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Parliament and the War Prerogative in the United Kingdom and Canada: Explaining Variations in Institutional Change and Legislative Control

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The British and Canadian Parliaments have no legal control over military deployment decisions. Recently, however, governments in both countries have held votes in the House of Commons on expeditionary missions involving combat. In the United Kingdom, this has led to a convention of legislative control of the executive's prerogative to deploy the armed forces. In Canada, the votes have benefited and enabled the executive, rather than strengthening legislative control. Using Mahoney and Thelen's (2010) theory of gradual institutional change, this article analyses how and why war prerogative reforms in the United Kingdom and Canada have resulted in different outcomes.

Keywords: Canada, Military, Parliament, Prerogative, Reform, United Kingdom

The authority to deploy armed forces is a royal prerogative in Westminster states. Cabinet is not legally required to consult Parliament when exercising this power, which grants Westminster executives near complete control over military deployments (Joseph 2013). As part of recent reform efforts, however, governments have brought controversial military missions before the lower house of Parliament for votes of support or approval. These votes have taken place in all four Westminster states, the United Kingdom (Strong 2015a), Australia (Larkin and Uhr 2010), New Zealand (Parliamentary Library 2014) and Canada (Bolt 2014).

The results of these reforms have varied. In the United Kingdom, a convention has formed, such that the House of Commons must approve major military deployments (Phillipson 2014). Propelled by backbenchers and parliamentary committees, this convention has given the Commons a check over the war

prerogative, as demonstrated by the August 2013 vote against a British military intervention in Syria. This convention has since been refined, giving the legislature an informal veto over expeditionary combat operations, except in urgent cases (Strong 2015a). As Prime Minister David Cameron stated in September 2014 regarding the deployment of forces to Iraq: 'I think the convention that has grown up in recent years that the House of Commons is properly consulted and there is a proper vote is a good convention'. The convention was further acknowledged in February 2015 by then defence secretary Michael Fallon, who noted that the government would consult the Commons for 'offensive military operations' owing to the existence of a 'well established convention' (quoted in Mills 2015: 30–32).

In Canada, the requirement to consult the Commons prior to deploying the armed forces remains vague, and no convention of legislative control has formed (Bolt 2015). Instead, the Canadian votes have largely benefited the executive. The executive chooses when the House is consulted, and the Conservative government (2006–2015) used deployment votes to divide opposition parties (Sjolander 2009), discourage debates about controversial missions (Saideman 2016), and deflect Cabinet's accountability for these decisions (Lagassé 2016). Rather than augmenting the Commons' control over military deployments, Canada's war power reforms have strengthened the executive's position vis-à-vis Parliament. The executive's continuing ability to act without a formal vote in the House was made clear when Canada's new Prime Minister, Justin Trudeau, announced changes to the military's mission in Iraq in February 2016. Although he pledged to consult the Commons, Trudeau was careful to acknowledge 'the exclusive role of the executive in military matters' (PMO 2016).

This article explains the variation in war prerogative reform in these two 'most similar cases'. Applying Mahoney and Thelen's theory of gradual institutional change (2010), the article argues that the variation is explained by each country's political context and institutional dynamics. Using their framework, the article argues that Britain's post-Iraq War legislative-driven reform efforts resulted in change by layering, whereby new rules are introduced 'on top of or alongside existing ones', while Canada's executive-driven change reflected conversion, where existing rules are respected or modified depending on the strategic interests of the reformers (Mahoney and Thelen 2010: 16–18). While the two reform efforts may look similar on the surface, the form they have taken and the results they have yielded differ.

The article begins by outlining its theoretical framework and methodology. Next, the article examines the evolution of war prerogative reforms efforts in the United Kingdom, from the late 1990s to the Commons vote authorizing British air strikes against Islamic State targets in Syria. Canada's war power reforms are then assessed, from the early 1990s to the debates and votes on Canada's

involvement in the coalition fighting the Islamic State in Iraq and Syria. The article concludes with a discussion of how British and Canadian cases accord with the underlying claims about institutional change made by Mahoney and Thelen.

1. Identifying and tracing gradual institutional change

Mahoney and Thelen's theory of gradual institutional change (2010) brings together insights from different schools of neo-institutionalist thinking to offer a comprehensive understanding of how institutions evolve. Incorporating but moving beyond critical junctures to explain change, their framework seeks to understand how and why institutions develop through incremental steps that reflect particular political contexts and institutional characteristics (Mahoney and Thelen 2010: 15). Mahoney and Thelen take the view that institutions—which encompass rules, norms, and procedures—are essentially '*distributional instruments* laden with power implications' (2010: 8). The distributive nature of institutions ensures that tensions and the possibility of change surround them; competing actors work to preserve or enhance the power that an institutional setting provides them. The ability of discontented actors to tilt distributions in their favour, however, is shaped by how well-placed defenders of the status quo are able to block change. It is this dynamic that provides the political context of institutional change. As importantly, change will be structured by the degree of discretion actors have in interpreting and enforcing rules. Low interpretive discretion will lead to the preservation or removal existing rules, while high interpretive discretion will allow for a manipulation of existing institutions to bring about change.

When opportunities for reform presents themselves, therefore, Mahoney and Thelen argue type of institutional change achieved will reflect two factors: the ability of status quo defenders to veto reform initiatives, and the discretion actors have in reinterpreting or ignoring existing rules. Based on these variables, they draw on the four types of institutional change proposed by Streeck and Thelen (2005) and link them to four types of change agents.

Displacement is the first type of institutional change. It occurs when 'existing rules are replaced by new ones'. Displacement occurs when challengers are able to overwhelm defenders of the status quo. A second type of change is layering. It 'occurs when new rules are attached to existing ones, thereby changing the ways in which the original rules structure behaviour'. Rather than introducing 'wholly new institutions or rules', layering 'involves amendments, revisions, or additions'. Layering is pursued when challengers are unable to completely displace existing rules and must 'work within the existing system by adding new rules on top or alongside old ones' (Mahoney and Thelen 2010: 16–17).

