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## The Royal Prerogative

Dicey defined The Royal Prerogative as “the residue of the discretionary or arbitrary power legally left in the hands of the crown.” This means that powers which belong to the crown alone could only be considered prerogative powers. It is a set of powers that allows the Prime Minister and the Government the authority and means to make important decisions without referring to parliament. These powers were previously in the hands of the Queen however in practice are used by the ministers and cabinet. Historically the prerogative was used to create treaties and deploy armed forces. Powers also cover the appointment and removal of ministers and civil service officers. With the Prerogative, the Prime Minister can dissolve a parliament, declare war and call for elections.

Historically when the death penalty existed the royal prerogative of mercy allowed ministers to pardon the sentenced however now it only allows for the changing of sentences. In the Case of Proclamations (1610), Lord Coke states that the king does not have the power to introduce new offenses or change common law, however, can only exercise the prerogative powers which are given by the courts. Hence the courts have the power to state if that prerogative power exists and how much of the power is used by the monarch, showing that the basic rule of the prerogative power is in the hands of the courts. Prerogative powers have changed through legislation. Some of them have now been substituted by statutory powers.

According to A-G v De Keyser's Royal Hotel Ltd (1920) when both statutory and prerogative powers coincide the crown is unable to exercise the prerogative power. It was held that no less money could be paid under prerogative powers as statute would always prevail over prerogative powers. In R v Secretary of State for the Home Department Ex Parte Fire Brigades Union (1995), the home secretary refused to choose a time to implement part of the Criminal Justice Act 1988. The Home Secretary implemented a substitute scheme under prerogative powers. This conveyed that the Home Secretary had acted in an unlawful manner due to that he was not allowed to refuse to implement legislation completely. Each of the executives, legislature and judiciary have their own domain ensuring separation. Hence if there is a statutory scheme, the prerogative cannot choose to replace it. Courts do not have the power to regulate how the prerogative is exercised nonetheless the extent of the powers are in the hands of the Courts as stated by Lord Coke.

In the Council of Civil Service Unions v Minister for the Civil Service [1985], there is a recognition that judicial review could apply to the exercise of the prerogative powers. Although prerogative powers can be subject to judicial review there are some exceptions such as if the power is used to protect national security as in this case. Moreover, a decision which defies

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logic or moral standards can be repressed. The prerogative power of issuing passports is reviewable by the courts. *R v Secretary for Foreign and Commonwealth Affairs Ex p Everett* (1985) supported the GCHQ case and showed that the executive prerogative power is subject to judicial review. Historically formal declarations of war were the standard however now they are considered unfashionable, this power includes deployment of armed forces to an overseas encounter. It is a prerogative power hence the choice lies in the hands of the crown rather than the monarch. There's an emerging constitutional convention on parliamentary involvement in these decisions. There were no votes whatsoever to obtain the sanction of the parliament, for example in the first Gulf War 1991 or the Falklands War 1982.

The change came when the United Kingdom decided to join the invasion of Iraq in 2003. It was incredibly controversial to the extent that it was a political necessity rather than a constitutional or legal requirement to seek the sanction of the House of Commons. The House of Commons Select Committee on Public Administration called for Parliamentary approval for war decisions to be a constitutional requirement. In 2007 the government suggested that it would support a House of Commons resolution that government must consult parliament before declaring war. Acts may have retrospective effect, for example, the War Damages act 1965 which reversed the House of Lord's decisions in *Burmah Oil v Lord Advocate* (1965). This issue was on the verge of being resolved in favor of statutory regulation through the Constitutional Reform and Governance Bill 2010; this included a draft provision on previous approval by resolution of each house. Due to the final version of the act not containing this proposal the exercise of this power is still in the hands of the government.

In 2015 the United Kingdom decided not to progress with the airstrikes against ISIS in Syria due to government feeling it would not win the majority of the House of Commons points to the strength of the emerging constitutional convention. There are several problems with the prerogative; the powers usually need precision. However, the biggest problem is that the use of prerogative powers bypasses Parliament. By taking advantage of prerogative powers, governments will not rely on parliament to seek statutory powers. Prerogative actions should be subject to higher control by parliament. There are numerous options for reform, to replace the prerogative power with a legal rule such as the Fixed Term Parliaments Act 2011. To retain the prerogative power, however, formalize by law or a constitutional convention. For example, the emerging convention on the use of the war prerogative. To retain the prerogative power but formalize the legal requirements for Parliamentary consent.

For example, the Constitutional Reform and Governance Act 2010 on international treaties. In conclusion, prerogatives are the residue of special legal powers that the crown possesses over and above all other persons. The prerogatives can be controlled and displaced by statute, and the courts can rule on the existence and scope of prerogative powers and judicially review their exercise.

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