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Why parliament now decides on war: tracing the growth of the parliamentary prerogative through Syria, Libya and Iraq¹

‘I may not have succeeded in halting the war, but I did secure the right of parliament to decide on war’ (Cook 2003, 190).

‘Edward Miliband: ...there having been no motion passed by this House tonight, can the prime minister confirm to the House that he will not use the royal prerogative to order the UK to be part of military action...

The Prime Minister: I can give that assurance...’ (Hansard 2013, 1555-1556).

Parliament now decides when Britain goes to war. In August 2013 the House of Commons blocked British participation in military action against the Assad regime in Syria. The result surprised many observers. It should not have done. Parliament has grown more assertive on issues of foreign affairs in recent years, particularly those involving major military deployments. Successive prime ministers have refused to give up the legal authority to deploy the armed forces, yet they have allowed a political convention to develop granting parliament a veto over actual deployment decisions. The House of Commons votes over Iraq in 2003 and Libya in 2011 were legally unnecessary, but they were central to the legitimacy of both actions, indeed to the legitimacy of British military action more generally (see Pakenham 1970 on legitimacy). They established precedents that constrained David Cameron to obey the will of the House of Commons in 2013 regardless of his formal freedom to act without its support. His capitulation confirmed what several MPs and ministers have long suggested, that there is now in place a political convention, a new ‘*parliamentary prerogative*’ governing the use of force overseas that sits alongside and qualifies the legal position. A future parliament, differently comprised, may yet decide to give this power up (Bogdanor 2009, 224). But absent a parliamentary change of heart, no future British military deployment will achieve domestic legitimacy without MPs’ express support.

In this article I trace the parliamentary prerogative’s origins in debates over military action in Iraq, Libya, and Syria. I draw from two main research traditions to inform my analysis. Firstly, I apply ideas drawn from the broader foreign policy analysis literature. In the aftermath of the Cold

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War, democratic leaders can no longer point to a single over-arching bogeyman to justify armed adventures overseas (Everts 2000, 178, Shapiro and Jacobs 2000, 243, Entman 2004, 2-3). *Al Qaeda* offers a useful foil, but the controversy over Iraq left the ‘war on terrorism’ narrative critically undermined. It never achieved the levels of linguistic hegemony or cultural resonance the Cold War possessed (see Jackson 2005). Leaders must work far harder now than in earlier generations to convince sceptical public and political opinion of the case for the discretionary, ‘anticipated’ conflicts that dominate the post-modern international landscape (Hennessey 2007, 347). Making the case for war, in other words, is now an essential component of waging war. This is why Krebs and Jackson concluded that ‘rhetoric is central to politics, even when politics takes the form of war’ (Krebs and Jackson 2007, 35-36). It is why Michalski and Gow observed that ‘winning is about narrative, not sheer brute force’ (Michalski and Gow 2007, 198). It is why, as far as Joseph Nye is concerned, military success ‘depends not only on whose army wins, but also on whose story wins’ (Nye 2009, 160-163, 2011a, 19, 2011b, 18). Reality is important still, in Baum and Groeling’s formulation, but ‘both rhetoric and reality matter’ (Baum and Groeling 2010, 445). Rhetoric shapes how reality is interpreted, and that interpretation matters, not least to foreign policy legitimacy. Before a democratic government can order its country to fight, then, it has to argue its case in public, and it has to win. Critically, and in contrast to earlier wars, it is now clear when states face the prospect of using force that ‘doing nothing *is* a choice’, as Cameron admitted over Syria (Hansard 2013, 1034, emphasis added).

Secondly I refer to the specific literature on foreign policymaking in Britain, dominated by two main theoretical models developed in the broader British politics field. In the Westminster model, foreign policy is determined in top-down fashion, and parliament is a minor player, warranting for example no more than a single brief mention in Jamie Gaskarth’s recent analysis (Gaskarth 2013, 28, see also Norton 2013 for a study of parliament which does not mention the deployment power at all). Steven Kettell’s study of the Iraq war, similarly, emphasised the ‘centralisation, hierarchy and elitism’ that he sees underpinning the British political system (Kettell 2006, 2-3). For adherents of the Westminster model parliament is ‘weak and reactive: a legislature that chooses never to bite, a tiger muzzled by partisan politics’ (Heffernan 2005a, 68). While its members may speak out from time to

time, parliament is dominated by MPs loyal to the government of the day. It has no constitutional role in foreign policymaking. The latest House of Commons Library report on the subject states explicitly that the prime minister directs the military, and is not obliged to consult parliament before doing so (Mills 2013, 3). While some studies note that the vote over the Iraq war in March 2003 set a precedent for parliament to have a greater role (Bogdanor 2009, 225), they usually conclude that the absence of supplementary legislation renders the precedent inert (Peters and Wagner 2013, 16). The differentiated polity model, by contrast, sees policymaking more in terms of negotiation and coalition-building (Rhodes 1997, see also Marsh et al. 2001). The British executive, according to this tradition, is constrained by institutional and political structures (Gaskarth 2013, 47). Whatever the law might say about the power to take Britain to war, without institutional and political support no government can act entirely as it might wish (Joseph 2013, 1). Parliament backed intervention in Iraq and Libya, but blocked action in Syria. Only on the latter occasion did it divide primarily along partisan lines, and even then some government MPs rebelled.

