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Author(s): Häkkinen, Teemu

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The concept of the Royal Prerogative in parliamentary debates on the deployment of military in the British House of Commons, 1982–2003

Teemu Häkkinen, University of Jyväskylä

Abstract

The article will discuss how one political key concept, the Royal Prerogative, was discussed in the British House of Commons in relation to the right to deploy and use armed troops abroad during the period 1982–2003, a time when the role of the British Parliament in decisions to deploy and commit troops to an armed conflict abroad was under extensive discussion in Parliament. This discussion began increasingly to address the state of the constitutional arrangements, more specifically the redefinition of the Royal Prerogative rights, the residual powers of the executive, as outdated in the understanding of modern representative democracy. The use of the concept was studied to reveal the attitudes towards the constitutional state of the country. However, the legal implications of the concept remained unchanged despite such criticism. The discussion on the role of Parliament consequently bypassed the concept and focused on the parliamentary convention defining the role of the House of Commons to emphasize a prior role instead of a retrospective role.

Keywords: royal prerogative, the British Parliament, constitution, foreign policy, defence policy

If there is one concept in the British political vocabulary that symbolizes war, it is the concept of the Royal Prerogative, the concept referring to a set of powers enabling the executive branch to deploy troops abroad. In this article I will argue that in the period 1982–2003 the concept increasingly acquired negative connotations in terms of waging war and in terms of how Parliament was perceived as a part of the decision-making. The concept was linked to the question of constitutional change to improve parliamentary opportunities to decide about the use of British troops in combat operations. Furthermore, I will

also argue that the discussion of the concept did not lead to the constitutional change embedded in restricting the usage of the Royal Prerogative, and the *de facto* strengthening of the parliamentary role came about by changing parliamentary practice. As a result the concept of the Royal Prerogative was partly bypassed in the war-related political discussion.

For members of parliament (MP), only few matters may be graver than the idea of the country going to war. In the period 1982–2003 Britain participated in many conflicts. First of all, Britons waged a defensive war in the Falkland Islands in 1982 and a second war as a part of a larger coalition to stop an Iraqi aggressor from gaining benefit from its illegal occupation of Kuwait in 1990–91. Britain also participated in two major conflicts as result of the terrorist attacks against the United States in 2001. The first of these conflicts was the Afghanistan War beginning in 2001 and the second the Iraq War beginning in 2003. In addition with these, Britain participated in the war in Kosovo in 1999 as a part of a NATO operation, deployed troops to Sierra Leone and the former Yugoslavia and bombed Iraq in December 1998. Within the United Kingdom's own borders, there was a significant military deployment in Northern Ireland in order to curb violence. Perhaps the frequency of war in parliamentary politics has led to war being a rather typical decision under foreign and defence policies. As MPs have increasingly become professional politicians, war and the military have tended to become more remote from the lives of politicians. (See Riddell 1996, 84–187)

Perhaps so, but as a decision-making process, the decisions on how Britain goes to war have undergone a profound transformation, a change that casts the argument of a weakening legislative branch in a new light. (Häkkinen 2014, 264–275) As a result of this change, the British House of Commons has become a forum in which decisions to deploy troops abroad have to be authorized before an outbreak of hostilities; a radical change in the parliamentary practice compared to the situation, for example, in the 1980s. This was a result of a change in parliamentary convention, which dictates whether the House of Commons should have a chance to vote on war before or after the hostilities, and if so, whether by means of a technical or substantive motion. As late as in August 2013 this convention was reinforced, and in fact placed in the political spotlight in quite a dramatic vote over military intervention in the Syrian Civil War. The debate culminated in a division in which the Government's motion to accept its legal grounding to intervene the Syrian Civil War was rejected by a parliamentary majority with margins of 13 votes (272 in favour, 282 against). (HC Deb 29 August 2013, Vol. 566, Part No. 40, C 1551. Division No. 70)

The discussion on the role of Parliament is above all discussion on policies, but simultaneously a discussion on the constitutional positions of the legislative and the executive. At the heart of the uncodified British constitution lie the fundamental political concepts that reveal the features and principles of

the political system. The Royal Prerogative as a political key concept is the one which is addressed if the roles of different branches of power are challenged within the British political system, a part of the discussion on attitudes towards how Parliament should be able to act in decisions to deploy armed forces abroad.

