This project will compare efforts to reform royal prerogative powers in four Westminster states: Canada, Australia, New Zealand, and the United Kingdom. The research aims to understand how the reform of these residual, yet still highly significant, powers have varied within and between these four countries.

In the Westminster system, royal prerogatives are "the residue of discretionary power left at any moment in the hands of the Crown, whether such power be in fact exercised by the King himself or by his Minister" (Dicey 1959: 464). Royal prerogatives have traditionally included the power to pardon, to negotiate and ratify treaties, to declare war and dispatch armed forces, to appoint judges and public officials, to determine the machinery of government, and to prorogue and dissolve Parliament (UK 2009; Strange 2001; Olson and Lordon 1991). Although these powers are derived from the monarch's traditional authorities at common law, royal prerogatives still provide Westminster executives with significant discretionary authority (Payne 1999; Forcese 2017). Westminster states continue to rely on prerogative authority to deploy the military, both domestically and on international operations (Bolt 2015; Chowdhury 2018). Moreover, as the Supreme Court of Canada found in *Khadr*, prerogative powers remain the underlying source of the executive's discretion in international affairs (Roach 2010). Similarly, the British government's argument that it could trigger an exit from the European Union without consulting Parliament involved a debate about the scope of prerogative authority (Grant 2017; Craig 2017).

Royal prerogatives have been criticized for a lack of democratic legitimacy. Critics charge that prerogatives are antiquated, opaque powers that should no longer be a legitimate source of executive authority in a contemporary democracy (Schneiderman 2015; Joseph 2013; Cohn 2005; Harrington 2005; Vincenzi 1998). Acts of Parliament, not the traditional powers of the monarch, they argue, should be the source of governing authority today (Harris 2009). Giving Parliament greater power over these powers, moreover, could democratize their use (Aucoin et al. 2011). Furthermore, although royal prerogatives are subject to judicial review, and courts ultimately determine their scope and application, judges continue to approach their exercise with deference (Daly 2017; Klinck 2017; Banfield and Flynn 2015; Moosavian 2012; Poole 2010; Elliott and Perreau-Saussine 2009; Sossin 2002; Gibson 1998; Wheeler 1992). Replacing prerogative authority with parliamentary statute could, therefore, enhance judicial review of executive decisions (Lagassé 2012). For these reasons, efforts to replace or curb prerogative powers have been an important part of the democratic reform agendas in Westminster countries (UK 2003-2004; Aucoin et al. 2011). However, there has been considerable variation within and between Westminster states in terms of which royal prerogatives have been the subject of reform, which actors have been driving reform efforts, and what the outcome of the reforms have been.

Objectives

- In light of the continuing importance of prerogative powers, questions about their democratic legitimacy, and their prominence in democratic reform agendas, this research will provide the first comparative analysis of royal prerogative reform variation in Canada, Australia, New Zealand, and the United Kingdom.
- To further structure the comparison, this research will analyse reform efforts related to four categories of prerogative: 1) treaty ratifications; 2) military deployments; 3) judicial appointments; 4) the dissolution of Parliament.
- The research will bring together an international team of political scientists and legal scholars to study prerogative reform and contribute original scholarship and knowledge on democratic reform and executive-legislative-judicial reform in Westminster states.
- The research will provide insights into prerogative reform that will be useful for parliamentarians, governments, and reform advocates across Westminster democracies.

Context

Background: The timeliness and importance of this research is evidenced by the accelerated pace of prerogative reforms over the past decade and a half. The British government's ability to take part in the Iraq War without consulting Parliament sparked a series of constitutional reforms aiming to 'tame' the prerogative (UK 2003-2004). These reform efforts were primarily driven by parliamentary committees. The committees took aim at a number of prerogatives, including the treaty power, war powers, and the powers of the prime minister (Bartlett and Everett 2017; Hazell 2010). Under Prime Minister Gordon Brown, the British executive was nominally supportive of these efforts. Brown's government published a Green Paper examining the scope of existent prerogatives, what reforms might be worth pursuing, and how they might be enacted (UK 2007). Despite voicing its support of reform, however, the Brown government was cautious about these initiatives and no significant progress was made during his time as prime minister. Reform efforts accelerated under the coalition government of David Cameron's Conservatives and Nicholas Clegg's Liberal Democrats. As part of the coalition agreement between the Conservatives and the Liberal Democrats, Cameron agreed to advance prerogative reform, notably surrounding the power to dissolve Parliament. Understandably, Clegg worried that the prime minister might call an election to secure a majority government for the Conservatives. He was therefore determined to prevent that possibility. The result was the *Fixed-Term Parliaments Act 2011*, which removed the Queen's power to dissolve Parliament on the advice of the prime minister. Henceforth, Parliament would dissolve itself as per the conditions set out in the Act.