Drift is a third type of change. It 'occurs when rules remain the same but their impact changes as a result of shifts in external conditions'. Drift reflects a decision

not to adapt rules or norms to new conditions that affect their meaning and implementation. Conversion is a fourth type of institutional change. Under conversion, 'rules remain formally the same but are interpreted and enacted in new ways'. Conversion exploits ambiguities surrounding existing rules to reinterpret them in the pursuit of 'new goals, functions, or purposes' (Mahoney and Thelen 2010: 17–18). Conversion occurs when actors are not interested in institutional change per se, but offer up change as a means of achieving self-interested ends.

The type of change pursued is affected by the veto possibilities available to defenders of the status quo and the degree of discretion change agents have in interpreting and enforcing existing rules. When status quo vetoes are weak, displacement and conversion are more likely. When status quo vetoes are strong, layering and drift tend to occur. In addition, drift and conversion are associated with high discretion in rule interpretation, while layering and displacement occur when rule interpretation and enforcement are less discretionary.

To complete their theory Mahoney and Thelen identify four varieties of change agents. The first type, insurrectionaries, 'seek to eliminate existing institutions or rules, and they do so by actively and visibly mobilizing against them'. Insurrectionaries are therefore linked with displacement. A second type of change agent are symbionists. They 'exploit an institution for private gain', but 'carry out actions that contradict the "spirit" or purpose of the institution' (Mahoney and Thelen 2010: 23–24), and are thus associated with drift.

Subversives as the third type of change agent. They do not seek to preserve existing rules, yet they respect them as they attempt to bring about change. They may be insurrectionaries who realize that they cannot overcome status quo vetoes. Unable to displace existing rules, they are drawn to layering. Finally, the fourth type of change agents are opportunists. These actors are ambivalent about existing rules. Their principal concern is advancing their political interests, and they 'exploit whatever possibilities within the prevailing system to achieve their ends'. As such, opportunists will gravitate toward conversion, defending or reinterpreting rules to 'suit their interests'. This further means that opportunists will often contribute to institutional inertia, despite appearing to favour change (Mahoney and Thelen 2010: 26–27).

When these arguments are brought together, Mahoney and Thelen arrive at the following conclusions (Table 1). Insurrectionary displacement occurs when existing rules do not lend themselves to reinterpretation and status quo vetoes are weak. Symbionic drift happens when status quo protections are strong, but existing rules can be ignored or reinterpreted. Subversive layering is pursued when change is sought, but existing rules are protected by strong vetoes and do not lend themselves to reinterpretation. Finally, opportunistic conversion is available to agents who face weak status quo vetoes and who have high discretion in reinterpreting existing rules for their own ends.

Table 1 Contextual and institutional sources of change agents

		Characteristics of the targeted institution	
		Low level of discretion in interpretation/ enforcement	**High level of discretion in interpretation/ enforcement**
Characteristics of the political context	Strong veto possibilities	Subversives (layering)	Symbionists (drift)
	Weak veto possibilities	Insurrectionaries (displacement)	Opportunists (conversion)

Reproduced from Mahoney and Thelen (2010).

The executive has been the dominant actor in Westminster states for more than a century, though the past three decades have seen increasing efforts to redistribute power toward the legislature. Understanding the recent evolution of the Westminster system in this way highlights the applicability of Mahoney and Thelen's framework to prerogative reform in these states. Their theory of institutional change sheds light on how attempts to draw power away from the government toward Parliament is affected by the differing political contexts and rule interpretations in Westminster states.

The authority of Westminster executives to deploy the military without consulting Parliament constitutes the existing rule for the purposes of this study. To assess how this much this rule has changed in the United Kingdom and Canada, an interpretive process tracing methodology is employed (Vennesson 2008: 227). Recent efforts to grant the Commons a role in these military deployment decisions are traced to their origins. The main steps in the reform process are then analysed over time to identify the motives of change agents, and the kind of institutional change they pursued owing to status quo vetoes they faced and the degree of rule interpretation discretion they had.

The analysis relies on five sources of data: House of Commons debates published in Hansard in both countries; reports and studies produced by parliamentary committees and parliamentary researchers in both countries; bills introduced in both Parliaments; official documents published by the executive in both states; and secondary literature and media accounts of political developments. In the British case, committee reports were more numerous than in the Canadian case. A series of committees reported on reforms to the executive's war powers in the United Kingdom; only one has done so in Canada since 2000. The British government also published more responses and official documents related to the war prerogative than did the Canadian government. And British parliamentarians

introduced a greater number of bills related to this executive power. In Canada, relevant data was primarily found in parliamentary statements and motions.

2. Parliament and military deployments in the United Kingdom

The British Parliament had limited influence over military missions in the 20th century. Cabinet's authority to deploy the armed forces was not seriously questioned. The Commons did express its support of Britain's involvement in the Korean War in 1950, but no vote has held during the Suez Crisis of 1956, nor was a vote held regarding the Falklands War in 1982 (Mills 2015: 8–10). In comparative studies of legislative influence over military deployments, the British Parliament ranked among the weakest (Peters and Wagner 2011).

Efforts to strengthen Parliament's control of the executive's war powers began in earnest after the Persian Gulf War (1990–1991), when backbench Labour MPs grew concerned about the United Kingdom's continuing role in containing the Iraqi regime of Saddam Hussein (Gray and Lomas 2014: part one). In 26 January 1999, Labour MP Tam Dalyell introduced the *Military Action Against Iraq (Parliamentary Approval) Act 1999*. The bill would have prevented the executive from engaging in hostilities against Iraq without securing the 'prior approval of the House of Commons'. Since it sought to affect a royal prerogative, ministers were able to deny the bill the Queen's consent, which prevented a second reading (*The Guardian* 2013a). This initial attempt to limit the war prerogative via statute was thus blocked by a status quo veto.