The Royal Prerogative refers to the prerogatives of the Monarch, as the concept itself suggest. It is royal in nature and in contemporary Britain the Monarch continues to personally exercise certain Royal Prerogatives, such as the prerogative to grant honours, when most exercise of any Royal Prerogative right has been transferred to the Government led by the Prime Minister. However, in terms of deploying the armed forces, the Royal Prerogative relates to rather more profound issues and many of these rights are, in fact, related to the implementation of foreign policy. According to A.V. Dicey, the Royal Prerogative is a name for the residue of discretionary power that is still legally in the hands of the Crown and was, at least for Dicey, a supplementary means to actually strengthen the authority of the House of Commons. (Dicey [1915] 2010, 282; Richards 1967, 37) They were, and still are, difficult to define in a comprehensive way. (Blick 2005, 54) The Royal Prerogative defines powers between the executive and the legislature, and was both set and limited in 1689, with the passing of the Bill of Rights. The Royal Prerogative referred to a much older set of prerogatives exercised by the Monarch; for example the right to maintain a standing army was in itself considered a prerogative. The role of Parliament was defined to be that relating to taxation and as such being fundamental for both maintaining an army and going to war. (Jupp 2006, 7; Barnett 1970, 122–124) Constitutionally speaking the British political system and the underlying constitutional arrangements are consists not only of the Royal Prerogative, but of different laws and principles in addition to parliamentary conventions - it is parliamentary practice that matters as well.

In order to conduct the study, the verbatim records of the House of Commons, the lower chamber of the British Parliament in Westminster, were used to analyse the use of the concept of the Royal Prerogative during the period 1982–2003. Attention will also be paid to on other types of material if need arises, including other official publications. The material used has been digitalized and published in open access format via Internet. The database on parliamentary debates provides almost 100% coverage of the debates since the late nineteenth century and requires only limited external source criticism. However, in terms of what the sources provide, the political nature of their origins is the source of the main challenges. First I shall discuss the methodological framework used to shed light on key details of parliamentary debate, after which the attention will be directed to the empirical findings.

Methodological reflections

Parliament as an institution emphasizes debate and in Britain the role of Parliament has occasionally been seen as controlling government through discussion. Through debate, Parliament not only carries out its legislative processes but also voices the opinions of the electorate. (Bagehot [1873] 2000, 119) Speaking goes beyond mere oratory, i.e. speaking eloquently, and focuses on debate in which political struggles are conducted through dialogue with other MPs. As Kari Palonen has argued, the distinctive feature of the parliamentary style of politics is the debate *pro et contra*, for and against issues that are representing different points of view on the matter. (Palonen 2008, 82–103; Palonen 2012, 21) In terms of making the use of language the key research theme, the attention can be focused on parliamentary discourse on specific topics. The term discourse is used not to refer to discourse analysis as such, but to discussions on certain topics that creates a discourse focusing on certain issues.

Constitutional discussion as such can be performed through *pro et contra*, but matters relating to going to war produce a different *topos* for political debate. A good example of a different linguistic context is that relating to the traditional perspectives on politically accepted topics: for example, when the military is at war, the electorate and the nation in general are expected to rally behind the flag and to support Government in its efforts to prosecute the war. (Lai and Reiter 2005, 256) However, speaking on political preconditions for decision-making can produce a totally different topic, more easily accepted by fellow MPs. As for constitutional discussion as general theme, the House of Commons provides a logical forum for such discussion, also from the historical point of view. (Norton 2011, 2) The actions of members of parliament, such as submitting motions or trying to force a division, are quite straightforwardly linked to their opportunities to speak on different issues. In the British case the opportunity to speak existed, in spite of certain institutionally or self-imposed restrictions, as will be discussed in the empirical section.

To locate the study of parliamentary debates as a part of the study of the deployment of the armed forces, three different modes of operation can be identified related to the uses made of Parliament and parliamentary debates. It is frequently difficult to draw clear distinctions, but these general attributes are discernible. Firstly, the debates are part of the study but carry very little meaning. The main attention is devoted to the decision-making as a whole, with the procedural aspect becoming the most essential, as in Johan Matz's (2013) study on Swedish decision-making on international armed missions. (Matz 2013, 186–201) This is an important approach as such because it focuses on the role of Parliament and provides opportunities to examine the role of Parlia-

ment in a comprehensive way. Secondly, the extracts of parliamentary debates are used when they include the actions of prominent parliamentarians, such as party leaders. Otherwise the analysis is based on a wider variety of sources. Nigel D. White's (2009) work is a good example of this way; another example can be found in Robert Johnson's *Congress and the Cold War*, in which attention is paid to parliamentarians in a very broad form; the debate in plenary sessions is relegated to the sidelines because of the importance of other forums for discussion and decision-making. In the third way the parliamentary debates as are taken to be the most important topic for research, as Anna Kronlund (2013) and myself (Häkkinen 2014) have done. In this third way parliamentary discourse as such is the primary focus and is used to reveal certain key perspectives on the institution studied and its members.

In parliamentary history the change in the concept has been a meaningful area to study and will probably continue to be so. The applications of conceptual history are diverse. Pasi Ihalainen, for example, used the concepts to analyse entire political communities instead of only focusing on individual thinkers. (Ihalainen 2010, 1) The use of concepts in historical study has been influenced by both the micro and macro level analysis of the history of concepts and their use in specific temporal and locational perspectives.