Ultimately I find the differentiated polity model more useful in explaining the growth of the parliamentary prerogative power, but I begin in a traditional vein by discussing the Westminster model, focusing on the legal basis of the power to deploy the armed forces. I note parliament's exclusion from formal decision-making, while recognising that prerogative powers can quite easily be amended or legislated away. I proceed through a detailed historical account to show the gradual development over the past decade of a clear link between parliamentary approval for the use of force, and its domestic political legitimacy. Building on the core insights of the differentiated polity model, I highlight three historically-contingent factors, two derived from the foreign policy analysis literature, and one specific to the British case, which combined to boost parliament's role over this period; party politics and coalition-forming structures (Risse-Kappen 1991), leadership psychology (Foyle 1997), and Britain's convention-driven constitutional structure (Heffernan 2003, Bogdanor 2009 223-225). Individually these elements were insufficient to bring about a major change in the policymaking process. Their combined impact proved profound.

The informal nature of the parliamentary prerogative leaves its application in any one situation open to debate. In each of the Iraq, Libya, and Syria cases, the government proposed a large-

scale, novel, extraordinary deployment of British military assets in the expectation that they would use deadly force. In colloquial terms we might describe these situations as states of ‘war’, although the term no longer has legal meaning (Joseph 2013, 2), and I use the terms ‘war’, ‘military action’ and ‘conflict’ interchangeably throughout this piece.

Tradition: the Westminster model

According to the Westminster model, parliament has no role in decisions about the use of military force (Bowers 2003, 2, House of Lords Select Committee on the Constitution 2006, 8, Taylor and Kelly 2008, 8, Mills 2013, 1, Joseph 2013, 21). The legal authority to direct the armed forces rests with the prime minister as part of the royal prerogative, what AV Dicey termed ‘the residue of discretionary or arbitrary authority, which at any given time is legally left in the hands of the Crown’ (Dicey 1959, 424). It is not subject to parliamentary approval, or open to judicial review (Joseph 2013). The royal prerogative pre-dates British democracy, and in effect supersedes it. The unwritten British constitution’s democratic elements represent in every case concessions made by absolute rulers over centuries of gradual change. Where no concession has been made, the ancient prerogative power remains in place. Where concessions *are* made, by contrast, through new precedents or legislation, change can be both dramatic and swift (Heffernan 2005a, 57). The present coalition government, for example, gave up control over the timing of general elections in the Fixed Term Parliaments Act of 2011 (Bogdanor 2011, 107). Because Britain has no comparable War Powers Act, according to the Westminster model, war powers remain part of the royal prerogative, and parliament has no say over how they are employed.

Parliament’s role in foreign policy decision-making is limited by the royal prerogative. Even in the Westminster model, however, parliament retains some influence over foreign policy decision-makers, although questions remain about how likely that influence is ever to be used given the loyalty most MPs show to party leaders. Britain’s most fundamental constitutional principle is that a government must command majority support in the House of Commons (Bagehot 1936, 125). Those that fail, fall. A government defeated on a confidence motion can no longer govern and must resign. While MPs may not control the use of force overseas, they retain this ‘nuclear option’ of removing the

government from office rather than swallowing unpopular decisions. This fallback power led William Wallace to term parliament a 'powerful constraint, a negative if not a positive force of considerable strength' (Wallace 1977, 98). Parliament is powerful because the government depends on its support in order to survive. Its power is negative because it is purely reactive and destructive (Joseph 2013, 14).

Most observers agree, furthermore, that parliament has long had the right at least to debate military actions (O'Donnell 2011, Cabinet Office 2011, 44, House of Lords Constitution Committee 2013c). This right is significant, but it does not on its own constitute real influence. MPs may discuss a question without necessarily deciding it and, as Wallace warned, 'the appearance of debate and activity often serves to mask the ineffectiveness of parliament in holding the government to account' (Wallace 1977, 92). Debates on military action typically take place through a technical process by which the government proposes to adjourn the House, the opposition objects, and MPs then discuss the issue of the day. Adjournment debates allow discussion without exposing actual policies to MPs' formal approval. Governments need not fear defeat, since any vote relates only to the question of the adjournment, and not to the policy itself. Adjournment debates offer MPs the chance to discuss matters beyond their formal purview, to air different points of view, to present arguments to the executive, to hear directly its response, and to express symbolic support for or opposition to its ultimate decision. Few would give up the right to an adjournment debate. But few would accept that it offers serious scope for democratic control over deployment decisions. The government is free to ignore the result of any vote. It can disregard the entire content of the debate if it sees fit. Since, under the Westminster model, adjournment debates are as close to influence over foreign affairs as MPs get, its adherents remain unsurprisingly sceptical about their impact.