Iraq continued to fuel the push to reform the executive's war powers in the 2000s. As James Strong has detailed, in 2002 Prime Minister Tony Blair refused to hold on debate on a possible war with Iraq, 'since no decisions had been taken about the use of force' (2015a: 608). Labour MPs led by Dalyell exerted pressure on the government to hold debates and a vote on the question. The confrontation between Blair and discontented Labour MPs was resolved when the prime minister agreed to a series of debates and formal vote. To ensure that he would carry the vote, however, Blair declared it a matter of confidence. On 18 March 2003, the motion supporting the government's Iraq policy passed 412 to 149. In Strong's words, 'Ultimately a majority preferred to overthrow Saddam Hussein than to overthrow Tony Blair' (Strong 2015a: 610).

Rather than appeasing reformers, the 2003 Iraq vote amplified calls to curb the executive's prerogatives. Indeed, the Iraq War stands as a turning point in contemporary British executive–legislative relations. The conflict galvanized calls for prerogative reform, and the war prerogative in particular (Gray and Lomas 2014: Chapter 2). In March 2004, the Public Administration Select Committee published *Taming the Prerogative*. The report noted that 'Several witnesses considered the power to go to war to be the most significant of the prerogative powers'

(PSAC 2004: 9) and that reforms were needed to strengthen Parliament's influence over this executive authority. Whereas certain witnesses, such as Lord Hurd of Westwell, argued that a convention of parliamentary approval should be sought, former Cabinet minister William Hague suggested that a statute was needed. The committee concurred with the latter. Consulting Parliament prior to war, the report concluded, 'should never depend on the generosity or good will of government. A mere convention is not enough when lives are at stake' (PSAC 2004: 16). In Mahoney and Thelen's terms, the committee's intent was insurrectionary, to curtail the executive's discretion over military deployments, and *Taming the Prerogative* aimed to displace the prerogative in law.

In response, the Blair government noted the benefits of retaining the executive's prerogative. The prerogative allowed the government to act with dispatch and when Parliament was not sitting. Without ruling out occasional parliamentary consultations, the government stated 'that the pragmatic approach, allowing the circumstances of Parliamentary scrutiny to reflect the circumstances of the armed conflict, continues to be the more effective approach' (UK 2004). The Blair government thus signalled an intent to defend the status quo against an insurrectionary displacement.

Insurrectionary reformers made two attempts to displace the prerogative the following year. Labour MP Neil Gerrard introduced the *Armed Forces (Parliamentary Approval for Participation in Armed Conflict) Bill* in January 2005. The bill sought to supplant the prerogative with a conditional statutory authority. To participate in armed conflict or declare war, the government would need the prior approval of both houses of Parliament. In times of urgency, the executive would retain the authority to deploy armed forces, provided that the approval of both houses was secured at the earliest opportunity. Gerrard's bill failed to reach second reading before Britain's 2005 general election. Upon Parliament's return in June 2005, Labour MP Claire Short presented a modified version of Gerrard's bill. Short's bill was debated, yet it went no further after the House declined to give it further time. This third displacement effort failed to overcome status quo opposition.

The House of Lords Select Committee on the Constitution took up the issue next, publishing its report, *Waging War: Parliament's role and responsibility*, in July 2006. The report argued that 'the exercise of the royal prerogative by the Government to deploy armed force overseas is outdated and should not be allowed to continue as the basis for legitimate war-making in our 21st century democracy'. However, the committee further noted that the option of displacing the prerogative by statute was the 'least persuasive' (HoL 2005–2006: 41). The committee found that placing war powers on a statutory footing would increase the risk of subjecting ministers and military personnel to prosecution. The statutory option might open military deployments to judicial review, and 'the need to

provide for 'emergency' exceptions would create loopholes that could be readily exploited by a future administration with ambitions less benign than those to which we are accustomed' (HoL 2005–2006: 41). Accordingly, the committee recommended that Parliament's role in conflict decisions should be determined by a convention. The convention would involve seeking Commons' approval for operations involving combat. In emergency circumstances, the convention would require the government to seek approval as soon as possible (HoL 2005–2006: 42–43).

In outlining the risks of displacing the prerogative with a statute, the Lords committee took, in Mahoney and Thelen's parlance, a subversive stance and offered a layering approach to reform. The prerogative would remain the legal authority for military deployments, but it would normally need to be exercised with the Commons' approval. In this way, an antiquated power would be legitimized and subject to democratic control. Yet, the Blair government continued to defend the status quo in its response: 'The existing legal and constitutional convention is that it must be the Government which takes the decision in accordance with its own assessment of the position' (UK 2006). In December 2006, Labour MP Michael Meacher introduced a bill to force the government to craft a parliamentary convention. It failed to reach second reading. The veto possibilities faced by reformers remained too strong, owing to the Blair government's disinterest in a compromise.

On 15 May 2007, reform-minded MPs were able to secure the passage of a resolution stating that no government should depart from the precedent set in 2003 of obtaining the House's approval and that the executive should come forward with a concrete path for further reform.[1] The prospects for such a reform seemed to improve with the appointment of Gordon Brown as prime minister. His government declared constitutional reform a priority, and the July 2007 *Governance of Britain* green paper acknowledged that exercising the war prerogative without parliamentary approval was outdated (UK 2007: 18). The paper further recommended a convention of parliamentary control. Brown's government thereby endorsed the layering approach proposed by the Lords committee. In October 2007, however, the government published *War power and treaties: Limiting Executive powers*, a detailed study of the issue. The study listed an abundance of concerns; indeed, it is not difficult to see the study as a summary of all the reasons the status quo was preferable.

Following a public consultation and debate in the Lords, the government concluded that another Commons resolution was the best means of establishing a convention (Mills 2015: 17). Importantly, though, most of the provisions of the proposed draft resolution dealt with exemptions to the requirement to obtain

[1]Hansard, 15 May 2007, vol. 460, 582.

approval. Of note, the retrospective approval would not be required for emergency deployments. Moreover, the executive, not Parliament, would decide how the convention applied. The resolution suggested that the Brown government was not all that subversive, and that the convention would layer over little of the executive's authority. Critically, interpretations of how this new rule would apply would rest with the executive. An impasse over the caveats sought by the Brown government and the aims of reformers in the legislature prevented the passage of a parliamentary resolution prior to the 2010 election.