In this article the interest was focused on the discursive process concerning the role of Parliament, a discursive process that was related to one key concept, the Royal Prerogative. This approach stems from my doctoral dissertation (Häkkinen 2014) analysing the parliamentary discussion on the role of Parliament in decisions to deploy the military. The development of different discourses is neither straightforward nor linear, as John Pocock has stressed, but rather a complex dialogue of different patterns of language, also related to the way in which the institution as a forum for debate influences its members. (Pocock 1988, x; Pocock 1973, 28–31) The use of concepts points towards the opinions contemporary speakers considered important; as such, concepts serve more as factors of social reality and as pivots and indicators of political thought, as Reinhart Koselleck shows. (Koselleck 1996, 61–65; See also Wiesner 2012, 255–261) The decision-making on deploying troops abroad in order to, at least potentially, conduct combat operations against an opponent affords opportunities to discuss many details, from strategic objectives to relations between different countries, in addition to the discussion on more pragmatic details, such as on the troops to be deployed. If one concept is used to pinpoint this discussion, the ideas concerning that concept can be found in relation to the deployment of the military. Through means of contextualization attention was directed to how the prevailing political situation influenced the use of the concept.

As was discussed regarding the Royal Prerogative, the British political system has been executive oriented when it comes to the deployment of the armed

forces. It has fallen to Parliament to decide on the budget and provide the support for the Government, but the modern party system has tended to support the Government in power in the House of Commons. This has effectively limited the real possibilities to challenge the Government on military operations and to challenge the budget. As was the case in the period studied, military operations are financed through an already existing emergency fund. Other moments of major parliamentary role have focused on holding the Prime Minister accountable, as can be argued to have been the case in 1940, with the resignation of Prime Minister Neville Chamberlain (Smart 1998, 215–243) or with Prime Minister Anthony Eden and his resignation in 1957 after the failed military operation in Suez. At that time surviving the vote of confidence in the House of Commons turned out merely to be a proof of the capabilities of party discipline. The lack of real support within the Conservative Party was linked to the conduct of the military operation. (Kyle [1991] 2011, 488–492) This, the way in which Parliament has been able to be a part of the decisions, has been the situation since the nineteenth century. However, in terms of the royal prerogative as the one defining the roles of the legislature and the executive, the situation has not been stable but a context-bound dynamic process.

The Royal Prerogative as the traditional setting

Different parts of the Royal Prerogative have been changed over the years, as, for example, when it comes to the direct influence exerted by the Crown over the administration of the army; this political discussion has also included the role of the Crown in British society. (Omond [1933] 2009, 30–33, 140–157) The discussion on the Royal Prerogative had not surfaced in previous decades, not least in relation to the use of military force. It appeared to be too radical to challenge this set of rights. For example, the Suez Crisis in 1956 led to only one occasion when a reform of the Royal Prerogative was referred to. This sole instance occurred after the crisis was over, when Prime Minister Harold Macmillan, in response to a written parliamentary question, rejected the idea of introducing reforming legislation. (HC Deb 22 January 1957 vol 563 cols. 5–6W) As Peter G. Richards noted in 1967, the use of the Royal Prerogative rights were linked to the question whether the Government enjoyed the support of Parliament. Without support, a decision to enter into hostilities without parliamentary consent could lead to a significant reduction of support. (Richards 1967, 38–39) It also seemed that the situation was considered to be rather good because there were no efforts to challenge the system. Perhaps the political discussion was happy with this fact for decades, but this point of view ceased to be accepted by the end of the 1980s.

To locate the discussion on this concept in the 1980s, certain main findings can be mentioned: (i) an increase in criticism by individuals of the rights underlying that concept, (ii) an increase in criticism by individuals regarding the state of the political system as a whole. A good example of this was Charter 88, an all-party group campaigning for major constitutional reform in Britain which was only partly parliamentary in nature. (Brazier 1998, 12) Thirdly (iii), the Labour Party started to redraft its agenda on the political system at the end of the 1980s. These processes were intertwined and formed a cumulative process in which the concept was discussed in terms of deploying the armed forces.

Individuals played a major part. A former member of the Cabinet, Tony Benn (Lab., Chesterham) first referred to “elected monarchy” in 1980, when he published an article in *Parliamentary Affairs*. On this occasion his main focus was on how political parties were able to dominate Parliament and how party leaders were able to dominate within parties; both issues he considered to have negative meaning in terms of Benn’s understanding of democracy. (Benn 1980, 7–22) The use of the concept in the plenary debates of the Commons was infrequent and occasional without clear influences from the political context. In the House of Commons in 1981 another Labour MP, Eric Deakins (Waltham Forest Walthamstow) asked whether the Royal Prerogative could be placed under statutory authority, but this was turned down by the Government. (HC Deb 16 April 1981 vol 3 cols. 256–7W) The war in the Falklands was waged with a minimal parliamentary role and the role of Parliament was conferred to showing its support in debates. The only real challenge to the Government occurred in May 1982, when the opposition showed interest in including Parliament to diplomatic negotiations. Prime Minister Margaret Thatcher rejected this and referred to the role of Parliament as that of giving its judgment afterwards. (HC Deb 11 May 1982 vol 23 col. 597–598) During the plenary debates the Royal Prerogative was not discussed.