In consultation with parliamentary committees, the coalition government also introduced a Cabinet Manual outlining conventions and customs surrounding the exercise of certain prerogatives (UK 2011). As part of their *Constitutional Reform and Governance Act 2010*, moreover, the coalition government placed the civil service on a statutory footing instead of prerogative, and subjected treaty ratifications to greater parliamentary scrutiny. Cameron's government further saw the emergence of a convention of parliamentary consultation prior to major military engagements. This convention seemed to have been cemented in August 2013, when the House of Commons voted against British air strikes against the Syrian regime and Cameron vowed to respect the will of the elected house (Strong 2015). In recent years, however, the British government has sought to reassert prerogative authority, though not always successfully. Following the referendum to withdraw from the European Union, the British government argued that it had the prerogative authority to trigger the United Kingdom's exit without parliamentary approval. The Supreme Court of the United Kingdom rejected this argument in the high-profile *Miller* case (Elliott et al. 2018).

In Canada, Conservative government of Stephen Harper advanced prerogative reform for its own ends. Canadian advocates of democratic reform had criticised the discretionary powers of the executive for several decades. Although the Liberal Party and Progressive Conservative Party largely ignored these calls for reform, many of them were taken up by the Reform Party, which would eventually merge with the Progressive Conservatives to form the Conservative Party under Harper's leadership. When Harper formed government in 2006, his ministry initiated a number of reforms, though they were almost all symbolic in nature. These measures included bringing military deployments before the House of Commons for non-binding votes, allowing Parliament to review treaties prior to ratification, and the passing of a fixed-election law that left the Governor General's power to dissolve Parliament unaffected (Fieldman 2015; Heard 2010; Lagassé 2010; Dodek 2010). The Harper government also continued the practice introduced by Paul Martin's Liberal government of having Supreme Court appointees appear before a group of parliamentarians to answer questions. The common thread in these reforms was that they left prerogative authority untouched in law. Thus far, the Liberal government of Prime Minister Justin Trudeau has followed symbolic consultation practices introduced under Harper, and advanced reform efforts in other areas, notably senatorial and governor-in-council appointments.

Australia and New Zealand were pioneers in restraining prerogative authority, granting their Parliaments a role in reviewing treaties in decades past (Australia 2016; Nielsen 2007; Chen 2001). New Zealand was also the first of these four countries to introduce a Cabinet Manual that outlined the

conventions and customs surrounding government formation and other exercises of prerogative authority (Duncan 2014). Recently, moreover, the High Court of Australia limited the scope of the executive's authority in the landmark *Williams* cases (Saunders 2013; Appleby and McDonald 2013). As part of *Williams*, the High Court determined that the powers of the Australian executive do not automatically mirror those traditionally belonging to the British Crown. This finding has the potential to notably curtail the extent and application of royal prerogative in an Australian context (French 2018). Advocates in Australia and New Zealand have also initiated campaigns to reform the war prerogative (Broinowski 2015; Moore 2015) and judicial appointments system (Williams 2008). Interestingly, despite their initial leadership in this area, reform of these prerogatives has been slower in Australia and New Zealand than in the United Kingdom and Canada (New Zealand 2014).

Prerogative powers, therefore, have been and remain a significant part of the democratic reform debate in these four Westminster states. There has been considerable variation in terms of how different categories of prerogative have been reformed within these four countries, as well as between them. This research will provide greater understanding of how and why these reforms have varied within and across Westminster states.