The Conservative–Liberal Democrat coalition was poised to accelerate the pace of war prerogative reform. When in opposition, the Conservatives' Democracy Task Force had endorsed a parliamentary convention. Prime Minister David Cameron had backed a greater role for Parliament in deployment decisions when he was opposition leader, and William Hague, who was appointed Secretary of State for Foreign Affairs in the coalition Cabinet, continued to voice his support for displacing the prerogative in law (Gray and Lomas 2014: part one). Yet, the coalition government proved less enthusiastic in practice. The government merely sought retrospective approval when deploying forces to Libya in March 2011. The government's October 2011 Cabinet Manual merely stated that 'a convention had developed in Parliament that before troops were committed the House of Commons should have an opportunity to debate the matter. . .except when there was an emergency and such action would not be appropriate' (UK 2011: 44). An underlying preference for the status quo, or at least for the executive retaining the right to decide how Parliament would be consulted, persisted.

Reform advocates took note of the government's ambiguity. In May 2011, the Political and Constitutional Reform committee argued that there was 'an urgent need for greater clarity on Parliament's role in decisions to commit British forces to armed conflict abroad' (PCRC 2011: 5). Seizing on Hague's past support war prerogative reform, the committee pushed for an agreement on a parliamentary resolution establishing the convention by year's end. The committee further noted that supplanting the prerogative in law remained a long-term goal, but that a convention was the immediate priority. Reformers still preferred displacement, but layering was achievable at the moment, given the executive's lingering concerns about judicial review and emergencies.

Momentum toward greater parliamentary control became stronger in the years that followed. A possible British intervention against the Syrian regime in the summer of 2013 brought the issue to the fore. The Commons Backbench Committee, which had forced a vote on Britain's involvement in Afghanistan in 2010, demanded a vote on any involvement in Syria. MPs from both sides of the aisle expressed their support for a vote. Backbench Conservative MP John Baron led the initiative, tabling the motion 'That this House believes no lethal support

should be provided to anti-government forces in Syria without the explicit prior consent of Parliament' on 11 July 2013.[2] Faced with a rebellious Commons (Cowley 2015), the Cameron government had little room to manoeuvre.

On 29 August 2013, Cameron recalled the Commons to vote on a motion condemning the Syrian government's use of chemical weapons.[3] It was defeated 272 to 285. Following the vote, the leader of the opposition, Ed Miliband, asked whether the prime minister would respect the vote and not exercise prerogative authority to deploy the armed forces. Cameron made clear that he would respect the will of the House.[4] The vote set an important precedent. By allowing the House to decide Britain's involvement, the prime minister suggested that the authority to decide the deployments was now divided between the executive and legislature; the legal authority to send the armed forces remains with the government, but the political authority to dispatch them rested with parliamentarians (Phillipson 2014; Strong 2015b). Cameron's promise to respect the vote, in effect, indicated that the Commons had secured an informal veto over exercises of the military deployment prerogative (Strong 2015a). While the government could have ignored the vote, doing so would have been politically untenable. A layer of parliamentary control had been placed over the prerogative.

Over the next two years, the nature of the convention was refined. In August 2014, Cameron again asked the Commons to approve a military deployment, this time to assist Iraqi forces against the Islamic State. Leading up to the vote, the prime minister acknowledged that a convention of Commons approval now existed. However, Cameron further noted that the executive retained the authority to act in times of urgency (Mills 2015: 30). After the Cameron government ordered a targeted killing in Syria in September 2015, on the grounds that the individual represented a threat to Britain, the exceptions were expanded to include acts of self-defence. When asked about the government's understanding of when votes were required, defence secretary Michael Fallon replied that the convention only applied to 'offensive military operations' (Mills 2015: 32). This meant that the contribution of military trainers to Ukraine was not brought to a vote, nor was the deployment of forces to assist with the containment of Ebola. Starting in the fall of 2015, however, the Cameron government undertook a concerted effort to garner support for air strikes against the Islamic State in Syria (*The Guardian* 2015). The care taken to win the Commons' approval, and lack of any questioning about the need to secure it, suggests that the convention had taken root.

[2]Hansard, 11 July 2013, vol. 566, 587.

[3]For a detailed discussion of the August 2013 vote, see Kaarbo and Kenealy (2016).

[4]Hansard, 29 August 2013, vol. 566, 1555–1556.

Consequently, the executive's ability to reinterpret the rule of consulting the Commons before engaging in combat now appears quite narrow.

War power reform in the United Kingdom began as an effort by individual MPs to displace this executive prerogative with statutory authority. The insurrectionary agents behind these initial efforts sought to replace the executive's existing legal authority and replace it with one that would grant the Commons the power to control such decisions in law. Following Britain's involvement in the Iraq War, calls to displace the executive war powers took on greater importance. Parliamentary committees joined backbench MPs in demanding legislative displacement of the prerogative. Owing to the vetoes exercised by the Blair government, however, reform efforts shifted toward subversive layering; displacement was not a viable option. Working through committee reports and bills, this subversive layering acknowledged the executive's concerns about replacing prerogative power with statutory authority, while pressuring the government to grant the Commons a political role in the process through the establishment of a convention. With ministers and official documents acknowledging the necessity for change under the Brown and Cameron governments, change agents in the legislature were able gradually to layer a convention of Commons control over the executive's authority. The Conservatives' past endorsement of war prerogative reform, and an increasingly assertive backbench, created unique conditions for a successful layering of parliamentary control. The change was actualized in August 2013, when Cameron accepted that he should not exercise the prerogative contrary to the will of the House. Although the executive's power to address emergencies and 'defend the realm' without consulting the Commons remains (Gray and Lomas 2014), the layering resulted in a political requirement to secure the Commons' approval to dispatch the military on offensive operations.