The war nevertheless gave reason to ask whether the Royal Prerogative and ministerial accountability provided the relevant safeguard for civil control over the armed forces, as Benn did - did the existence of the Royal Prerogative mean that the armed forces were loyal to the Crown rather than to the electorate? (Benn 1982, 51–52) To provide an overview of the political attitudes towards the concept of Royal Prerogative, the Falklands War serves as the beginning of the study because it (i) included the traditional use of the Royal Prerogative rights, (ii) did not include any major discussion on the concept itself, (iii) showed that Parliament as a whole was in a retrospective role. The Government and the Monarch exercised the powers of the Royal Prerogative that were at their disposal and Parliament provided the scrutiny. War, although this as a concept was used only in a very limited fashion, was area for the executive role.

What followed was that the 1980s featured problems within the British economy and various social problems, in addition to successive general election victories for the Conservative Party. As a result, the political system was critically discussed. The same applied to the concept of the Royal Prerogative. In the House of Commons in 1988, the tercentenary debate on the revolutions of 1688–89 showed the critical atmosphere prevailing in the Commons. Neil Kinnock, the leader of the Labour Party, voiced a need to further advance ideas of representative democracy in Parliament, when he called for “getting rid of residual injustices and abuses from previous ages, ancient and modern”. (HC Deb 07 July 1988 vol 136 col. 1236) In the same debate Tony Benn, on the other hand, directly dubbed the Royal Prerogative simply feudal and called for statute law to restrict their control. (HC Deb 07 July 1988 vol 136 cols. 1241–1242) Public support for Benn’s ideas varied, since his opinions on the royal prerogative were related to much larger issues concerning the entire political system and not only to the power rights over certain issues. However, the Royal Prerogatives as such were considered a problem. For example the right to make peace and war was listed as a problem, and a similar idea was implied regarding the presence in Britain of 30,000 US military personnel. (Corbyn HC Deb 07 July 1988 vol 136 col. 1254)

The support for Benn’s position widened as the leftist members in the Labour Party established their Social Campaigning Group to exert socialist political pressure that was especially relevant in the Labour Party. As for parties, the establishment of the Liberal Democrats in 1988 to include the Liberal and Social Democratic Parties continued the agenda to reform the constitutional system; the election system especially being considered unequal. However, in 1989 it was the Labour Party that made the “fullest commitment ever to constitutional reform by either of the two main British political parties” as Rodney Brazier argues. (Brazier 1998, 98, 40) The implementation of foreign policy was also placed on the Party’s political agenda, and for the first time the Labour Party adopted a positive stance on placing the Royal Prerogative rights under parliamentary control; they were planned to be subjected to a major review process. (Labour Party 1989, 56) Even this changed official attitude did not satisfy the left wing within the party, who attacked the party programme and proposed, among other matters, the total abolition of the Royal Prerogative. (Routledge 1989, 3)

Changed attitudes to the concept in the 1990s

In the 1990s, the Royal Prerogative continued to raise comment in the Commons. Benn’s comment on the Royal Prerogative being feudal was reiterated

during the Gulf Crisis. In January 1991 Britain went to war against Iraq because of the occupation of Kuwait, but the House of Commons was given the right to vote on the matter only after the British troops were already in action. The House had been given a technical vote over the crisis, but as such it was not an effective means to show real opposition to the war as the hostilities were known to be imminent. Benn's judgment on the nature of the vote was negative and he considered the issue to be fundamentally related to the Royal Prerogative. (HC Deb 15 January 1991 vol 183 col. 777) Taken together, the Royal Prerogative on decisions and the governmental control over the House's agenda meant that the chances of the House to vote were limited. On 21 January, when the war was on-going, the House was finally given a substantive motion on which it could have a division and to show its support for the troops in action. This, however, was far from satisfying the critical antiwar lobby. "We have had three debates on the Adjournment without substance. Today, we are having a debate without choice", Benn argued. (HC Deb 21 January 1991 vol 184 col. 23) Dubbing the Royal Prerogative anachronistic and drawing attention to how Parliament was being ignored had, as a discourse on Parliament, shifted from the way Benn had talked about the Royal Prerogative only a few months earlier. At the beginning of the Gulf Crisis, a debate in the House of Commons included an occasion in which Benn drew critical attention to the Royal Prerogative, but simultaneously denied the chance that this would be a proper situation to discuss the perceived problems of the Royal Prerogative, thereby himself restricting his opportunity to speak. (HC Deb 06 September 1990 vol. 177 cols. 774–775) As can be seen, the thrust of the criticism was against the content of the policies rather than the decision-making processes.