The House of Commons held a substantive vote over military action on just one occasion during the 20th century, over the Korean War. Winston Churchill argued a vote would prove that vocal parliamentary opponents of the war were unrepresentative (Hansard 1950, 2463). Clement Attlee agreed, and the vote carried. Attlee's successors disregarded his example. Margaret Thatcher saw no need for a substantive vote to demonstrate parliamentary solidarity as she launched the Falklands War in 1982. John Major adopted a hybrid approach during the Gulf War of 1991, seeking support but not

approval. Both Thatcher and Major allowed a number of supplementary debates during the course of their respective campaigns, on each occasion following an adjournment motion. Tony Blair used adjournment debates to announce Operation Desert Fox in 1998, interventions in Kosovo in 1999 and Sierra Leone in 2000, and the invasion of Afghanistan in 2001. On no occasion between the debate on the Korean war in 1950 and that on Iraq in 2003 did parliament vote directly to approve a military deployment. The Iraq vote was not unique, but it did represent a 'remarkable exception' to the historical norm (Wagner, Peters and Glahn 2004, 100).

In the Westminster model, then, parliament is not excluded entirely from deployment decisions, but it is weak, able only to consider and never to shape policy actively. The government retains the power to decide the timing and format of any debate and vote. Parliament cannot recall itself should hostilities arise other than during its regular sessions. MPs rarely dare to defy the party whip. Yet, despite its formal weakness, parliament *has* influenced recent decisions around military action. It did not need established authority. The gradual accumulation of political precedent was sufficient.

Iraq: precedent set

The process began with the Iraq War vote in March 2003. Tony Blair was weighed down by Labour Party opposition, but personally prepared to risk losing office rather than renegeing on commitments to President Bush and threats to Saddam Hussein. He had the legal authority to go to war without parliamentary or public support. But he knew such a step would lack legitimacy, and he offered MPs a vote as a way to win that legitimacy back. Throughout early 2002, Blair refused to hold a debate on Iraq, since no decisions had been taken about the use of force. While that stance avoided a premature public discussion at an early stage in the war planning, it also frustrated parliamentarians, who recognised the direction of President Bush's policy. In March 2002 veteran Labour MP Tam Dalyell instead organised a Westminster Hall discussion during which he and a number of his colleagues attacked the government's alleged warmongering (Hansard 2002a, cc69-89WH). Over the summer the combined effect of vocal public debate in Washington and media speculation in London convinced many MPs that Blair planned to go to war before they returned from recess (The Guardian

2002, *The Independent* 2002, *Daily Mail* 2002). In a startling challenge to formal democratic processes, former government whip Graham Allen arranged an ‘unofficial’ sitting of the Commons. Retired Speaker Lord Weatherill agreed to chair the session, and the BBC offered to broadcast it, adding to its credibility. The sitting threatened both to embarrass the government and to undermine the legitimacy of the House of Commons itself. Blair capitulated, accelerating the release of the government’s ‘dossier’ on Iraq’s Weapons of Mass Destruction and recalling parliament for a debate, albeit on an adjournment motion (cf. Blair 2002). Again in line with the differentiated polity model, Blair found his formal power over the parliamentary agenda insufficient to stifle debate. Unable to prevent it, he chose reluctantly to embrace it.

For all the later criticism, at the time of its release the dossier changed few minds. Blair faced hostile questions about Iraq for the remainder of the build-up to war. Parliament debated and voted to endorse UN Security Council Resolution 1441 after its passage in November 2002 (Hansard 2002b, cc35-133). Tam Dalyell attempted to force an adjournment debate on Iraq on 8 January 2003, but failed to convince the Speaker that the matter met the criteria (Hansard 2003a, cc162-172). Following large-scale anti-war protests, Foreign Secretary Jack Straw led a second substantive debate on 26 February. The vote again endorsed the UN process (Hansard 2003b, cc265-371). It was inevitable by March 2003 that the US would invade Iraq, yet Blair still faced considerable domestic opposition to his offering British support. He told colleagues in Downing Street that allowing MPs an opportunity to overturn his policy was ‘the right thing to do’ (Seldon, Snowdon and Collings 2007, 159). He did not, however, concede the point willingly. Blair applied the Westminster model in planning his own approach, maintaining until after January 2003 that he would decide and then parliament would discuss, but not vote on, war with Iraq. Although he accepted that ‘no government could engage in a conflict if parliament was against it’ he refused for many months to back down on the procedural point (Blair 2003). He only gave in at a late stage, hoping to assuage at least some of the opposition within the Labour Party, and gambling on gaining legitimacy by winning a parliamentary vote. The gamble paid off. MPs approved the invasion of Iraq by a margin of 412 to 149.