3. Canada's parliamentary consultations

Contemporary calls for Canadian war prerogative reform began during the Liberal government of Jean Chrétien.[5] Under his premiership, the military was routinely deployed on operations with minimal parliamentary consultation. This led to various attempts to either displace the prerogative or layer a convention of parliamentary control. These efforts were initially led by the Reform Party, a populist party sceptical of executive authority (Flanagan 2009b). In 1994, Reform MP Chuck Strahl introduced a bill that would have prevented the executive from deploying the Canadian Forces on any peacekeeping operations without a vote of approval in the Commons. It was defeated at second reading. Reform MPs also

[5]For an overview of the historic role of Canada's Parliament in military deployment decisions, see Hillmer and Lagassé (2016).

tabled motions requesting free votes on military deployments in 1996 and 1999 (Dewing and McDonald 2006: 7). These also failed despite garnering the backing of all opposition parties, with the government arguing that this practice would unduly constrain the executive. In 2000, the Senate Standing Committee on Foreign Affairs recommended that Parliament approve military interventions (SSCFA 2000). The government did not respond. Between 2001 and 2004, opposition parties moved additional motions to require a vote in the Commons before the government deployed forces abroad. None of these efforts were successful. The Liberal governments of Chrétien and his successor, Paul Martin, held take note debates on military deployments, but dismissed the idea of holding votes. Status quo vetoes prevented any legislative encroachment on the war prerogative while they were in office.

During the 2005–2006 election, the Conservative Party pledged to 'Make Parliament responsible for exercising oversight over … the commitment of Canadian Forces to foreign operations' (CPC 2006: 45).[6] The ambiguity surrounding this promise continued when the Conservatives formed the government. One of the first acts of the Conservative government was a vote to extend Canada's military mission in Kandahar, Afghanistan. With the mission slated to end in 2007, Prime Minister Stephen Harper sought the Commons' support for an extension to 2009. His reasons for holding the vote were murky. The Liberal government had deployed the military to Kandahar without a vote the previous year. Coupled with the Conservative's electoral promise, this might have been a first step toward giving the House control over deployment decisions. Yet, Harper noted that this was not the case. He stated that 'What the government will do, if we do not get a clear mandate, the clear will of Parliament to extend for two years and beyond, is proceed cautiously with a one year extension'.[7] Holding the discretion to initiate the vote and determine its meaning, Harper decided that it would merely serve to caution against or endorse, not check, the executive's pre-determined policy.

Parliamentary politics played into Harper's decision. With only a slim plurality of seats in a hung parliament, the Conservatives stood a fair chance of losing the 2006 vote. Yet, the risk came with an opportunity. Having initiated the Kandahar mission, a number of Liberals were committed to Canada's involvement in Afghanistan. Compelling them to vote with the government would give the extension bipartisan support and grant the Conservatives a political victory

[6]The Conservative Party of Canada was born of a merger between the Progressive Conservative and the Canadian Alliance, the successor to the Reform Party. The Reform Party itself had splintered from the Progressive Conservatives in the late 1980s. However, the Reform/Alliance faction of the new party was the senior partner when the merger occurred (Flanagan 2009a).

[7]House of Commons, *Debates*, 39th Parliament, 1st session, 17 May 2006, vol. 141, 1605.

by splitting the official opposition. The gamble paid off. On 17 May 2006, the Commons voted 149 to 145 in favour of the extension, with thirty Liberal MPs siding with the government, including the party's interim leader and the future winner of the party's leadership race. Over the next two years, the Conservatives put to symbolism of the vote to good use. Given that their leadership supported the extension, the Liberals were muted in their criticisms of the mission. This left the role of critiquing the operation to smaller opposition parties. When questioned about the mission, Conservative ministers reminded the House that its members had voted for it. The vote proved to be an effective means of deflecting criticism, creating a wedge between Liberals, and shielding the government from attacks (Lagassé 2010: 14–18). It was a politically advantageous vote, suggesting that the Harper government's motives were opportunistic and bringing the matter before the House was a form of conversion. There was no need or recent precedents for exercising the prerogative after a vote in the House, yet the Conservatives stressed the importance of gauging the mood of the Commons.

In the 2007 throne speech, the Conservatives declared that 'any future military deployments [to Afghanistan] must also be supported by a majority of parliamentarians'.[8] Although this language seemed to presage the establishment of a convention, it remained ambiguous. Votes would be required for deployments to Afghanistan, not expeditionary operations in general. As with the conditions placed on the 2006 vote, the speech demonstrated the government's discretion in interpreting when and how the Commons would be consulted. The political advantages of consulting the House grew over the next year. As the military took ever more casualties in Kandahar in 2007–2008 and the public grew wary of the engagement, the Conservatives sought a way to further extend the mission while minimizing negative effects on their popularity. To do so, the government attempted to launder its responsibility for the decision through the legislature and conclude a tacit agreement with the Liberals to ensure that another extension would not become a point of debate between the two major parties.

In October 2007, the Harper government established an independent panel to issue policy recommendations on Canada's role in Afghanistan. Chaired by former Liberal Cabinet minister John Manley, the panel provided the government with bipartisan advice on the future of the mission. The panel recommended that the mission be extended without an end date. Armed with this recommendation, the Conservatives approached to Liberals about securing their support for a second extension vote. The parties ultimately agreed on a 2011 termination. When the motion was brought before the House in March 2008, it passed 198–177, with twenty Liberals absenting themselves and the rest voting with the Conservatives. Following the vote, questions about Afghanistan in Parliament fell dramatically

[8]House of Commons, *Debates*, 20 October 2007, vol. 142, Speech from the Throne.

and the mission was ignored by the Liberals and Conservatives in the October 2008 election, despite increasing public opposition to the deployment (Saideman 2016: Chapter 4).

The 2008 vote was another opportunistic conversion by the Conservatives. Canada's mission to Kandahar was extended by an additional two years. Although the government might have suffered politically for the decision, the Manley panel and Liberal–Conservative unity provided cover. Rather than shouldering responsibility for the extension, the government noted that it had reached a cross-party consensus. And instead of casting the vote as a legislative approval of an executive policy, the extension was framed as a parliamentary decision.[9] Parliament, not only the government, shouldered the responsibility, and hence the accountability, for an increasingly unpopular mission.