In relation to the concept being dubbed feudal, it cannot be argued that it was an example of *paradiastole* of the concept's usage in Quentin Skinner's sense. The Royal Prerogative was more related to the stability in the political vocabulary, a set of rights that had existed for centuries. What was happening was that the concept was being redefined to refer to an outdated situation, irrelevant to the needs of a modern representative democracy. As for the criticism of the content of the policy in 1990–91, it is also important to remember that the antiwar opposition was rather small comprising only around 34 MPs as the vote on 21 January 1991 revealed. (HC Deb 21 January 1991 vol 184 cols. 111–113 Division no. 40) Nevertheless they were primarily opposed to the content of the policy. The public attack against the Royal Prerogative both as a concept and as a political element was mounted mainly by Tony Benn, who exercised considerable influence over the left wing in the Labour Party. However, there was a cumulative effect, and this influenced how individual MPs discussed the Royal Prerogative. Graham Allen, another Labour MP with an interest in constitutional issues, submitted a written parliamentary question on the control of the Royal Prerogative as the war was still on-going. The

answer to the question revealed that the Government was not willing to introduce any such convention that would have made it compulsory to notify Parliament when decisions were taken under the Royal Prerogative, nor would the Government introduce any specific legislation to make it a necessary requirement to consult the House of Commons before going to war. This was reminiscent of the ideas of the prime ministers both in 1957 and in 1981 and typical of the traditional thinking: why should the Royal Prerogative be changed since the Government continued to rely on the support of Parliament? (HC Deb 28 January 1991 vol 184 cols. 374-5W) Nevertheless, the use of the concept in argument that either a) challenged the content of the Government's policy or, b.) challenged the legal instrument the concept represented provided a way to imbue the concept with negative connotations.

As for the institutional context and its possibilities and limitations, the attention should focus on how the opposition was able to act; those addressing the problems of the Royal Prerogative were, in most cases, members of the opposition. The Government was clearly reluctant to introduce legislation outside its public agenda, set often at the beginning of the parliamentary sessions. The opportunity to hold debates on a certain theme was limited since only a small portion of the parliamentary calendar was reserved for debates initiated by the opposition. For example, in the session of 1988–1989 there were 20 Opposition Days available, divided among the various opposition groups. (Poyser 1991, 12–14, 20–21) Non-governmental motions under foreign affairs had provided some means to address the issue, although the adjournment debates initiated by backbencher members were able to add further chances to raise important matters. A similar policy continued during the time period analysed. The Speaker of the House logically had an extensive role in deciding who was given a chance to speak, but it appeared that those individuals who might publicly criticize the Royal Prerogative, like Tony Benn, were indeed afforded opportunities to speak. In addition to the debates, the parliamentary questions, presented either orally during Question Time once a week (twice a week during Tony Blair's premiership) or in written format throughout the session, provided a continuing opportunity to bring the Royal Prerogative under discussion or at least to comment on it.

Nevertheless, did it appear that parliamentary control over the Royal Prerogative had become a more generally discussed matter but was this related to the Gulf Crisis? Partially yes, since the war had shown how the Government could exercise power without parliamentary approval and the use of the concept was related to arguments concerning defence and foreign policy. However, in other contexts of the time, the main attention focused on democratic deficits occurring elsewhere. Britain's entry into the Exchange Rate Mechanism in October 1990 showed that not only was European economic integration advancing, but also that it could be advancing through governmental de-

cisions. The Royal Prerogative also gave the right to exercise power in this field. In addition to this understanding, a MORI poll, published on 11 May 1991, clearly showed that the public was expecting an electoral reform that would lead to a system of proportional representation; an issue the Labour Party was demanding. (Linton 1991, 7) To sum up, what was happening was that the increasing awareness of how the nation's defence policy was being decided coincided with perceptions of how the foreign policy decisions were taken as a whole, and it all came down to the concept of the Royal Prerogative that was defining this use of power.

This mood was noted a week later in the debate in the House of Commons on constitutional reform, a debate initiated by backbencher Archy Kirkwood MP (LibDem., Roxburgh and Berwickshire) that featured many aspects of the constitution, and especially foreign policy decision-making in Britain. However, in several speeches, the Royal Prerogative was considered to represent highly negative aspects in executive decision-making, the lack of accountability and parliamentary control. The answer to the question as to how these problems should be dealt with differed, but the view in general was similar. (Benn, Darling, Trimble HC Deb 17 May 1991 vol 191 cols. 551, 561, 577, 599) The Royal Prerogative had both conceptual and constitutional significance that was considered to be in contrast to visions of representative democracy in Parliament. The political system of the time also had its defenders, and these views clashed. In 1993 the Royal Prerogative to conclude treaties with foreign countries was curtailed through legislation; it was made a necessary requirement to have the approval of parliament before Britain could join the third phase of economic and monetary union taking place in Europe. (HC Deb 24 March 1993 vol 221 col. 600W) The discussion on European integration is important to understand in relation to the analysis of the role of Parliament in time of crisis, because it was the same set of powers that defined the roles in both areas of decision-making. Even the critics of the Royal Prerogative only occasionally made distinctions between different areas of its application and treated the Royal Prerogative as a multifaceted problem, but an opportunity to see part of the Royal Prerogative placed under parliamentary control raised the question whether such reform could also be implemented in other parts of this set of powers.