Blair’s intransigence during 2002-2003 raised the salience of parliament’s influence over military action for many MPs (Issacharoff 2009, 203-204). The more he refused even to debate the

prospect of war with Iraq, the more they demanded not just a debate but actual influence. His strict adherence to the Westminster model encouraged opposition, and that opposition forced a more consensual approach. He suffered, too, from divisions within his own party. Blair dominated parliament in 2003 thanks to his landslide majorities, one major reason why he was accused of furthering the 'presidentialisation' of his office (Phythian 2007, 129-130). Prime ministerial power knows few formal limits, especially when backed by a large majority. Its limits arise politically, and absent political challenge a British leader can accrue immense personal authority. Although Iain Duncan Smith made clear he would not back the government on a confidence motion (Cook 2003, 317, Heffernan 2005a, 61, Seldon, Snowden and Collings 2007, 170), Blair could also count on opposition votes to get the Iraq policy through. Britain has traditionally maintained a bipartisan approach to foreign policy (cf. Joseph 2013, 78), although this disguises greater intra-party political complexities. Party leaders often agree with each other, while arguing with their own back-bench MPs (Wallace 1977, 93). That, indeed, is why when we speak of executive-legislative relations in Britain, we really refer to the relationships between political leaders and their own parties (King 1976, 12). Blair's power to move against Iraq was constrained primarily by the difficulty he faced winning over Labour rebels. One of the key insights the differentiated polity model offers is that no prime minister can exercise the formal authority of his office if his political base collapses (Heffernan 2005b, 618). That was Blair's problem. Facing calls for his resignation and aware of MPs' ultimate capacity to bring his government down, Blair concluded he had no choice but to allow a substantive vote before invading Iraq (Kettell 2006, 96). He was constrained by political circumstances, and forced to pursue a coalition-building approach rather than simply issuing orders and expecting them to be obeyed.

That does not mean Blair held a weak hand. He both suffered and benefited from the dynamics of democratic rebellion. From a theoretical perspective, it was unsurprising that his government faced occasional rebellions, and not only because it pursued policies at odds with traditional Labour Party ideology. The party system grants leaders a number of tools to discipline dissent, of which the most significant is control over appointments. Yet prime ministers find their ability to proffer or threaten to withhold government jobs gradually declines as the back benches come to be dominated by 'ejected' ex-ministers and 'rejected' MPs who never became ministers

(Benedetto and Hix 2007). The effect grows more acute over time, and for those who head particularly large parliamentary parties. Blair's government was nearly six years old at the time of the Iraq war, and Labour enjoyed a massive majority. His structural capacity to ward off rebellion and maintain loyalty was, consequently, diminished. Having said that, most back-bench unrest still stems from ideological disagreements. Here Blair regained an advantage. While much of the Labour Party instinctively opposed the invasion of Iraq, it still largely supported his domestic agenda. Like most parliamentary rebels, even the staunchest anti-war Labour MPs shared more with their party leaders than with the opposition, and so stood to lose more from a government collapse than from their own capitulation (Huber 1996, 269, Diermeir and Feddersen 1998, 611). By making the Iraq question into a confidence motion, Blair forced Labour MPs who opposed war but otherwise supported the government to choose between the two. Ultimately a majority preferred to overthrow Saddam Hussein than to overthrow Tony Blair (Runciman 2004, 13-14, Coates and Krieger 2009, 251, Powell 2010, 156).

Particular political circumstances forced Blair to allow the March 2003 vote. Once the dust settled from the immediate battle, the pressure to enshrine parliament's role in decisions about the use of force fell off the agenda of public debate, though it never vanished completely. Over the years that followed, both the House of Commons Public Administration Select Committee (2004) and the House of Lords Select Committee on the Constitution (2006) reported on the question of what say parliament should have. Although they disagreed over whether legislation was required, or if what the MPs labelled 'mere convention' sufficed, both committees agreed that parliament ought to decide on war. Senior politicians concurred. Gordon Brown suggested just before the 2005 election that he supported a stronger parliamentary role, and told the Fabian Society in January 2006 that he would legislate on the issue once in Downing Street (Thomson and Sylvester 2005, Brown 2006). David Cameron made similar promises to the British-American Project six months after Brown, while the Conservative Party's Democracy Task Force echoed the call in a report the following year (Cameron 2006, Conservative Democracy Task Force 2007, 1).

This was fine talk. But once in office neither Brown nor Cameron took real steps to place parliament's role in deployment decisions on a statutory footing. Neither was willing to concede the

freedom of action the royal prerogative provided. Early on in his premiership, Brown launched a consultation on *The Governance of Britain* that proposed ‘the Government should seek the approval of the representatives of the people in the House of Commons for significant, non-routine deployments of the Armed Forces into armed conflict’. While the paper noted that this could involve legislation, it favoured developing a parliamentary convention (British Government 2007, 18, 19). A follow-up paper from the Ministry of Justice discussed the problems of legislation in more detail. It noted, for example, that a convention remained parliament’s to interpret, while a statute would inevitably be subject to judicial review (Ministry of Justice 2007, 13). In the event no draft bill appeared. At the same time, however, no-one explicitly asked whether the establishment of a convention depended on an active decision. Certainly both governments and parliamentarians acted as if they thought it did. But neither considered the fact that conventions are defined by what *is* done, not by what *ought* to be done. This proved important later on.