Scholarly Contribution: Although the history, theory, and contemporary importance of royal prerogatives have attracted significant scholarly attention (Poole 2015; Tucker 2014; Cox 2012; Gerangelos 2012; Loughlin 2010; Blackburn 2009; Olson and Lordon 1991; Bradley 1988; Evatt 1987; Anson 1935; Allen 1849; Chitty 1820), this research will provide the first structured, comparative study of prerogative reform within and across the four largest Westminster states. Equally important, this research will bring together evolving legal and political science perspectives on royal prerogatives. While both law and political science have studied prerogative powers, the two fields have tended to work in isolation, with legal scholars examining judicial review of these authorities and the jurisprudence surrounding them, and political scientists analysing their importance for Westminster institutions. This research will see political scientists and legal scholars collaborating to provide a shared assessment of the evolution of prerogative powers in law and government. In so doing, this project will help breakdown disciplinary boundaries that have surrounded the study of prerogative powers and the Westminster system of government generally.

The value of this research is fourfold. First, in addition to making an original and timely contribution to the literature on prerogative powers, the research will contribute to knowledge and scholarship on democratic reform and executive-legislative-judicial relations in Westminster states by assessing how and why parliamentary control of executive authority has increased or not. Since royal prerogatives allow the executive to act with discretion in matters of state and to make decisions that shape the judiciary and legislature, they arguably constitute some of the most significant powers that Westminster government can exercise (Aucoin et al. 2011). Comparing how prerogative reform has fared within and across the four largest Westminster states will therefore deepen understandings of what conditions are favourable to reform and which are unfavourable. Gaining a better understanding of when conditions for reform are favourable will thus provide valuable insights to reform advocates and parliamentarians across the Westminster system who are seeking to establish greater legislative scrutiny or control of executive power. Second, and relatedly, this research will provide 'lessons learned' from other Westminster states on prerogative reform. Parliamentarians, advocates, and governments who aim to advance prerogative reform will benefit from knowing which efforts have proved lasting or fleeting. Indeed, in cases when reforms have been reversed or undone, these 'lessons learned' will provide reformers with a clearer sense of how future reforms can be improved, what compromises might be worth pursuing, and what risks and unintended consequences appeared when reforms moved too quickly.

Thirdly, this research will contribute to comparative studies of the Westminster system. In recent years, this literature has compared the role of first ministers (Weller 2018), leadership changes (Cross and Blais 2012), the head of state function (Twomey 2018), parliaments and party discipline (Kam 2009), and constitutional conventions (Galligan and Brenton 2015). Adding a comparative analysis of

prerogative reform to this literature will further contribute to our understanding of the Westminster system and how the states that share this governing tradition relate and differ. Fourthly, as discussed below in detail, this project will apply recent theoretical advances in the study of institutions and institutional change to the Westminster system. Neo-institutional theory has greatly advanced understandings of how institutions operate, and most importantly, how they change over time (Peters 2012). Applying these recently developed frameworks will deepen theoretical understandings of institutional change in the Westminster system.

Theory: This project will apply the theory of gradual institutional change developed by Mahoney and Thelen (2010). Under this framework, institutional change is understood to be a process that varies according two factors: 1) the ability of those who benefit from the status quo to block reform; and 2) the discretion that actors have to reinterpret or ignore existing rules. Based on how these two factors vary, Mahoney and Thelen outline four types of institutional change driven by four types of change agents. When existing rules cannot be reinterpreted or ignored, but status quo defenders cannot protect them, 'insurrectionary' agents can replace the existing rules with new ones. This is change by *displacement*. When existing rules cannot be reinterpreted or ignored, and their defenders can veto their removal, then 'subversive' agents must opt for change by *layering*, which involves placing new rules atop the existing ones. In those situations where existing rules cannot be removed, but they can be reinterpreted or ignored, 'symbionist' agents can rely on *drift*, which sees an existing rule changed based on new conditions or circumstances where it is applied. Finally, when existing rules are subject to reinterpretation, and defenders of the status quo are weak, 'opportunistic' agents can *convert* the existing rule, changing its meaning or application to suit their political aims.