In an adjournment debate, John Garrett (Lab., Norwich, South), the initiator of the debate argued in 1993 that around 1,400 orders had been made under the Royal Prerogative, including issues like the appointment of governors of universities but also issues that related either to international obligations or to citizens' rights. Garrett linked this set of rights to royal absolutism exercised by the Government. (HC Deb 21 April 1993 vol 223 cols. 485–487) The Government's representative referred to the fact that the Government was dependent on parliamentary support; furthermore, the Royal Prerogatives had

been quite similar for centuries when it came to scope or the exercise of these rights. (Wardle HC Deb 21 April 1993 vol 223 cols. 488–492)

Even for the needs of political discussion in Parliament, the concept of the Royal Prerogative was difficult to define. Outside the House of Commons, the Lord Privy Seal Viscount Cranborne defined them as an answer to a written question submitted by Lord Jenkins of Putney within the House of Lords. Viscount Cranborne defined them as: "...those residual powers, rights, immunities and privileges of the Sovereign and of the Crown which continue to have their legal source in the common law and which the common law recognises as differing significantly from those of private persons." Cranborne also talked about which rights remained important in 1994: "Examples of areas where the Royal Prerogative remains important include the conduct of foreign affairs, the defence of the realm and the regulation of the Civil Service." Furthermore, they were exercised by ministers who were accountable to Parliament. (HL Deb 01 December 1994 vol 559 col. 49WA) This was an important parliamentary question, because it served to remind the MPs of the unclear scope and extent of the Royal Prerogative. If the definition of the Royal Prerogative was problematic, it was no wonder that it was difficult to discuss in political communication. Furthermore, the Labour Party had adopted the Royal Prerogative into its reformist programme, but what happened?

When the party achieved victory in the 1997 general elections, it failed to adhere to its earlier position. In the new Labour Government's otherwise reformist programme, the focus was on reforming various parts of the political system. The Royal Prerogative, however, was a matter of its own and quite different. "There are no plans at present to legislate on matters dealt with under the Royal Prerogative." Prime Minister Tony Blair answered Norman Baker (Lib-Dem., Lewes) in 1998, when Baker enquired about whether the Government was planning to introduce changes to the Royal Prerogative. (HC Deb 12 March 1998 vol 308 col. 279W) Jack Straw, Home Secretary from 1997 to 2001, had called for the abolition of the Royal Prerogative in 1994, but the political reality of life in the Government showed that it was difficult to actually get rid of these ancient rights. (Straw 1994, 127–129) The Royal Prerogative was too important for the daily exercise of ministerial power, but the political climate had gradually resulted in more and more opinions in favour of the reform; a cumulative effect that was linked to the concept. In terms of the deployment of the armed forces, the Royal Prerogative was a thing of its own and was inextricably linked to the existence of on-going military operations and was also to the question of how the British armed forces would perform. Rodney Brazier noted in 1998 that "No one could seriously suggest that the royal prerogative should be abolished as a historical anachronism." It was too important for daily ministerial power. However, even he conceded that not all of the Royal Prerogatives were justifiable, and defence was named as one such area. (Brazier 1998, 103–105)

The change in political practice had to be found in other issues than the reform of the legal significance of the Royal Prerogative. As a result, the attention was directed away from this contested concept. If the Royal Prerogative was a complex issue, the context-contingent chances of making distinctions within the Royal Prerogative to different exercisable areas were useful in providing opportunities to not only to address that particular area of policy, but also to generate discussion relating to that specific area of decision-making. In this respect, the Kosovo War in 1999 afforded an opportunity to see how the decision-making was carried out in relation to the use of the armed forces as a part of an international coalition, and the experience was a bad one. Considering it a short-term military operation, the Government did not involve the House of Commons in the decision-making process in terms of voting. This gave rise to criticism that influenced the discussion on the Royal Prerogative. In April 1999 the Liberal Democrat spokesperson for foreign affairs, Menzies Campbell, declared that the current constitutional reform dealing with devolution of power to Scotland and Wales could also include the reform on the way the armed forces were used. (HC Deb 19 April 1999 vol 329 col. 590) In May 1999 a debate on parliamentary democracy was held and Benn, with two others, drew attention to the way in which the Royal Prerogative was again used to wage war without explicit parliamentary consent. Benn even presented his draft bill that would have made it necessary in the future to secure parliamentary consent before embarking on war. (Benn, Tyler, Bruce HC Deb 13 May 1999 vol 331 cols. 498–500, 505, 513)