Conservative pressure forced Brown to consider the issue in 2007. That May, William Hague introduced a parliamentary debate calling for the Iraq precedent to become a new norm (Hansard 2007, 480). Hague explained in the *Guardian* that MPs had previously relied on an ‘act of generosity...by the prime minister’ (Hague 2007). That was not good enough, he said. Parliament’s role needed to be formalised, not left dependent in any way on executive goodwill. Hague’s resolution was non-binding, though it passed with government support. It did not, on its own, overturn the royal prerogative. It did however provide an opportunity for several prominent MPs, including Hague himself, to promise publicly to follow the 2003 precedent (Hansard 2007, 502, 513). It underlined a growing elite consensus that parliament should decide on the use of force overseas. Although little noticed at the time, that consensus was significant. Conventions are social and political constructs, not legal instruments. They exist because everyone involved thinks they exist. The House of Lords Constitution Committee defines conventions as ‘practices which are politically binding on all involved, but not legally binding’, and notes that ‘whilst a convention is not justiciable, it is nevertheless regarded by all relevant parties as binding’ (House of Lords Constitution Committee 2013a, 11). Philip Norton has meanwhile described conventions as ‘the oil in the constitutional machinery’, possessed of legitimacy if not legal authority (Norton 2011, 2). Leading figures from

each of the three main political parties made it clear that the parliamentary prerogative had achieved convention status. This ‘unequivocal acknowledgement’ established a ‘conventional obligation for all future situations’ (Joseph 2013, 183), yet also one a future parliament might easily have ignored. That was why the precedent’s later application had such significance.

Libya: precedent applied

Eight years passed between the Iraq vote and Britain’s next new military action, although the intervening period saw British troops engaged in almost constant combat in Afghanistan and Iraq. Blair handed over power to Gordon Brown in 2007, and Brown’s defeat in the 2010 general election put David Cameron in Downing Street heading Britain’s first coalition government since the Second World War. Like Blair, and unlike the majority of their 20th century predecessors (Wallace 1977, 46), Cameron came to office with no ministerial experience and no direct knowledge of international affairs. Unlike Blair, Cameron did not get the opportunity to build up to his first major military action through a series of more minor skirmishes. By the time of the Iraq invasion, Blair was a veteran of international conflict, having ordered troops to action four times before, banishing his initial caution in the process (Daddow 2009, 548). Experience matters, and it mattered particularly for Blair, who learned to trust his own judgement over others’ advice.

The psychological differences between Blair and Cameron appear to go much deeper than simple experience, however. In his autobiography Blair admitted to ‘a somewhat weirdly optimistic view of the power of reason, of the ability to persuade if an argument is persuasive’, what Jonathan Powell called his ‘Messiah complex’ (Blair 2010, 117, 157, Powell 2010, 56). Stephen Dyson found that Blair in office exhibited ‘a high belief in his ability to control events, a low conceptual complexity, and a high need for power’ (Dyson 2006, 289). Blair liked to be in charge. He preferred black-and-white judgements to shades of grey. His belief in his own judgement helped sustain him through the confrontation with his party over Iraq. It gave him faith that his chosen course was right. It is the central reason why he took such a prominent role in British foreign policymaking, and when combined with his considerable ambition helps explain why he spent so much energy and effort on grand international designs (Hennessey 2000, 387). Even the Iraq vote itself encapsulated Blair’s

optimistic, borderline reckless, approach. While making it a confidence motion helped discipline dissenters, it also opened him up to the very real prospect of politically fatal defeat. Cameron is more consensual in style and more cautious in substance, in part because he heads a coalition government. While Blair excluded Cabinet from the key decisions over Iraq (Short 2010, 3), Cameron's Cabinet explicitly endorsed his Syria policy, a vital point in a time of coalition. While Blair largely served as his own Foreign Secretary, including Robin Cook, Straw, and Margaret Beckett in discussions but at times excluding them from the 'real' decision-making process, Cameron and Hague have a more equal relationship (Daddow 2013, 115, Gaskarth 2013, 20-21). Even the formation of the coalition itself suggests Cameron possesses an instinct for compromise, at least compared to his predecessors, although he takes a cautious approach and likes to be sure of his ground. Cameron might have won Liberal Democrat co-operation on some measures without appointing Liberal Democrat ministers in 2010, yet he preferred a full coalition. This was a bold move, but also a cautious one. It won Cameron greater popular legitimacy, greater political stability, and a scapegoat to blame when explaining his centrist approach to the Conservative Party's right wing. It also opened him up to accusations, of varying accuracy, that he was selling his party out.

Cameron's conservatism – small 'c' – superseded his more consensual approach over the question of parliament's involvement in decisions to use force overseas. His commitment to legislation, made in opposition, evaporated when he reached office. Less than a year after the 2010 election, however, Cameron faced the prospect of ordering British troops into action for the first time, as the international community prepared to intervene in the Libyan civil war. In contrast to Blair, Cameron did not need to be forced into allowing parliament a say. In contrast to Blair, he quickly confirmed that parliament would get a substantive vote. These were differences of style rather than substance; both leaders gave MPs the chance to veto their decisions. Cameron simply did it less grudgingly than Blair. Yet the stylistic difference helped set the tone for the debate that followed. Even before the UN Security Council agreed Resolution 1973 in March 2011, ministers assured MPs that the government would seek their approval for any military action that followed (Hansard 2011a, 1066). With UNSCR 1973 in hand, Cameron based his case for British participation on the UN mandate, the need to protect civilians from imminent and demonstrable danger, and the insistence that