Based on Mahoney and Thelen's framework, it is possible to derive the following hypotheses about what factors influence the direction of prerogative reform. First, we expect that governments who dominate the legislature and impose strong discipline over their parties will be better placed to defend prerogatives against parliamentary efforts to displace them with statute. In such cases, parliamentarians are expected to rely on layering or drift to reform the prerogative. An example of layering would include the development of a convention to control when the government exercises a prerogative, while drift could involve establishing a norm against exercising a particular prerogative. Second, parliamentary-driven, insurrectionary efforts to displace the prerogative are likelier when governments are weaker, such as during hung parliaments. Third, when governments take charge of prerogative reform and parliamentarians are not seized of the issue, reform will tend toward displacement or conversion. An insurrectionary, executive-driven displacement reform would replace the prerogative with a statutory authority that gives governments more power than they had before, while an opportunistic conversion would see governments manipulating the prerogative or reform proposals to satisfy political aims. Fourthly, we anticipate that court rulings play a significant role in determining how prerogatives can be reinterpreted and how effectively prerogative authority can be constrained by layering and reinterpreted under drift or conversion. Moreover, the courts themselves act as status quo defenders or as change agents in matters touching on the prerogative, notably by protecting the prerogative from statutory encroachment or finding that the scope of a prerogative is wider or narrower than originally thought.

An important limitation of Mahoney and Thelen's framework is its bias toward linear change. Specifically, the framework is most effective in explaining when change moves forward, but less insightful when calls for change stalled or reversed. Given that calls for prerogative reform have often been ignored, it is necessary to complement and expand their framework as part of this research. To better understand how and when prerogative reform becomes politically salient, the research will apply theories of agenda setting (Green-Pedersen and Walgrave 2014). Adding agenda setting theory to the analysis will allow the project to not only explain variations in the types and outcomes of prerogative reform, but when such reforms gather momentum. Equally important, bringing agenda setting into the analysis will help us better understand when opponents of a reform are able to reverse institutional change. Specifically, this literature will allow us to better grasp when and how those opposed to change

are able to turn the agenda away from reform toward reconsideration. Bringing this element of institutional change into Mahoney and Thelen's framework, i.e. moments of reverse institutional change by status quo defenders, will build upon their theory and have applications beyond this particular project.

Methodology

The methodology underpinning this research is a series of structured, focused comparisons of 'most similar' cases (Bennett and George 2005). These cases will be analysed and compared qualitatively, using interpretive process tracing (Vennesson 2008), and the research will rely on two types of data: primary documents and semi-structured interviews. The set number of cases and our experience collecting this type of data will ensure that the project is feasible.

Case selection: In their seminal comparative study of the Westminster system, Rhodes et al. (2011) limit their discussion to the United Kingdom and the former 'Dominions' of the British Empire who still adhere to system of government recognized as Westminster: Canada, Australia, and New Zealand. This is also the approach taken by Galligan and Brenton (2015) in their comparative study of constitutional conventions. By contrast, Twomey's recent study of the head of state function in the Westminster system takes an expansive view, including the Commonwealth realms and former realms and colonies whose systems of government retain elements of the British parliamentary tradition (2018). Comparative studies of the Westminster system, moreover, can include Canadian provinces and territories, as well as the Australian states. This research will follow Rhodes et al. (2011) and Galligan and Brenton (2015) in focusing on the United Kingdom, New Zealand, and the federal-level of government in Canada and Australia. The criteria for this selection are three-fold. First, these four cases have had the widest degree of prerogative authority compared with sub-state governments and smaller realms. Second, as the largest and oldest of the Westminster states, the United Kingdom, Canada, Australia, and New Zealand are more amenable to a 'most similar' focused comparison. Third, limiting the research to these four cases allows for more in-depth analysis of prerogative reforms within and across them. Increasing the number of cases would force an undesirable trade-off between the richness of the case studies and feasibility of the project.

Focusing on four categories of prerogatives further structures the comparison. Concentrating on four sets of prerogatives will allow the research to compare reform efforts within each state and across them, as well as address critical powers (treaty powers, military deployments, judicial appointments, and parliamentary dissolution) that have been at the centre of debates about prerogative reform and executive-legislative-judicial relations within the Westminster system.

Scope: With respect to temporal boundaries, our research will focus on prerogative reform efforts since the late 1960s. The prerogatives that will be studied as part of this project have become serious objects of reform in recent decades, rather than centuries. Limiting the scope to the past half century is expected to capture the relevant data and events that surrounded their reform. In those instances where the data reveals a need to reach farther back to gain a full sense of the impetus toward reform, the scope may be broadened, though only to the extent necessary.