As 2011 approached, the Harper government considered a future role for Canada in Afghanistan. Although a further Kandahar extension was discounted, the government settled on a non-combat training mission in the capital, Kabul, which would last until 2014. While the New Democratic Party, a left of centre party opposed to the mission, expressed dismay that Canada was remaining in Afghanistan despite the Commons' vote to end the Kandahar mission in 2011, the Liberals supported the Conservative plan. When announcing the mission, Harper further noted that a parliamentary vote would not be necessary, since the new mission did not involve combat. This went against the Conservatives' 2007 throne speech, but better defined when votes would be held. The New Democrats decried the lack of a formal vote, though Liberal MPs agreed with the prime minister. With the opposition divided, Harper thus retained his discretion to interpret how and when Parliament should be consulted. Had the opposition been united, the Commons might have wrestled a degree of control over when the House should be consulted. Yet the Liberals chose not to seize the opportunity. Indeed, the Liberal response led the New Democrats to accuse them of secretly colluding with the Conservatives (CBC 2010).

In early March 2011, the Harper government deployed forces to the coalition operation against the Gaddafi regime. Two weeks after the initial deployment and following initial escort operations by Canadian fighter aircraft, the government requested the House's consent for the mission. With tensions between the government and the opposition mounting, the Conservatives sought to secure bipartisan support for the mission in anticipation of a possible election. Doing so would ensure that the deployment would not be debated or politicised during the writ. Thanks to negotiations between the parties, common ground was found before the motion was tabled (*Globe and Mail* 2011). On 21 March, the motion

[9]House of Commons, *Debates*, 20 November 2008, vol. 143, 1115.

passed unanimously. Four days later, the House withdrew its confidence in the Conservative government and Parliament was dissolved.

The Conservatives won a majority of seats in the May 2011 election. In its throne speech, the government promised to hold a parliamentary debate on 'this important mission'.[10] Once again, the promise to consult the Commons was mission-specific, and in this case there was no pledge to hold a vote. Nonetheless, with discretion over when to consult parliamentarians or not, the government held votes to extend operations in Libya in June and September 2011, though the results were preordained because of the Conservative's tightly disciplined majority in the House.

Canada's response to the 2014 conflict in Ukraine, which included fighter aircraft patrols and army trainers, was not brought before the House by the government, nor did the opposition request a vote. Although they no longer had the influence they enjoyed during the hung parliament of 2008-2011, the opposition parties did not question the Conservative's pledge to only hold votes for combat missions. In August 2014, however, the House's role in military deployments became a matter of contention. At issue was the government's decision to deploy special operations forces to train local fighters battling the Islamic State in Iraq without a vote. The New Democratic Party accused the government of violating its own precedents and pledges, and further argued that the decision to deploy the armed forces now belonged to the House. As they had in the past, the New Democrats were seeking to imbue past votes with greater meaning and importance.

Harper answered these charges by exploiting the ambiguity surrounding the Commons votes. He indicated that the executive's right to exercise the prerogative remained untouched, but that his government had made it a point to consult the House regarding combat missions to reaffirm the Commons' confidence in the government.[11] Whether this implied that the government was bound to follow a vote against an operation remained vague, and probably purposefully so. Regardless, the point was moot under a Conservative majority. When the Commons was asked to vote on air strikes against the Islamic State the following month, the motion passed 157–134, with only one opposition member and one independent voting with the Conservatives. The wedge driven between the Conservatives and opposition Liberals and New Democrats over the air strikes benefited the government. Polls showed that Canadians supported the mission and the prime minister. The opposition leaders were deemed to have performed poorly in opposing the strikes (CBC 2014). The Conservatives continued to benefit from the votes.

[10]House of Commons, *Debates*, 3 June 2011, vol. 146, Speech from the Throne.

[11]House of Commons, *Debates*, 15 September 2014, vol. 147, 1425.

In the months that followed, ministers followed the prime minister in noting that the executive's prerogative to deploy the armed forces remained unaffected by their past precedents of consulting the Commons.[12] Ministers presented the votes as an unbinding practice that the Conservatives deserved credit for introducing.[13] As defence minister Jason Kenney declared:

> This is a new practice introduced by this government. There was no constitutional, statutory or even conventional obligation for the government in exercising the royal prerogative in the deployment of Canadian troops to consult with the House of Commons. Therefore, every hour of debate that we have in this place, including the 15 hours on this motion, is extraordinary. It is an extraordinary opening to the democratically-represented voices of the people in the House.[14]

After nearly a decade of holding votes on combat operations, the Harper government thus reaffirmed the executive's prerogative authority in 2015. As with the first vote in 2006, consulting the House was cast as a courtesy, one that allowed the government to hear dissenting views and test the mood of the Commons. This contrasted with the rhetoric surrounding previous combat operations, notably the March 2008 extension of the Kandahar mission. In that instance, the government sought to emphasise that the deployment decision was the House's to make, and that the executive was adhering to the 'will of Parliament' in exercising the prerogative. Similarly, in the March 2011 vote on Libya, the motion requested the House's consent, implying that the Commons had a degree of authority over the decision, although the military was already in theatre when the motion was tabled. Not coincidentally, the March 2008 and March 2011 votes took place during hung parliaments when the Conservatives were more politically vulnerable and acutely aware of likely elections looming on the horizon. The amplification of Parliament's role therefore coincided with the Conservatives' political interest in securing the opposition's support, seeking to co-opt them and silencing partisan debate over contentious military deployments. In 2006, in contrast, the government could afford the risk of trying to divide the Liberals soon after an election, and by 2014–2015 the Conservatives held a comfortable majority, allowing them reassert the executive's authority while presenting the parliamentary votes as an enlightened, yet essentially symbolic, practice.

[12]House of Commons, *Debates*, 26 March 2015, vol. 147, 1035.

[13]Standing Committee on National Defence, 29 January 2015, no. 45, 1200.

[14]House of Commons, *Debates*, 30 March 2015, vol. 147, 1530.