no British ground troops would be used. In case the message was insufficiently clear, he spelt it out: ‘this is not another Iraq’ (Hansard 2011b, 700, 709, 710). Parliament, and the press (cf. *The Economist*, 24 March 2011), agreed, and MPs approved the motion by 557 votes to 13. It was a significant moment. While the prospects of defeat had never been high, Cameron’s decision to copy Blair in procedural terms while maintaining a more consultative rhetorical stance established a dual precedent. Parliament signed off on the use of force on a second consecutive occasion. That was important in itself. But it also did so under conditions of political consensus, resurrecting the forgotten Korean precedent and breaking the link implied by the Iraq case between a policy’s (un)popularity and parliament’s right to vote. Interestingly, the BBC political editor erroneously praised Cameron for allowing the debate to end with ‘a proper vote (rather than the vote on the Iraq war which ended with a more technical parliamentary voting procedure)’ (Robinson, N. 2011). He later corrected himself, but the fact a sophisticated observer made such a mistake illustrates the irony that Cameron successfully differentiated himself from Blair in part by copying him, in substance if not in style.

Cameron differed substantively from Blair over the timing of his vote. Knowing that the Security Council endorsed action to protect civilians in Benghazi, and that the US and France were ready to establish a no-fly zone immediately, Cameron first announced a Cabinet decision that Britain would take part, and then promised a substantive vote in the House of Commons to approve that decision on the following Monday (this was on the Friday afternoon). The first airstrikes took place during the weekend between the statement and the debate. Cameron explained the decision as a product of parliamentary procedure and the need to act fast, but it is notable also that his initial announcement fell on the eighth anniversary of the Iraq debate. He may have decided the coincidence raised the risk of invidious comparison and opted to delay. He may also have hoped to minimize opposition by asking anti-war MPs to call for forces already in action to be withdrawn, a more damaging proposition than never deploying them in the first place. Several MPs complained about this (Hansard 2011b, 749, 752, 771). They made a good point. The timing of a vote matters. It is one of the critical points left unresolved by the conventional nature of the parliamentary prerogative that could yet be cleared up by legislation (Joseph 2013, 105). During the Iraq debate a number of opponents of military action, possibly mindful of the *Sun*’s lists of ‘traitors’ during the Afghan

campaign (Robinson, P., et al. 2009, 537), abstained or switched to support the invasion in order to show solidarity with British troops in the Gulf. As the *Daily Telegraph* put it on the day: ‘the time has passed when war could be averted, so any vote against war...turns...from being an expression of principle to being an act of defeatism’ (*Daily Telegraph*, 18 March 2003). By 18 March 2003, when the only real chance opponents got to stop the war arrived, it was already too late. Eight years on, MPs felt there was ‘no doubt’ that they would have approved the Libyan intervention before it began. They nevertheless sought (and, vitally, received) assurance from William Hague that the government would arrange a special sitting of the House if similar circumstances occurred in future, so that MPs were not asked to vote to withdraw troops already in combat (Hansard 2011b, 752, 779, cf. House of Lords Constitution Committee 2013b, 18). This was itself a major concession, given that the question of the timing of a vote has been constantly at the heart of debates over parliament’s role in deployment decisions. It was also a concession that the government honoured in 2013.

While political circumstances pushed Blair to grant parliament an extraordinary say over the Iraq war in 2003, they meant Cameron could follow suit in more routine fashion over Libya in 2011 without significant risk. Explicit UN approval makes a huge difference to the British domestic perception of the legitimacy of military action (Ralph 2013). Britain is not unusual in this regard (Buzan and Gonzalez-Pelaez 2005, 31). MPs were always likely to support the protection of civilians in Benghazi given the proposal had Security Council endorsement. So the risks for Cameron were lower than they were for Blair, and the benefits clearer. He was able to differentiate himself from his controversial predecessor, and keep his coalition partners onside. It mattered, too, that Cameron’s approach was more open than Blair’s, that he offered MPs a vote as a matter of course rather than trying to avoid a discussion. He was helped by the fact that conditions on the ground around Benghazi prevented a drawn-out debate. If the West was to act, it had to act on 19 March, before pro-Qathafi forces penetrated the rebel stronghold. Blair hoped to avoid damaging headlines and difficult discussions with MPs before he decided what to do about Saddam Hussein. Cameron did not share that concern.

Syria: Convention established

The debate over intervention in Syria resembled that over Iraq rather than Libya. The build-up lasted over eighteen months, with few clear decision points. During the first half of 2013 ministers talked repeatedly about the potential need to act, yet brought no specific proposal forward. One point alone was clear. William Hague told *The Andrew Marr Show* in June 2013 that any intervention would be subject to parliamentary approval, even if it involved no British forces, only British arms (BBC News Online, 9 June 2013). Hague both confirmed that earlier parliamentary precedents would apply to intervention in Syria, and offered parliament further influence over tools other than military action (Morris 2013). This helped avoid the sort of media speculation that damaged Blair during the summer of 2002. But it led to no definitive action.

