case of women the disparity is still both substantial and seemingly entrenched. In 2008 the proportion of women among the 22,300 councillors on Great Britain's 442 principal local authorities reached, for the first time, 30% (LGA/IDAA 2008). It had taken exactly 100 years – since the 1907 legislation permitting the election of women to all-purpose local councils – to reach this symbolic milestone (Game, 2009, pp. 154-57). At recent rates of progress, it would take most of a further century to approach gender parity. At least women's representation is increasing. The proportion of BME councillors is currently falling – from 4.1% in 2006 to 3.4% in 2008 – although most of this reversal is attributable to the Labour Party's heavy loss of seats in all recent sets of local elections. Interestingly, the 13.3% of self-declared disabled councillors is actually higher than the 9.5% Census figure.

These representational disparities can be seen as direct consequences of the major parties' largely unregulated candidate selection markets, and, just as with financial markets, it seems that at least some of our politicians, albeit late in the day, are coming to recognise that perhaps there is a case for greater intervention in these markets, and maybe even recourse to the law. For the evidence strongly suggests that almost all the countries that have managed noticeably to increase the electoral chances of under-represented groups have done so through electoral systems and regulations that foster that objective. The UK, on the other hand, has historically had an electoral system that restricts representational diversity, reinforced, in respect of the operation of its parties, by a *laissez-faire* political culture.

Electoral engineering and the representation of minorities

Just as civil engineers design houses, roads and bridges, electoral engineers design electoral systems. Given the specifications, they can produce systems to achieve almost any desired outcome: simplicity, proportionality, inclusiveness, ‘strong’ and stable government, higher turnout, voter choice, minimal vote wastage, exclusion of extremists – including the outcome that concerns us here: increased representation of previously under-represented minorities (‘minority’ being used here of women in obviously a purely representational sense). The world’s leading electoral engineers are the International Institute for Democracy and Electoral Assistance (see, for example, IDEA 2005) and it is their approach that is summarised here.

The IDEA design model comprises three main electoral system variables:

- District magnitude – the number of representatives elected per electoral division at any particular election
- The formula – that determines how the winner or winners are decided
- Ballot structure – whether the elector votes for a candidate or a party, and whether they make a single choice or can express a series of preferences.

Each variable can have its impact on the chances of minority group candidates being nominated and elected. With district magnitude, for example, multi-member constituencies permit party selectors to nominate a list of candidates. To maximize the appeal of their list, they are more likely, the reasoning goes, to nominate a diverse, ‘balanced’ slate than if they were picking just one candidate. The greater the district magnitude, the longer will be the party lists of nominees, and the greater the likelihood of candidate, and eventually representative, diversity.

Bringing the three electoral system variables together, both a priori reasoning and the international literature (DCLG, 2007b, pp. 22-24) suggest that party-centred, multi-member constituency systems of proportional representation (PR) are the most favourable combination for the election of minority group representatives. As for the least favourable combination, the picture is even more clear-cut: it is the mostly single-member constituency, candidate-centred plurality systems that until recently were all that voters in Great Britain had experienced: “This is a global tendency. Women’s representation in parliaments in the world is around twice as high in countries with PR

electoral systems as in countries that use majority/plurality electoral systems” (European Parliament, 2008, p. 10).

Since 1998, however, elections in parts of the UK have been transformed. The new devolved governing bodies – the Scottish Parliament, the National Assembly for Wales, the Northern Ireland and Greater London Assemblies – are all elected by PR systems based at least in part on multi-member constituencies. And in 2008 Scotland changed its local electoral system from FPTP to the more proportional Single Transferable Vote (STV) – a candidate-centred system, but one also requiring multi-member constituencies.

The case for electoral reform was naturally, therefore, among the topics addressed by the Councillors Commission, set up in 2007 with effectively a local government version of the Speaker’s Conference brief: to identify barriers deterring people from standing for election as councillors and to recommend ways of increasing councillor diversity. A key recommendation of the Commission was that, following Scotland’s change, English councils should be able at least to pilot STV (DCLG 2007a, Rec. 21). Despite her professed commitment to both the principle of local experimentation and the cause of councillor diversity, Hazel Blears, the cabinet minister responsible for local government, chose to reject this recommendation, among others, in the Government’s official response to the Commission (DCLG 2008, p. 67). Northern Ireland councils have used STV since 1973, now all Scottish councils, but no English council was to be allowed even to test it. One implication of which would seem to be that, if any marked improvement is to be made in the so-called ‘descriptive representation’ of our councils – looking, feeling and acting like the people they purport to represent – English reformers, like those in new and transitional democracies unwilling to take the Scandinavian incremental track to equal political representation, may have to look to quotas.

Quotas – how they work

Electoral quotas are a form of affirmative action to help under-represented groups overcome obstacles preventing them from participating in politics to the same extent as certain other groups. They entail specifying that the under-represented group must constitute a certain proportion of the members of a body – a party’s candidate list, an elected assembly – and, for the policy to be effective, specifying also the sanctions for non-compliance. The idea is to bypass the endless debates about why the under-representation exists, and place the responsibility for redressing it not primarily on

members of the under-represented group themselves, but on those who control the recruitment process.

The recent spread of electoral quotas has been such that, while the simile is hardly a very positive one, it has been likened to a fever or epidemic. There are several different types, but, following Dahlerup (2006, p.19), they can be usefully arrayed along two dimensions: the body responsible for the quota system, and the part of the electoral process – nomination, selection, and post-election – that the system targets.