Rather than reflecting a determined effort to give the House control over the prerogative, the evolution of the Harper government's position reflects an opportunistic approach to war power reform. Instead of seeking to displace the executive's authority or layer a convention of Commons control over it, as opposition MPs had attempted during the Chrétien era, the Conservative government presented their parliamentary consultations in a way that best served their short-term strategic goals. Under Mahoney and Thelen's construct, this aligns with conversion, where the need to hold a vote in the House or emphasize the prerogative shifted based on the opportunistic change agent's political interests at the time. In keeping with the conditions identified by the framework, the Harper government was well-placed to engage in opportunistic conversion. The executive faced no status quo vetoes when it began holding the votes in 2006, and the government retained the full discretion to interpret how and when the votes would be held, and what meaning would be ascribed to the practice of consulting the Commons. Indeed, although the opposition might have limited the government's discretion over the votes during the hung parliaments of 2006–2011, this opportunity was not seized.

A decade after the practice of holding votes began, the Canadian Parliament's role in military deployment decisions remained ambiguous. Consulting the House before deploying the military was politically prudent and will likely continue as a result (Hillmer and Lagassé 2016), but there are few indications that the Commons must hold votes or that the executive is bound by the results. The war prerogative, it can be argued, was doubly converted, first to amplify the Commons role in pursuit of the Harper government's short-term political interests, then to reassert 'the exclusive role of the executive in military matters', as Prime Minister Trudeau stated, echoing his predecessor (PMO 2016). This suggests that no significant institutional change to the Canadian war powers has occurred. This, in turn, reinforces Mahoney and Thelen's observation that opportunistic change agents often encourage institutional inertia, rather than veritable change.

4. Conclusion

Mahoney and Thelen contend that gradual institutional change results from tensions inherent in the distribution of political power. The case of war prerogative reform in the United Kingdom and Canada supports this interpretation, while further highlighting the need to examine how political context and institutional structures shape how rules, norms and procedures evolve.

Following the Iraq War, the British Parliament undertook a concerted and prolonged effort to curb executive authorities sourced in royal prerogatives. The ultimate aim was to bring these authorities under greater legislative control.

These efforts coincided and were enabled by an increase in backbench assertiveness and a ministry that included advocates of prerogative reform under Prime Minister David Cameron. Despite sustained calls to displace the war prerogative, however, the legal authority to deploy armed forces remains with the executive, with a convention of political control layered atop it. To explain this outcome, it is necessary to note the executive's extensive status quo vetoes. The British government blocked attempts to displace the war prerogative in law, owing to the risk of judicial review of military operations and importance of preserving the executive's ability to respond to emergencies and act in self-defence. However, sustained pressure from backbenchers and parliamentary committees meant that the war prerogative could not be left entirely unaffected; a degree of power had to shift toward the legislature. This led to the layering compromise: a convention of parliamentary control would be formed, giving the Commons an informal veto over major military deployments involving combat. The executive's discretion to ignore this new rule now seems quite limited, meaning that it is likely to endure. Yet, thanks to the government's veto options, continuing calls for a displacement of the war prerogative are unlikely to succeed unless a statute can provide an equal degree of flexibility and protection from judicial review.

Canada's Conservative Party campaigned on a pledge to subject the executive to greater parliamentary control in the 2006 election. Increasing parliamentary oversight of military deployments was presented as one means of doing so. Once they formed government, however, the Conservatives exploited the ambiguity of their promise to suit political ends, leading to institutional change by conversion. A non-binding military deployment vote was used to divide the official opposition in 2006, another was used to shift responsibility for an increasingly unpopular mission from the government to Parliament in 2008, and yet another was used by all parties to establish a bipartisan consensus on an intervention in Libya before the 2011 election. Although these votes were held during hung parliaments, opposition parties and parliamentary committees did not use their influence to demand clarity on their meaning, displace the prerogative in law, or demand that a convention of parliamentary control over the executive's war powers. As a result, the Conservative government was free to interpret the Commons' votes to suit its interests, and the executive faced no pressure to shift any significant power to Parliament. After a Conservative majority was elected in 2011, the government reconverted the practice it had introduced. When the New Democratic Party questioned the executive's ability to deploy special forces to Iraq without a vote in 2014, Prime Minister Harper and his minister reasserted their prerogative authority. Commons votes were still held, but they were essentially a symbolic practice. Harper's Liberal successor, Prime Minister Trudeau, has held votes as well, though his government has not signalled an intention to increase legislative control of the war power. Despite the appearance of change,

the Canadian executive's military deployment prerogative remains unchecked by law or convention.

As per Mahoney and Thelen's framework, therefore, the variation in British and Canadian parliamentary control of the war prerogative can be explained by the degree of legislative effort to shift power from the Crown to Parliament, the executive's willingness to reform and ability to veto impalpable changes, and the degree of discretion governments retain in determining when military deployment votes are held and what they mean.

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References

Bolt, A. (2014) 'Crown Prerogative Decisions to Deploy the Canadian Forces Internationally: A Fitting Mechanism for Liberal Democracy'. In Jackson D. Michael and Lagassé Philippe (eds) *Canada and the Crown: Essays on Constitutional Monarchy*, Montreal, McGill-Queen's University Press.

Bolt, A. (2015) 'The 'Convention' to Consult Parliament on Decisions to Deploy the Military: a Political Mirage?' In Bédard Michel and Lagassé Philippe (eds) *The Crown and Parliament*, Montreal, Éditions Yvon Blais.

Canadian Broadcast Corporation (CBC). (2010, 15 November) 'Afghanistan Training Plan Details Emerge', accesssed at http://www.cbc.ca/news/politics/afghanistan-training-plan-details-emerge-1.889522 on 23 August 2016.

Canadian Broadcast Corporation (CBC). (2014, 22 October) 'Polls Suggest that Canadians still Support the Mission in Iraq, but show Mixed Results for Liberals', accesssed at http://www.cbc.ca/news/politics/justin-trudeau-vulnerable-on-iraq-but-has-it-hurt-him-1.2807576 on 23 August 2016.

Conservative Party of Canada (CPC). (2006) *Stand Up for Canada —Federal Election Platform.*

Cowley, P. (2015) 'The Most Rebellious Parliament of the Post-war Era', *Political Insights*, **28** March; available at https://www.psa.ac.uk/insight-plus/blog/most-rebellious-parliament-post-war-era.