A chemical weapons attack on three suburbs of Damascus on 21 August changed the terms of the Syria debate, at both international and domestic levels. Britain, the US, France, and Germany each concluded that the Assad regime was responsible, though Russia blamed rebel groups (Cabinet Office 2013, US State Department 2013, French Defence Ministry 2013, Gebauer 2013). Leaders of the former three states argued that the use of chemical weapons crossed a 'red line', and threatened military retribution. Ban Ki-Moon condemned the attack as 'a war crime' even before UN inspectors concluded their investigations, though the UN studiously avoided assigning blame (United Nations 2013). Apparently under pressure from the White House to call a quick vote (Clarke 2013), and determined to act, Cameron fulfilled the promise Hague made at the time of the Libya intervention and recalled MPs just days before the end of the summer recess for an urgent debate. Ironically, he was punished for his haste. MPs saw no reason to rush. Not only was there uncertainty about the provenance of the Damascus strike, there was no imminent threat of a further attack, and so no imperative to act as there had been to defend Benghazi. The UN inspectors made clear they needed weeks to confirm what exactly had happened. The Security Council remained deadlocked (see Ralph 2013).

Cameron was consequently unable to rely on the legitimising power of the Security Council to win him parliamentary support. Like Blair, he had to fall back on parliamentary approval to win

legitimacy. Unlike Blair, he was unable to rely on opposition votes. Cameron expected the support of Labour leader Ed Miliband, especially after watering down, at Miliband's request, the original parliamentary motion to guarantee a further debate and vote once the UN inspectors reported. But Miliband instead proposed an even softer amendment to the government text, ensuring that the House divided along partisan lines. The revised government motion promised no military action would take place until after the end of the parliamentary recess, completely defeating the point of the recall, and raising suspicion among back bench government MPs about the prime minister's true intentions. These suspicions were heightened further by the way ministers made their case. Downing Street published a note from the Attorney General arguing that the humanitarian case made intervention legal even without a Security Council Resolution, and also a letter from the Joint Intelligence Committee confirming its view that the Assad regime ordered the 21 August attack. Several MPs regarded these publications as proof that intervention was illegal and that the government possessed no evidence that the regime carried out the attack. Others saw the promise that a further vote would precede military action as proof that no further vote would be allowed before military action. This instinctive mistrust reflected the legacy of Iraq. Tony Blair promised parliamentary involvement in the Iraq decision but committed the country to war long before the March 2003 vote. Blair's Attorney General stated publicly that an invasion would be legal despite harbouring private doubts. The JIC declared Iraq awash with WMD. It was not. A degree of mistrust might have been expected. Cameron erred by failing to marshal his parliamentary troops. Yet he erred more fundamentally by letting Syria look like a re-run of the perceived disaster in Iraq. He was perhaps duped by the relative ease with which the Libya motion passed. During the Libya debate, no-one questioned the threat posed by Qathafi to Benghazi, no-one seriously challenged the legality of military action, and no-one doubted the prime minister's honesty. But the Libyan action came with the legitimacy only the UN Security Council can grant (Kettell 2006, 96, Ralph 2013). The proposed Syria intervention did not. The Westminster model has no place for supranational constraints. The differentiated polity model, by contrast, explicitly expects them.

Similarly, the political circumstances in August 2013 were closer to March 2003 than March 2011. There was limited support for further war. Cameron's MPs were already more ready than

Blair's to rebel. The 2010 parliament looks set to become the most rebellious since 1945 (Cowley and Stuart 2013), somewhat undermining the Westminster model's imagery of a supine chamber beholden to party whips. Cameron also lacks Blair's 'messiah complex', leading him to a far less aggressive parliamentary approach, both rhetorically and procedurally. Where Blair described intelligence about Iraq's WMD as 'extensive, detailed, and authoritative', Cameron told MPs the JIC report on Syrian chemical attacks represented a 'judgement call'. Where Blair insisted that 'doing nothing is not an option', Cameron's more qualified argument was that 'doing nothing is a choice, but it is a choice with consequences' (Hansard 2013, 1034). Blair's determination convinced a number of MPs to support him over Iraq. Cameron offered no such certainty. He preferred sobriety and accuracy, a sensible strategy given how badly Blair's hyperbole burnt him later. At the same time, however, by holding back he signalled to MPs of all parties that he was not completely committed. Unlike Blair, Cameron did not present his policy as a matter of confidence in his government. He did not force parliament to choose between Bashar al-Assad and himself. He failed to press his greatest advantages. He kept the stakes too low, blinking in the face of opposition where Blair forced his opponents to back down. In defeat, he completed the transfer of power over war from prime minister to MPs. The Labour Party amendment fell, but the government motion was defeated also, by 285 votes to 272. Parliament, for the first time, and much to the surprise of many present, vetoed British military action abroad.

