After years of costly, unpopular, unsuccessful war, parliament understandably demands greater control over how the government uses force. Citing public opposition, (alleged) ministerial dishonesty or incompetence, and the risk of mission creep, MPs demand the right to veto military deployments before the fact. Though the unpopularity of what they propose limits their ability to do so directly, ministers resist this innovative step. The power to direct the armed forces forms part of the Royal Prerogative, the very core of executive authority in the UK’s uncodified constitutional order. Without it, the government risks being unable to make credible alliances, or threats. Supported by traditionalist back-benchers, ministers insist that they alone have access to secret intelligence, and that sharing their information and plans publicly risks benefitting the UK’s enemies. They maintain that parliament’s proper role involves sustaining the executive in power, approving funding for the armed forces, and holding ministers to account for their decisions after the fact. The push back against the idea that the House of Commons can properly consider, let alone practically take, operational decisions about military action. MPs resist these arguments. They broadly support the government’s domestic programme; a no-confidence vote seems far too drastic a step to take.
They want a change of course in this specific area, and otherwise hope the government will continue as before. They are willing to invent novel mechanisms to ensure both outcomes.

The year is 1782. Lord Cornwallis’ surrender to General Washington at Yorktown the year before has left the British Army in North America unable to continue offensive operations. Though British troops still hold important positions – notably New York, as well as Savannah and Charleston – they cannot hope to defeat the rebellious colonists without reinforcement. Prime Minister Lord North, urged on by George III, refuses to rule out continuing the war. But parliament is restless. Lord Rockingham’s Whig faction has long opposed the attempt to reconcile the American colonies by force, blaming British overreach for the rupture. It begins to attract support from the independent members who hold the balance of power in the House. After much debate over the constitutional propriety of doing so, MPs use a humble address to the King to demand an end to the war.

As this brief vignette suggests, debates since 2003 over the proper role of the House of Commons in military deployment decisions have echoed similar arguments made centuries ago. MPs concerned about the prospect of war in Iraq, but otherwise unwilling to remove Prime Minister Tony Blair from power, pressured the government into granting them a formal opportunity to veto the use of force. Seeking to distance himself from Blair, and knowing he would win, Prime Minister David Cameron copied Blair’s precedent when taking the UK into military action over Libya in March 2011. Crucially, when MPs vetoed an operation targeting the Assad regime in Syria in August 2013, Cameron complied. In so doing, he implicitly acknowledged a new conventional constraint on the Royal Prerogative power to direct the
armed forces¹. Yet Prime Minister Theresa May, urged on by colleagues in the Conservative Party, pushed back against Cameron’s precedents in April 2018. She ordered an essentially similar operation without calling a parliamentary vote. Instead she re-asserted the traditional Westminster Model approach.

Against this backdrop, this paper asks how much we can possibly learn about the role of the House of Commons in military deployment decisions by studying historical events. Given the basis of much of the UK’s uncodified constitutional order in convention and precedent, there must be at least a prima facie case for a historical approach. Yet the nature of the House has changed considerably since 1782, and the question must arise of how similar the present really is to the past. While some things clearly have changed – the Monarch no longer directly influences elections, for example – others remain the same. Understanding the present position means teasing out what they are. Finally, historical precedents help us understand the full range of possibilities. They help us identify the forgotten mechanisms that contemporary MPs might still use, and to cut through the recent debate’s focus on prior authorisation to appreciate the broader nature of the House of Commons’ role.

**Why, in theory, studying history might be helpful**

Foreign policy analysts treat history as part of the decision context in which leaders act. A society’s collective memory of past events helps establish which sorts of decision appear legitimate, or thinkable, and which appear illegitimate, or unthinkable – whether that memory is accurate or not. An individual leader’s understanding of history influences how they respond

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to new situations, providing them with a stock of analogies and images that help them process developments at times of information overload. Decision-makers are, in Yaacov Vertzberger’s term, ‘practical-intuitive historians’. They treat history as a guide to how to act in the present, and they do so intuitively, without systematic investigation or active critical thought.