Earlier, in January 1999, another Labour MP, Tam Dalyell, had unsuccessfully tried to curtail the Royal Prerogative to use force against Iraq by means of legislation. However, the passing of this draft Bill entailed the royal assent. This was an acceptance rather difficult to obtain, at least in such a matter not supported by the Government. The royal assent was also an institutional constraint that limited the abilities to proceed with Private Members' motions. (HC Deb 26 January 1999 vol 324 cols. 146–7; HC Deb 16 April 1999 vol 329 col. 541) Nevertheless, efforts like these could be used to try to limit the Royal Prerogative in its constitutional, legal meaning or at least to bring it under wider discussion. The Kosovo War produced one key aspect closely related to the role of Parliament but not to the Royal Prerogative: when the Foreign Affairs Committee later conducted an enquiry into the war, it explicitly recommended that in the future a vote in the House of Commons should be held if troops were at war. The role of Parliament was now interpreted to be linked to the right to vote. (House of Commons Foreign Affairs Committee 2000, paragraph 166)

Nevertheless the idea of making the executive more accountable to Parliament persisted in the Labour Government since 1997. In the Cabinet, Robin Cook, who served as Foreign Secretary from 1997 to 2001 and later as the

Leader of the House from 2001 to 2003, indicated his readiness to curtail the executive authority. During the oral questions in February 2002, Jeremy Corbyn (Lab., Islington North) asked about bringing the use of the Royal Prerogative under parliamentary scrutiny. Cook replied that he was “always open to constructive ideas on strengthening scrutiny.” (HC Deb 12 February 2002 vol 380 col. 68) However, Corbyn expressed his satisfaction with this kind of formulation, to which Cook replied,

“I thought that I had crafted an open and welcoming answer on which my hon. Friend could build. (...) There can be no question of the Prime Minister or any other Minister of the Crown acting under the royal prerogative in a way that is unacceptable to the House of Commons. They would be very quickly brought to book by the House, and rightly so.” (HC Deb 12 February 2002 vol 380 cols. 68–9)

This support from the Cabinet would prove important later in 2002, when, after the 9/11 terrorist attacks on the United States, the likelihood of war against Iraq rapidly increased.

What, if not a constitutional change?

In relation to the run-up to the war in Iraq in 2002–03, it was not a discussion on the Royal Prerogative, but rather a discussion on parliamentary convention: would the House of Commons have a chance to vote on going to war or not, and would it have a chance to vote before the use of military force? As a result of parliamentary pressure, this right was given in autumn 2002 if the conditions for the security of the armed forces were met. (HC Deb 25 November 2002 vol 395 col. 57) In the Cabinet, Robin Cook had secured this broad parliamentary role as he rejected the likelihood of a war without prior parliamentary support. (Ahmed 2002, 4) On 21 October Prime Minister Tony Blair had rejected the idea of requiring formal parliamentary approval for the use of the Royal Prerogative to wage war. It was an answer to a written question submitted by Graham Allen, an MP known to be keen to reform the political system. (HC Deb 21 October 2002 vol 391 col. 78W) The question of prior parliamentary approval was linked to the international context, in which the Congress in the United States had authorized the potential use of force against Iraq on 10 October. Despite the different political systems of the United States and Britain, why was no similar procedure, a decision by Parliament, possible in the United Kingdom? (The United States Congress 2002; Dalyell HC Deb 29 October 2002 vol 391 col. 683)

As the policy to disarm Iraq of its alleged weapons of mass destruction was considered controversial, the attention was directed to the right to vote. This

prompted a logical question as to whether the situation lead to an actual constitutional change in which the Royal Prerogative to deploy troops, deemed to be contrary to the principles of modern representative democracy, would be placed under parliamentary control. After months of political discussion, Prime Minister Tony Blair again rejected this view in January 2003. He answered a direct question on whether the Royal Prerogative should be modified, during a hearing in the Liaison Committee, that:

“So I think that even though it may be strictly true to say that the Royal Prerogative means you do it and in strict theory Parliament is not the authority, in the end Parliament is the authority for any Government, and I cannot ----- I mean, can you honestly imagine a set of circumstances in which the Government is defeated by Parliament over a conflict and says, ‘Well, I’m just ignoring that?’” (House of Commons Liaison Committee 2003, Q126)

Blair’s response was one of the traditional views. He considered that Parliament as an overall authority would be sufficient. Surprisingly however, this was the only occasion when the matter was openly discussed between the Prime Minister and the key political figures (the Liaison Committee consisted of the chairmen of select committees). The institutional context provided different means to discuss the Royal Prerogative but in practice the members were inclined to discuss the concept either through written questions or during more general speeches delivered in debates. The oral questions had the best opportunity to elicit direct comments from the Government, but this instrument was seldom used. Nevertheless, it was the possibility of war against Iraq that led to a more open discussion of the concept in addition with the open discussion on the role of Parliament. In terms of the committee level, the appearance of the Prime Minister before the Committee was unprecedented, and initiated in early 2002 after the Prime Minister’s suggestion that he should participate in a hearing in the Liaison Committee twice a year to discuss both domestic and international affairs. (Liaison Committee 2002, 5)

However, despite Blair’s reluctance to introduce limitations, the Royal Prerogative was unable to escape the power of precedent despite the Government opposing any changes. If invoked once, why would such a decision to deploy troops not require parliamentary consent in the future as well? (See Mills 2013, 1–4) If it was viewed by the supporters of the stronger role of Parliament as precedent, it was difficult to bypass – the more so when a similar vote was again held in August 2013 in relation to the Syrian Civil War that related to obtaining parliamentary approval before embarking on any military action in a foreign country. (HC Deb 29 Aug 2013, Vol. No. 566, Part No. 40, col. 1551) In practice such a convention limited the Government’s capabilities to exercise its Royal Prerogative rights. To consider the meanings of the concept, its being

outdated in a modern representative democracy now also received this broadly accepted status at the official level.