Cameron gained plaudits for allowing the Libya vote, and avoided the dragged-out debate that plagued Blair in the run-up to the Iraq invasion by promising a further vote on Syria at an early stage. He recalled MPs to ensure they voted *before* the first military strikes, keeping Hague's promise from the Libya debate, confirming in the process that the parliamentary prerogative usually requires MPs to approve an action *in advance*. Yet he failed to manage his own MPs, and failed to explain either the timing of the motion or its substantive significance given it did not directly approve the use of force. The timing question proved particularly significant. Cameron got away with holding the Libya debate after the first British forces went into action. He might have disregarded Hague's promise, or argued the circumstances demanded an immediate response. He would not necessarily have won such an argument, but he could have tried. He chose not to. Cameron suffered, too, from the echoes of Iraq,

especially in the absence of Security Council approval. It is ‘without modern precedent for a prime minister to lose control of his foreign policy’ to such a degree (Robinson, N. 2013). Yet the significance of the Syria vote lies not only in the fact that it was lost, but also in the fact that it took place at all. For the third time in a row a government sought parliamentary approval before using force overseas. In common with the vote over Iraq, and in contrast with that over Libya, the government faced a very real prospect of defeat. That it *was* defeated only serves to underline the gradual growth of parliamentary influence in this critical area. While the prime minister retains the legal freedom to direct the armed forces as he sees fit, in terms of practice parliament now wields a political veto over that freedom.

Conclusion: The new parliamentary prerogative

The conventional nature of the prerogative requires debate in future over the extent to which a particular decision triggers its invocation (Bogdanor 2009, 225). Each parliament must re-interpret the conventions of its predecessors. In this way, the political elements of the British constitutional settlement rely more on evolution than innovation, on a quasi-organic growth process that can be accelerated, slowed, halted, or reversed as circumstances demand (Burch and Holliday 2004, 1). They can change quickly and without fanfare as the accumulation of individual precedents gradually alters past conventions (Foley 2004, 301-302, Bogdanor 2009, 224, Joseph 2013, 183). As one Commons committee put it just days after the Syria vote, ‘the de facto situation on conflict decisions appears to have outpaced the legal position’ (House of Commons Political and Constitutional Reform Committee 2013, 5). Blair’s vote, in March 2003, was an innovation, a concession to opponents made necessary not only by the strength of their opposition but by the prime minister’s determination to drive his chosen course through. It was a context-contingent decision that could, like Attlee’s 1950 version, have been ignored by later generations. Cameron did not need to grant a substantive vote over intervention in Libya. The policy was not contentious because it had UN support. The few MPs specifically asking for a repeat of the Iraq precedent could safely have been ignored, though it is less clear the Liberal Democrat component of the coalition would have worn the reliance on royal prerogative willingly. But there seemed little downside to allowing a vote, and plenty of political

credit to be gained. No-one thought to ask what the constitutional implications might be. In the event, it was Cameron's decision to apply Blair's precedent that began cementing it into a convention. He was likely anyway to allow a further vote over Syria in 2013. His March 2011 decision offered political benefits with few costs, but it also reflected his publicly expressed beliefs about how British foreign policymaking should work. Had he not underestimated the opposition he faced, Cameron could conceivably have avoided a vote, though he would have been barracked by parliamentary colleagues and possibly forced to choose between peace in Syria and his coalition. He felt constrained, however, to follow past practice, and in the process surrendered control over his own foreign policy. Having lost a vote, he could never have launched military action without losing legitimacy. By losing a vote, and being bound by it, he confirmed the political convention that parliament ultimately decides when Britain goes to war. So much for the Westminster model.

Cameron's defeat over Syria proved that conventions can arise without active effort on the part of any one government. The Iraq vote set a precedent, the Libya vote confirmed and applied the precedent, and the Syria vote firmly established the convention. MPs have exercised the parliamentary prerogative three times in the last decade, in conditions of consensus and division, with a messianic leader convinced he was on the right course, and a more conservative successor willing to admit the nuanced nature of the judgement faced. The only characteristic common to Iraq, Libya, and Syria was that parliament made the final decision. Since military deployment remains beyond the scope of judicial review, a future government might yet refuse to allow a parliamentary vote without fear of censure from the courts, relying on royal prerogative to make its action legal. Absent a dramatic shift in public and parliamentary preferences, such a step would widely appear illegitimate, raising the ire of all but the most dramatically weakened House of Commons. The costs of waging an illegitimate war will likely exceed the benefits of bypassing parliament; Blair's experience suggests as much. No government wants to get into a conflict the country does not support. A future government might yet convince parliament to give up its veto rights over the war prerogative. Parliament seems unlikely at present to consent to such a reduction in its influence. Some grey areas remain, where legislation might clear up and strengthen parliament's role, but for now ensure the application of the prerogative remains open to debate. It remains possible for military action to be taken without parliamentary

approval in an emergency, but the definition of ‘emergency’ is unclear. MPs are still reliant on the government for the information on which to base their votes. There is no clear sense of how large or how dangerous a deployment must be before a vote is required, or what the consequences would be for a government that tried to ignore parliament’s conventional role.

The present government prefers to keep deployment decisions beyond the remit of the courts (Wallace 2013), even while recognising ‘that the need for Commons approval of deployment decisions is now a constitutional convention, and therefore politically binding’ (House of Lords Constitution Committee 2013b, 21, see also Bogdanor 2009, 224, and the December 2013 version of Mills 2013, 11-12). The law no longer needs to be changed to grant parliament a say over military action. Parliament enjoys a political right to be consulted, a new parliamentary prerogative that supplements its royal counterpart, regardless of the legal position. No future government will be able to deploy British forces without MPs’ express support. The legitimacy of their decisions depends on it, and that legitimacy matters more than any purely legal argument in the contemporary foreign policy environment.

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