Constitutional scholarship offers a different angle on history. For constitutional experts, the past shapes more than what a society considers possible, and how leaders think. It also establishes what the rules of decision-making are. Every legal order relies on precedent to some degree. But the UK constitution is itself, in AV Dicey’s famous formulation, ‘historical’ rather than ‘legal’ in nature. There is no formal codified document setting down who wields what power. Instead there is an accumulated collection of statute and common law, customs and practices, prerogatives and conventions.

From a purely legal perspective, MPs have no role in decisions about the use of force. The power to deploy the armed forces forms part of the Royal Prerogative. Neither parliament, nor the courts, have the right to interfere with how the monarch wields prerogative powers. Legal restrictions do nevertheless exist. Under the Bill of Rights (1689) the Crown requires parliamentary consent to maintain a standing army, and to raise the taxes necessary to keep it operating. Periodic Armed Forces Acts and annual votes of supply fulfil these obligations to this day. Even in law, in sum, the Crown’s power is not absolute. That is the legacy of the struggle between Crown and parliament in the 17th Century, and in particular of the Civil War and Glorious revolution.

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Subsequent political developments weakened the Crown’s role further. During the early eighteenth century, Queen Anne’s illness and the relative disinterest shown to English affairs by Kings George I and II opened space for senior ministers to wield power on the monarch’s behalf. By the time Sir Robert Walpole stood down as George II’s chief minister in 1742, he had dominated the political scene for a generation. While it took the Great Reform Act of 1832 – which limited the Crown’s ability to influence elections through manipulating the aristocracy’s control of ‘pocket boroughs’ – and Queen Victoria’s long withdrawal from public life after the death of the Prince Consort to cement the position, the convention that the Prime Minister exercises executive power in the monarch’s name dates originally from this time.

This convention places further political restrictions on the government’s ability to use force. Not only must the monarch defer to the Prime Minister, but the Prime Minister must retain the confidence of the House of Commons. Should either the government in general or any of its members in particular lose that confidence, MPs have the power to force them from office.

History teaches us, in sum, that MPs gained the power to withdraw both the right and the means to maintain armed forces from the government through the cumulative effects of the Civil War and the Glorious Revolution, as codified in the Bill of Rights. It shows us, also, how the related conventions emerged that the Prime Minister should be responsible to parliament, and should wield executive power – including the power to direct the armed forces – on the monarch’s behalf. It underpins the Westminster Model account of parliament’s role in decisions about military action. This holds, in short, that parliament has the right a) to disband the armed forces; b) to withhold funding, in whole or in part, from the armed forces, thus restricting their ability to act without formally abolishing them, and; c) to scrutinize the
government’s conduct after the fact, and to withdraw confidence from a minister or a ministry adjudged to have fallen short. As Sir Bernard Jenkin, Chair of the Public Administration and Constitutional Affairs Committee, put it in debate in April 2018, ‘Parliament controls laws and the supply of money to the Executive. Parliament is required to give its confidence to the Government in office for them to continue in office. It scrutinises Government decisions and holds Ministers accountable’. Theresa May herself asserted a similar view: ‘it is Parliament’s responsibility to hold me to account for such decisions, and Parliament will do so. But it is my responsibility as Prime Minister to make these decisions—and I will make them’.5

Similar arguments arose in debate on General Henry Conway’s attempt to use a humble address to the throne to force an end to the American War in February 1782. Though Conway (and others) asserted it was constitutionally proper for MPs to seek to override the government in this way, and everyone was too polite (or politic) to note that George III himself stood between Prime Minister Lord North and a decision to abandon the American colonies, several participants in the debate criticized Conway for constitutional overreach. William Adam, for example, argued that ‘by the constitution, the House had an indisputable right to examine into the past; but they could not dictate the measures to be adopted, without encroaching on the rights of the executive power’.6 Welbore Ellis, the Secretary of State for the Colonies, concurred, arguing ‘Ministers never could act to effect either in war or for peace, unless they possessed the confidence of that House; the Ministry that could not gain that confidence, ought to retire; but if confidence was given to them, the consequence of that confidence ought to be, that they should be left to act to the best of their judgment’.7

