

# Prerogative Power Reform: Avenues for Comparative Research

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# Prerogative Power

- Discretionary power of the executive, not derived from statute and traditionally warranting a degree of judicial deference
- Residual power waiting to be displaced and rightly subject to fully judicial review (Whig)
- Executive functions and competencies that touch upon high policy and political questions (Cavalier)
- Role of monarchical powers in a contemporary democracy
- Relationship between the executive and the legislature
- As either common law or constitutional powers, the role of the courts in determining their scope and proper exercise

# Variation

- Significant reform in the United Kingdom (Parliament and the courts)
- Executive driven reform in Canada, deferential Parliament and courts
- Australia (recent court narrowing)
- New Zealand (Vanguard of codification)

# National Contexts

- Shared Westminster tradition
  - Crown, ministerial responsibility, Parliament, and common law
- United Kingdom:
  - Parliamentary supremacy
  - Uncodified constitution
  - Codified conventions
- Canada
  - Constitutional supremacy
  - Written constitution
  - Partially codified conventions
- Australia
  - Constitutional supremacy
  - Written constitution
  - Partially codified conventions
- New Zealand
  - Parliamentary supremacy
  - Written constitution
  - Codified conventions

# Actors

- Executive (Canada)
- Parliament (United Kingdom)
- Courts (Mix of deferent and constraining)
- Civil society (UK and Australia)
- Civil service and armed forces (Wedded to the prerogative?)

# Prerogative Areas

- Treaties
- War and defence powers
- Appointments
- Reserve powers

# Questions

- What aspects of the prerogative merit greater attention, either in terms of understanding them or with a view to reform?
- Is there anything distinct about these powers today, aside from their grounding in royal and/or common law?
- Is there room for prerogative power in contemporary Westminster democracies? Will another form of discretionary authority replace them?