Analysis: Interpretive process tracing is well-suited to the study of institutional change, including prerogative reform. This approach allows us to understand how political dynamics evolve and interact over time (Bennett and Checkel 2014; Collier 2011). Lagassé (the applicant) has used this analytical approach as part of his previous work on prerogative power reforms in Canada and the United Kingdom (Lagassé 2012; Lagassé 2017b) and as part of another SSHRC-funded project on legislative oversight of the military (Lagassé and Saideman, 2018). Indeed, this methodology marries particularly well with Mahoney and Thelen's theory of gradual institutional change, as it allows us to identify when efforts to change an institution took hold, what actors were involved, whether they were pushing for change or defending the status quo, and how change agent strategies shifted based on their interaction with status quo defenders and existing rules.

Data: Primary documents produced since the late 1960s will be a first source of data for this research. These will include party platforms, parliamentary debates, transcripts and reports from parliamentary committees, legislation and executive orders-in-council, and court factums and rulings. These primary documents will then be read through the prism of interpretive process tracing and the theory of gradual institutional change to analyse the sequence of events that led to calls for reform, effort to reform, which strategies of institutional change were pursued and why, and whether reform efforts achieved their objectives or were ultimately blocked by those defending the status quo. These primary documents will be complemented and enhanced by semi-structured interviews with actors who were involved with prerogative reform, either as parliamentarians, advocates, former judges, or officials within government. Conducting these interviews will allow us to get a fuller sense of how reforms unfolded, particularly in terms of when the push for reform began, what obstacles reformers faced, how officials responded and reacted, and why certain compromises or choices were made in terms of reform strategies or solutions. These interviews will therefore fill important gaps found in the primary documentation and ensure that the processes of change we have identified reflect the experiences of those who were directly involved in the reforms. Based on Lagassé's past research that involved semi-structured interviews, we anticipate that 20-40 interviews per country will be representative and sufficient.

Feasibility: We are confident that this research project is feasible. A significant portion of the primary documents we will be gathering are available online. Although we plan on completing the data collection for all four countries in three years, this will be achievable since Lagassé will be on sabbatical during the second year of funding. To assist with the data collection, we will employ a doctoral student who will gather the Canadian data during the first year. During the second and third year, the doctoral student will travel to Australia and New Zealand (second year) and the United Kingdom (third year) to gather archival documentation. The doctoral student will work under the supervision of the project collaborators who are located in each country and assist them with their contributions to the project. In addition, while in country, the student will idenitfy individuals who will be the subject of our semi-structured interviews. Lagassé will then travel to Australia, New Zealand, and the United Kingdom to join the student and collaborators for one month to conduct the interviews. Having Lagassé and the student involved in conducting all of the interviews will ensure consistency in the questioning and approach.

Research Plan

This research will take place over five years. Early in the first year, the research team will gather in Ottawa, Canada for a preliminary workshop. This workshop will serve to collect the team's perspectives on the royal prerogative in their respective countries and disciplines. It will also allow for a preliminary discussion of trends and lines of inquiry that will guide the research going forward. The remainder of the first year will be devoted to the Canadian case study. Lagassé, Adams, and the doctoral student will be the primary members of the team researching the Canadian case. By the end of the first year, Lagassé and Adams will co-author two articles, the former on the politics of the prerogative in Canada, and the latter on the judiciary and the prerogative. In the summer of the second year, the doctoral student will travel to Australia and New Zealand for one semester to work under the supervision of Twomey, Banfield, and Sirota. The student will gather primary documents and identify interviewees. Lagassé will then travel to both countries for one month to conduct the interviews alongside other members of the team. The remainder of the second year will be devoted to further documentary research and the preparation of four articles (two per country) by the team. In the third year, the same approach will be applied to the United Kingdom, with Hazell and Payne supervising the student and helping the team produce two articles. Finally, the team will gather again in the fourth year for a workshop in Ottawa to compare and synthesise findings, as well as plan for a book. The fifth and final year will be devoted to preparing a book manuscript.