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7 Ellis, Welbore (1782) Debrett’s Parliamentary Register, Vol. 6: 266, 22 February.
North concurred, urging critics ‘if they suspected the sincerity, ability, or integrity of the servants of the Crown, it was not by such a motion as the present that the House ought to express their backwardness to trust them any longer with the management of public affairs: they ought to address the Crown to remove those ministers, in whom they could not place confidence’.

The similarities between the arguments used in 1782 and 2018 is striking. It speaks to the power of historical precedent in shaping contemporary attitudes. When Jacob Rees-Mogg quoted the Bill of Rights in arguing against parliament taking on prior veto powers during the debate following the May government’s action in Syria in 2018, he insisted ‘the process is established, has been established for centuries and is highly effective’. Nothing he said would have seemed amiss in the 1782 debate – MPs had approved the existence of the armed forces. They had approved the funding of the armed forces. Ministers alone possessed the information and the capacity to act rapidly and effectively. If the House declined to withdraw confidence in the government, its approval for any particular use of force was implicit.

What was different about 2018 was the suggestion – advocated by Leader of the Opposition Jeremy Corbyn – that parliament should pass a War Powers Act formally arrogating to itself the right to veto military deployments. The debate took place after several years in which practitioners and academic observers alike argued that MPs had gained a conventional power to do just that. Though questions remained about the proper process to be followed, and

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about the circumstances in which governments could act first and seek permission later, the basic principle looked quite well established. It appeared in the Cabinet Manual (though the text commits only to a ‘debate’ rather than a vote). It led, as we have seen, to the Cameron government pulling out of US-led military action against the Assad regime in August 2013. When then-Foreign Secretary Boris Johnson suggested the convention ‘needs to be tested’ during the 2017 election campaign, Downing Street slapped him down. Yet May did not, in fact, seek parliamentary approval before acting in Syria. Instead, she echoed a claim made two years earlier by then-Defence Secretary Michael Fallon, that the government had the right to bypass parliament where consultation would ‘constrain the operational flexibility of the armed forces and prejudice the capability, effectiveness or security of those forces’. That claim, in turn, went beyond Prime Minister Cameron’s assertion that the government would act without prior approval only ‘if there were a critical British national interest at stake or there were the need to act to prevent a humanitarian catastrophe’.

Yet this difference, and the nature of the push-back against it, raises the question of how much, actually, changed after 2003. And answering that question means establishing how meaningful it is to compare the role of the House of Commons in different eras. Rosara Joseph’s excellent legal analysis of the ‘war prerogative’ begins in the early Seventeenth

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Century, and traces its development through subsequent eras. Veronika Fikfak and Hayley Hooper, similarly, cite Seventeenth Century precedents in explaining the contemporary legal picture, and refer to the Act of Settlement (1701) in discussing the statutory picture. Neither study proves, however, that a historical approach is appropriate for analysing the politics of parliament’s war powers. The House of Commons might well hold the same position in the UK’s constitutional order in 2019 that it occupied in 1782, but have undergone internal changes that make comparison unwise.

