

An RCDS paper by James Gray MP dated July 2003

As reviewed by Roger Green

In his paper James Gray gives a parliamentarian's view of the history, role and legitimacy of the Royal Prerogative in respect of committing the country to war. It is possible that a constitutional expert may be at variance with some of the analyses that Gray suggests concerning parliamentary proceedings and Prime Ministerial positions in the lead up to recent wars.

The Royal Prerogative has its origins in the 17th Century and is the outcome of an attempt by the Parliament of the day to control the power of Charles I. It is neither detailed nor enshrined in any legal document and has evolved to reserve certain functions to the Crown's ministers. Of these functions the most important is undoubtedly the decision to go to war. Whilst this power might be regarded as undemocratic and thwarting the will of Parliament, Gray provides substantial justifications in providing the Prime Minister with the authority to act in the national interest by making strategic decisions without full parliamentary disclosure and without political risk.

As Gray points out there is significant historical precedent for exercise of the Royal Prerogative by Prime Ministers. In these instances the Prime Minister chose to inform Parliament rather than seek its approval through a vote and the use of the Royal Prerogative was widely accepted other than by a small minority. In this context there is advantage in the fact that the UK has an unwritten constitution whilst in the US with its War Powers Act the President has little room for manoeuvre in such matters and needs to seek Congressional consent to go to war.

As the UK was being committed to war more frequently since 1997, there was increasing interest and inquiry into the repeated use of the Royal Prerogative and in the run up to the Iraq War in 2003 the Prime Minister was faced with a serious challenge. In late 2002 the government came under increasing pressure whilst it tried to hold the line over the use of the Royal Prerogative and there were attempts to obfuscate the situation by debating whether Parliament should vote on 'supporting policy' or 'implementing policy'. However, the Government eventually had to give way and there followed a series of votes that the Government only won with the support of the Opposition. The underlying reason for this situation was that for the first time there no consensus on the question of war and as a result a parliamentary precedent was established. Gray addresses the constitutional consequences of that decision in some detail and concludes with his Gray's Paradox that 'the inverse proportionality of the controversiality of war against Parliamentary debate about it dictates that only universally popular wars should be allowed a Parliamentary vote'. A slightly cynical but possibly true summation.

Gray alludes to the question of national sovereignty over the commitment to war but he only poses the question without pursuing it. If a Parliamentary vote is at odds either way with the will of the UN Security Council how should the dilemma be resolved? At least the use of the Royal Prerogative is a valuable procedure that can avoid the UK being left to stand alone or left

behind on issues of a wider importance.

There are other factors beyond the purely parliamentary perspective that Gray does not address. The modern day difficulty over the legitimate use of the Royal Prerogative is bedevilled by public access to vast amounts of information, media positions taken by both informed and uninformed commentators, and by the increasing number of contemporary politicians who are prepared to challenge the perceived wisdom and established convention. The fact that the circumstances that lead up to a war are always unique as is invariably the political environment at the time, together further complicate the situation and weaken the argument of precedent. National unity is always of paramount importance and in such situations there is no place for attempts at party political advantage. The Prime Minister is charged with acting in the nation's best interest and should not have to take account of the consequences of losing a vote in the House when considering the gravity of his decisions.

In his paper Gray has revealed an insight into a little known area of government that is of great importance in the run up to war that will doubtless cause readers to consider further its role in 21st century politics. In the future, the success or otherwise of the exercise of the Royal Prerogative in a war context may ultimately be a measure of the Prime Minister's strength of character, the level of trust he engenders, his leadership qualities and his oratory skills to persuade both Parliament and the nation to support him.