Legal versus voluntary quotas

Legal quotas are either part of a country's constitution or established through election law. They apply to all political parties and organisations participating in the specified elections, and should stipulate penalties for non-compliance: fines, candidate disqualification, and ultimately disqualification of the offending party. If effectively enforced, they can provide, as in countries as diverse as Rwanda, Costa Rica, Spain and South Africa, what Dahlerup calls a fast track to more equal representation. According to the IDEA's *Global Database of Quotas for Women*, 15 countries in 2009 had constitution-based quotas for their national parliaments – including five Commonwealth nations: Bangladesh, Guyana, Kenya, Tanzania and Uganda – and 45 (in some cases the same countries) had quotas based on election law. Legal quotas operated at the sub-national level in 34 countries, the Commonwealth represented in this instance by Bangladesh, India, Lesotho, Namibia, Pakistan, Sierra Leone, South Africa, Tanzania and Uganda.

Voluntary quotas are those adopted and set voluntarily by political parties. They may exist alongside legal quotas, but otherwise they are not legally binding and there are no sanctions to enforce them. The IDEA listed 169 parties in 69 countries claiming to use voluntary quotas. Many of these countries are European, including about two-thirds of the 27 European Union members, and, ever since quotas were first introduced in Scandinavia in the 1970s, reliance on the commitment and integrity of political parties has traditionally been the preferred European way. But, although it has received little attention so far in the UK, Europe is changing. Belgium led the way, introducing a gender equality law in 1994 that was subsequently strengthened and extended to all elections. France followed in 1999 with a 'Parity reform' amendment of the Constitution,

and since 2005 Slovenia, Portugal and Spain have all passed equality laws that are binding on all political parties.

Results-based versus pre-selection quotas

Results-based quotas ensure that a certain number or proportion of seats in an elected body is reserved for women or other under-represented groups. These may be filled either by regionally selected representatives or by political parties in proportion to their overall share of the national vote. Pakistan is the longest-standing user of reserved seats for women, successive constitutions from 1954 providing for a proportion of reserved seats in the National Assembly (60 in the 2008 elections) and also in provincial assemblies and local councils. Uganda, though, has extended its use to probably the largest number of separate minorities, reserving seats in Parliament for women and for representatives of the youth, the disabled, workers, and the army, and also, on district councils, for the elderly (see Kiyaga-Nsubuga and Olum, 2009, p.32). Another device is the women-only ballot, the principal means by which Rwanda leapfrogged to the top of the IPU world rankings at a single election – the ballot accounting for 30% of the available seats. Some Indian states have similar systems for local elections – alongside, incidentally, two-term limits that apply to men only. For obvious reasons, results-based quotas tend to be entrenched in either constitutional or election law.

Nomination and selection quotas are applied at some stage during the candidate selection process, the aim being to make it easier for women to be selected as candidates in winnable seats or, in party list systems, to be placed in a favourable position on their party's list. The most common variant, except in the UK, is the specification of a minimum percentage of women to be included in a party or candidate list. Zipping – or the zebra system, as it is pleasingly known in some African countries such as Namibia – is also quite widespread, requiring that places on a party or candidate list be allocated alternately to men and women. In the UK it was used by the Liberal Democrats in the 1999 European Parliament elections, and subsequently in the regional lists in elections to the Welsh Assembly.

Quotas for UK elections?

Electoral quotas confront a double obstacle in countries like the UK with candidate-centred plurality electoral systems based nationally and mostly locally on single-member constituencies. These countries' choice of system in the first place reflects a preference

for elections that produce strong, preferably single-party, majority governments, rather than a proportionate representation either of the range of competing parties or of specific groups within the electorate. Secondly, this ideological distaste for minority representation is reinforced by the very nature of the electoral system, which makes it difficult to apply quotas in any case. Indeed, if you are selecting only a single candidate for a single electoral district, it is not just difficult, but impossible, to introduce both men and women at the same time as in a party list system.

If there is to be external intervention, it effectively has to come at the nomination stage of the candidate selection process, and the most noteworthy example in the UK has been the Labour Party's use of all-women shortlists. There had been previous, not conspicuously successful, attempts by parties to require the inclusion of at least one woman on candidate shortlists, but, in the run-up to the 1997 General Election, Labour adopted a policy of requiring that all-women shortlists be used to select candidates in half of all vacant seats that the party was likely to win. It was, unsurprisingly, extremely controversial and in 1996 was contested – by two 'excluded' male candidates claiming, to the satisfaction of an industrial tribunal, that the lists were themselves in breach of the Sex Discrimination Act. However, 39 women candidates had already been selected, 35 in seats the party judged winnable, all of whom were elected.

The two other major national UK parties – the Conservatives and Liberal Democrats – are both opposed to such forms of affirmative action, and neither has sought to use it even since it was legalised in the Sex Discrimination (Election Candidates) Act 2002. It was Labour also, therefore, who, for the first elections to the Scottish Parliament and the Welsh and London Assemblies (1998-2000), introduced a system of twinning. Party members of two neighbouring and comparably winnable constituencies met together jointly to select their candidates, with the requirement that one be a man and the other a woman. In 2004 the party instituted all-women shortlists for local government elections, and they were also used in the 2005 General Election.

Which brings us back to the potential importance of the Speaker's Conference, and the tradition that such conferences are expected to make recommendations specifically about changes in the law. The 2002 Act did the immediate job it was designed to do – namely to exclude from the purview of the Sex Discrimination Act any action by a political party to reduce inequality in the numbers of men and women elected to political office. Parties

could, if they chose, use devices like women-only shortlists. But it was entirely permissive – so innocuous, in fact, that the Conservatives and Liberal Democrats did not even oppose it. For reformers, therefore, it was a prescriptive opportunity lost: an opportunity to compel parties to adopt positive action to reduce inequality, to set candidate diversity targets for other groups as well as for women, and to institute a tariff of financial penalties for non-compliance. They will be expecting such questions to feature on the Speaker's Conference agenda.

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