Several such changes stand out. Before the Great Reform Act of 1832, the Crown directly interfered in elections to the House of Commons, with a view to delivering majority support for the monarch’s chosen Prime Minister. The requirement that the Prime Minister retain the confidence of the House of Commons gave the appearance of democratic control, but the monarch’s ability to influence the composition of the House returned power to the Crown. Between the two Reform Acts of 1832 and 1867, the decline of Crown influence and the absence of modern political parties gave MPs considerable power over the executive; power they wielded repeatedly to remove ministers and ministries who failed to maintain their confidence, especially on questions of foreign affairs. After 1867, modern political parties began to develop, and increasingly to deliver majority support for governments, ensuring they no longer needed to fear defeat on no-confidence motions. In the 1870s and 1880s, the growth of Irish Nationalism, and the Nationalists’ tactic of parliamentary obstruction, saw governments – often with majority support – take greater control over the procedures of the House, reducing the power of independent members even as the growing dominance of

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parties challenged their electoral position\textsuperscript{20}. The extension of the franchise in the early 20\textsuperscript{th} Century and the rise of the Labour Party complicated matters, as did periodic shifts in the structure of the party system\textsuperscript{21}.

Caution is required, therefore, in comparing the role of the House of Commons in different historical eras. It seems unwise, however, to ignore history completely. Historical precedents do shape present practices. In constitutional terms, it does not matter that the political nature of the House of Commons has changed markedly over the past two centuries. When MPs cite past events to justify their present positions, they rarely stop to consider how valid their (implicit or explicit) comparisons are. There are good grounds, in sum, for trying to learn about what the House of Commons can do by studying what it has done.

**Historical precedents**

The House of Commons has historically exerted at least five distinct forms of influence over the government’s ability to use force. These comprise, in no particular order, powers to control expenditure, to debate policy, to inquire into the government’s conduct, to withdraw confidence from the government, and actively to support the government.


The right of MPs to oversee the government’s expenditure on the armed forces arises, as we have seen, from the Bill of Rights (1688), which states that ‘the raising or keeping of a standing Army within the Kingdome in time of Peace unlesse it be with Consent of Parlyament is against Law’ and that ‘levying Money for or to the Use of the Crowne by pretence of Prerogative without Grant of Parlyament for longer time or in other manner then the same is or shall be granted is Illegall’. This provision came about as a direct result of clashes over the Crown’s right to raise and maintain an army during the Stuart era. Part of the cause of the Civil War lay in Charles I’s use of Royal Prerogative power to raise money for the navy without parliamentary approval. In May 1677 parliament refused to grant Charles II funds for a war with the United Provinces. Charles responded that ‘you have entrenched upon so undoubted a Right of the Crown, that I am confident it will appear in no Age (when the Sword was not drawn) that the Prerogative of making Peace and War hath been so dangerously invaded’, and ordered parliament adjourned until July.

Since 1955 the House of Commons has periodically passed legislation approving the continued existence of the armed forces; the most recent Armed Forces Act passed in 2016. It has also maintained control over the government’s ability to raise money – including to fund the armed forces – through the annual budget process, and the approval of departmental Estimates, including those presented by the Ministry of Defence. MPs are not empowered to increase the Defence Estimates, but can reject or reduce the proposals put by government.

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22 The Bill of Rights 1688 (1 Will and Mar sess 2 Chapter 2)
On 12 December 1781, Sir James Lowther attempted to block the Estimates entirely, by moving that ‘all further attempts to reduce the revolted colonies to obedience are contrary to the true interests of this kingdom’\textsuperscript{25}. Insisting ‘it certainly was not the intention of ministers to pursue the war in future in America as it had been last campaign, by marching armies through the colonies’, Lord North responded by arguing that the Estimates offered no room for further offensive operations\textsuperscript{26}. Sir Fletcher Norton hit back, arguing that MPs ‘could not trust His Majesty’s ministers’\textsuperscript{27}, while Colonel Barre pointed out that the Estimates allowed for the increase of forces in the Indies, and that ‘though these men should be voted for India, the executive power had an undoubted right to change their destination’\textsuperscript{28}. In the end, the government prevailed by 220 to 179 votes, helped in part by North’s assurances, despite his critics’ distrust. Lowther’s move may not have actually reduced the funds granted to the government for the maintenance of the military, but it did force North to commit, publicly, to ending the American War – a step that directly contradicted George III’s speech on the opening of parliament on 27 November, in which he maintained his desire, despite the defeat at Yorktown (news of which having reached London just days before), to ‘restore to my deluded subjects in America that happy and prosperous condition which they formerly derived from a due obedience to the laws’\textsuperscript{29}. Although the government survived this test, the question of whether the Estimates did indeed provide sufficient room for further offensive operations continued to haunt debates in the Commons. In the first debate on Conway’s motion, on 22 February 1782, for example, Lord John Cavendish warned that the American War had never cost as much as ministers assumed it would in any given year, and suggested that ‘the test