It was a discursive process that redefined the role of Parliament, and this discursive process included the use of the concept of the Royal Prerogative in an argument that helped to shape the views on the political system as a whole. The process also included how other politicians responded to these views and how the cumulative use of arguments addressing the problems of the political system led to concessions from the Government's side; the deployment of troops was one but an important side issue in the whole discursive process of how the political system was viewed.

In considering the use of military force as a political option, the changing circumstances had a profound impact on the ways in which the role of Parliament was addressed; the idea to use the British armed forces for reasons other than self-defence needed justification, and this process of justifying the decisions led to Parliament not only receiving but also demanding a major role. This was an idea that was also seen to have a logical connection to constitutional change.

Regardless of the circumstances, the discursive process to address the role of Parliament was related to the previous experience. Britain participated in several military conflicts between 1982 and 2003, which afforded opportunities for such scrutiny. It was a process that showed how commentary, especially on the Royal Prerogative rights, changed in different situations and how the previous experiences were used in the new situations. The situation in 1982 was one that emphasized the executive oriented decision-making during an armed conflict and that the Royal Prerogative powers could be used with very limited opposition. In 2002–2003, the executive right to use the Royal Prerogative was considered outdated when it came to the deployment of troops. This reflected a major shift in attitudes towards the roles of the legislative and executive branches, the concept being at the centre of the development.

In retrospect, the concept continued to be a subject of political discussion also after 2003. The conflicts in Libya and Syria revealed that the decision-making regarding the Iraq War was seen as a precedent which enjoyed the support of the Conservative Prime Minister David Cameron. In fact, when his Government's motion to take part in military action against the Syrian regime was defeated in the House of Commons on 29 August 2013, he ruled out the use of the Royal Prerogative. (Watt and Hopkins 2013) The premiership of Gordon Brown in 2007–2010 had featured an aim to bring the Royal Prerogative under parliamentary control; Jack Straw, who in 1997 had called for the Royal Prerogative to be abolished, announced in 2007 that the abolition of the Royal Prerogative was included in the Government's plan to achieve a further constitutional reform. (HC Deb 7 November 2007, Vol. No. 467, Part No. 2, col. 148) The change in the premier from a something of a traditionalist into one ready to bring the Royal Prerogatives under parliamentary control did not

lead to any actual changes; the legislation was never brought before Parliament. The following coalition Government of the Conservative and Liberal Democrat Parties was likewise unable to introduce any such legislation that would seriously limit its executive powers. Nevertheless, it can be argued that even if the parliamentary convention in relation to the deployment and the use of the armed forces in a foreign country had changed, the same did not apply to the legal significance of the Royal Prerogative. Dubbed outdated, it continued to furnish the key part of the executive decision-making power. Despite the concept being contested, the political realities limited the actual willingness to make any fundamental changes to the legal meaning of the concept.

Conclusion

To conclude, this article argues that if a conceptual redefinition of a legislative concept did not lead to changes in the constitution, a similar change could be brought about by focusing on the political practice and conventions embedded in that concept. The Royal Prerogative was a concept that had both legislative significance in endowing the executive branch with certain powers but it also had a symbolic meaning. The attitude towards the concept may also have been critical before the 1980s, but it was in the 1980s that it was publicly discussed and attacked. Gradually the concept became increasingly associated with negative connotations; both in terms of quantity and content. As a part of the argumentation, the Royal Prerogative was linked to the ideas of control and accountability. Furthermore, in the criticism of this concept it was dubbed an anachronistic or simply outdated right that represented what was perceived to be wrong with the British political system. And as such, the concept was considered ripe to assume a different meaning in terms of its legal significance - the abolition of the whole Royal Prerogative rights system would have led to a question of how to place the monarchy within the entire political system. However, the concept was only a part of the problem and as such, the solution could be found in the other parts of the perceived problem. If the problem concerned the role of Parliament in decisions to deploy and use the troops of the armed forces, it was logical to seek other political alternatives to achieve a solution. Despite criticism of the royal prerogative, the *de facto* constitutional change was achieved through means other than actually reforming this set of ancient rights. It was the power of political precedent that led to reductions in the Royal Prerogative in the form of parliamentary convention. The pressure to give parliament the right to vote before embarking on military hostilities was maintained in the various forums of Parliament, but especially in the plenary sittings. Ultimately, the concept was not the main issue; it was parliamentary practice that mattered most.

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