Dewing, M. and Corinne M. (2006) *International Deployment of Canadian Forces: Parliament's* Role, Parliamentary Information and Research Service, PRB 00-06E, 18 May.

Flanagan, T. (2009a) *Harper's Team: Behind the Scenes in the Conservative Rise to Power*, 2nd edn, Montreal, McGill-Queen's University Press.

Flanagan, T. (2009b) *Waiting for the Wave: The Reform Party and the Conservative Movement*, 2nd edn, Montreal, McGill-Queen's University Press.

Globe and Mail. (2011, 21 March) 'Commons Unanimously Backs Canada's Deployment to Libya', accessed at http://www.theglobeandmail.com/news/politics/commons-unanimously-backs-canadas-deployment-to-libya/article573406/ on 23 August 2016.

Gray, James and Lomas Mark. (2014) *Who Takes Britain to War*? Gloucestershire, The History Press.

The Guardian. (2013a, 15 January) 'Secret Papers Show Extent of Senior Royals' Veto Over Bills', accessed at https://www.theguardian.com/uk/2013/jan/14/secret-papers-royals-veto-bills on 23 August 2016.

The Guardian. (2015, 3 November) 'Cameron Drops Plans to Hold Vote on Airstrikes on Isis in Syria', accessed at https://www.theguardian.com/world/2015/nov/02/cameron-drops-plans-commons-vote-airstrikes-isis-syria on 23 August 2016.

Hillmer, N. and Lagassé, P. (2016) 'Parliament will Decide: An Interplay of Politics and Principle', *International Journal* **71**: 328–337.

House of Lords (HoL). (2005–2006) Select Committee on the Constitution, *Waging War: Parliament's Role and Responsibility*, volume I: Report, 15th Report of Session 2005–2006, July.

Joseph, R. (2013) *The War Prerogative: History, Reform, and Constitutional Design*, Oxford, Oxford University Press.

Kaarbo, J and Kenealy, D. (2016) 'No, Prime Minister: Explaining the House of Commons' Vote on Intervention in Syria', *European Security* **25**: 28–48.

Lagassé, P. (2010) *Accountability for National Defence: Ministerial Responsibility, Military Command and Parliamentary Oversight*, Institute for Research on Public Policy, Study 4.

Lagassé, P. (2016) 'The Constitutional Politics of Parliament's Role in International Policy'. In Chapnick A. and Kukucha C. J. (eds) *The Harper Era in Canadian Foreign Policy: Parliament, Politics, and Canada's Global Posture*, Vancouver, University of British Columbia Press.

Larkin, P. and Uhr, J. (2010) 'Bipartisanship and Bicameralism in Australia's 'War on Terror': Forcing Limits on the Extension of Executive Power', *Journal of Legislative Studies* **15**: 239–256.

Mahoney, J. and Thelen, K. (2010) 'A Theory of Gradual Institutional Change'. In Mahoney, J. and Thelen, K. (eds) *Explaining Institutional Change: Ambiguity, Agency, and Power*, New York, Cambridge University Press.

Mills, C. (2015) *Parliamentary Approval for Military Action*, House of Commons Library, Briefing Paper 7166, 12 May.

Parliamentary Library (New Zealand). (2014) *Troop Deployments Abroad: Parliamentary Consent*, Research Paper, November.

Peters, D. and Wagner, W. (2011) 'Between Military Efficiency and Democratic Legitimacy: Mapping Parliamentary War Powers in Contemporary Democracies, 1989-2004', *Parliamentary Affairs* **64**: 175–192.

Phillipson, G. (2014) 'Parliament's Role in the Use of Military Action after the Syria Vote', presentation at The Constitution Unit, University College London, 10 March; available at https://vimeo.com/88916249.

Prime Minister's Office (PMO). (2016) 'Talking Points for Prime Minister Trudeau: New Approach to Address the Ongoing Crises in Iraq and Syria', 8 February.

Political and Constitutional Reform Committee (PCRC). (2011) *Parliament's Role in Conflict Decisions*, Eighth Report of Session 2010–2012, 17 May.

Public Administration Select Committee (PSAC). (2004) *Taming the Prerogative: Strengthening Ministerial Accountability to Parliament*, Fourth Report of Session 2003-04 (HC422), 4 March.

Saideman, S.M. (2016) *Adapting in the Dust: Lessons learned from Canada's War in Afghanistan*, Toronto, University of Toronto Press.

Senate Standing Committee on Foreign Affairs (SSCFA). (2000) *The New NATO and the Evolution of Peacekeeping: Implications for Canada*, Seventh Report, April.

Sjolander, C.T. (2009) 'A Funny Thing Happened on the Road to Kandahar: The Competing Faces of Canadian Internationalism?' *Canadian Foreign Policy Journal* **15**: 78–98.

Streeck, W. and Thelen, K. (2005) 'Introduction: Institutional Chance in Advanced Political Economies'. In Streeck, W. and Thelen, K. (eds) *Beyond Continuity: Institutional Change in Advanced Political Economies*, Oxford, Oxford University Press.

Strong, J. (2015a) 'Why Parliament Now Decides on War: Tracing the Growth of the Parliamentary Prerogative through Syria, Libya and Iraq', *British Journal of Politics and International Relations* **17**: 604–622.

Strong, J. (2015b) 'Interpreting the Syria Vote: Parliament and British Foreign Policy', *International Affairs* **91**: 1123–1139.

United Kingdom. 2004. *Government Response to the Public Administration Select Committee Report of the 2003-04 Session*, July.

United Kingdom. (2006) *Government Response to the House of Lords Constitution Committee's Fifteenth Report of Session 2005-06*, November.

United Kingdom. (2007) *The Governance of Britain*, July.

United Kingdom. (2011) *The Cabinet Manual*, October.

Vennesson, P. (2008) 'Case Studies and Process Tracing: Theories and Practices'. In Della Porta, D. and Keating, M. (eds) *Approaches and Methodologies in the Social Sciences*, Cambridge, Cambridge University Press.