\begin{footnotes}
\item[25] Lowther, James (1781) Debrett’s Parliamentary Register, Vol. 5: 118, 12 December.
\item[26] North, Lord (1781) Debrett’s Parliamentary Register, Vol. 5: 127, 12 December.
\item[27] Norton, Fletcher (1781) Debrett’s Parliamentary Register, Vol. 5: 128, 12 December.
\item[28] Barre, Colonel (1781) Debrett’s Parliamentary Register, Vol. 5: 140, 12 December.
\end{footnotes}
given by ministers from the numbers voted this year might be fallacious, and probably it was so. Welbore Ellis repeated North’s claim – that the Estimates did not permit further offensive operations – but seemed not to get the same traction that the Prime Minister obtained the previous December.

In the end, events overwhelmed the 1781 Estimates debate, with MPs finding other ways to constrain the government. A different outcome awaited the Earl of Rosebery’s Liberal government in 1895. Following a scandal over the supply of cordite to the army, MPs voted to censure War Secretary Henry Campbell-Bannerman by symbolically reducing the portion of the Defence Estimates earmarked to pay his salary by £100. Although the measure targeted Campbell-Bannerman personally, and very few MPs actually participated in the vote (the government lost by 132 to 125), the government chose to resign en masse. Contemporary commentators regarded the vote as ‘rather the excuse for the resignation of the Rosebery Cabinet than the cause of it’. Nevertheless, it did illustrate the power MPs held to influence the government’s direction of the military through their control of supply.

**Debate**

The right to debate the government’s approach to the use of force is both the most fundamental and potentially least powerful tool MPs possess. It is fundamental because debate is the essence of a parliament. If not to debate, why do MPs gather in a single place? The very name ‘parliament’ implies deliberation. Debate is potentially parliament’s least powerful tool

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32 Hansard House of Commons Debates (1895) 4th Ser., Vol. 34, Cols. 1673-1713, 21 June.
33 Harcourt, William (1895) Hansard House of Commons Debates, 4th Ser., Vol. 34, Col. 1746, 24 June.
because it can only directly effect change through persuasion, and governments rarely look to MPs for advice.

Parliament’s power to debate the use of force nevertheless matters, for several reasons. First, because it is the one right that governments rarely challenge. Even critics of parliamentary involvement in military deployment decisions accept MPs should have the chance to discuss new operations. Although both the formal structure of debates, and the government’s ability to influence them, shifted over time, this rule generally applied from at least the eighteenth century onwards. On several occasions, MPs directly discussed the proper role the House should play at the outbreak of war. In April 1802 MPs considered establishing a committee of inquiry into the government’s conduct of war with France – the Treaty of Amiens having just been signed, ending the War of the Second Coalition. Although they rejected Sir Francis Burdett’s motion by 246 to 39, MPs spent several hours discussing whether they had the right to make the inquiries he proposed. In February 1854 the House spent three days debating the outbreak of the Crimean War, again reflecting on the constitutionality of the government’s efforts to minimise discussion on the objects of the war. In 1857 both the House of Lords and the House of Commons criticised Lord Palmerston’s government for making war in Persia without informing parliament. In 1880, following reports of fighting in Egypt, Sir Wilfrid Lawson asked ‘that the Government would not take any active steps in the direction of a policy of coercion without giving the House an opportunity of expressing an opinion on the subject’. Prime Minister Gladstone outright rejected the idea. In October 1899 MPs discussed the challenge of scrutinizing the looming Boer War without undermining the war.

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35 Debrett’s Parliamentary Register (1802) Vol. 17:1-34, 12 April.  
36 Hansard House of Commons Debates (1854) 3rd Ser., Vol. 130, Cols. 831-1041, 17-20 February.  
38 Hansard House of Commons Debates (1880) 3rd Ser., Vol. 256, Cols. 1313 and 1326, 4 September.
effort itself. A similar pattern arises throughout the twentieth century. MPs debated the outbreak of the First and Second World Wars (as well as key moments within them), the Korean War, the Suez Crisis, the Falklands War (the House met in a special Saturday sitting on that occasion), the Gulf War (following a recall of parliament during the Summer recess), and military actions in Kosovo, Sierra Leone, and Afghanistan.

With the exception of the Korean War, on each of these more recent occasions MPs formally considered a motion to adjourn the House. Such motions allow for debate on a subject without necessarily implying that the government will act on what results. The second reason why such debates nonetheless matter is that simply permitting MPs the chance to discuss the government’s approach can improve the deliberative legitimacy of whatever outcome emerges. It creates an opportunity for MPs to ask questions, air concerns, and listen to each other’s views before deciding how to proceed. The content of a debate can sway how individuals subsequently vote. Several commentators observed how Tony Blair’s performance in the final debate before the 2003 invasion of Iraq swayed wavering Labour MPs to his side. Others criticized Deputy Prime Minister Nick Clegg for failing to rally government backbenchers in the 2013 Syria vote.

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39 Hansard House of Commons Debates (1899) 4th Ser., Vol. 177, Cols. 60-483, 17-20 October.
40 Hansard House of Commons Debates (1914) 5th Ser., Vol. 65, Cols. 1809ff, 3-6 August.
41 Hansard House of Commons Debates (1939) 5th Ser., Vol. 351, Cols. 125ff, 3 September.
43 Hansard House of Commons Debates (1956) 5th Ser., Vol. 557, Cols. 1602ff, 2 August-3 December.
45 Hansard House of Commons Debates (1990) 6th Ser., Vol. 177, Cols. 734ff, 6-7 September.
The third reason why debates matter is that they enable MPs to communicate both specific concerns and a more general mood to ministers. Neville Chamberlain’s government won the adjournment vote at the end of two days of debate on its handling of British operations in Norway in May 1940. But the speeches made showed Chamberlain that he was losing the confidence of the House. At one point the veteran Conservative MP Leo Amery pointed at the Prime Minister and quoted Oliver Cromwell; ‘You have sat too long here for any good you have been doing. Depart, I say, and let us have done with you. In the name of God, go’.

Chamberlain resigned.

Inquiry

MPs are able to inquire into the government’s preparedness for and conduct of military operations through several different routes. Since the establishment of formal departmental Select Committees in 1979, MPs have used their regular inquiries to investigate different aspects of government policy. In 2015, for example, the Defence Committee criticized the government’s ‘strikingly modest’ contribution to the fight against Da’esh. Both the House of Commons Political and Constitutional Reform Committee and the House of Lords Constitution Committee have considered parliament’s role in military deployment decisions in recent years. The Public Accounts Committee publishes regular reports on the government’s handling of military procurement and expenditure matters. Academic studies

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51 Amery, Leo (1940) Hansard House of Commons Debates, 5th Ser., Vol. 360, Col. 1150, 7 May.
show that these inquiries really do matter; they force governments to respond, and to anticipate needing to defend their decisions in front of a committee even as they make them. Before the establishment of Select Committees, MPs occasionally proposed ad hoc inquiries into aspects of the government’s conduct. Most famously, in January 1855 the House approved a motion put by John Roebuck for a committee of inquiry into the government’s conduct of the Crimean War. Having failed to persuade the Cabinet to change course in response to clear evidence of military mismanagement in the camp at Sebastopol, former Prime Minister Lord John Russell had resigned as Leader of the House of Commons just days before – noting in the process that ‘enquiry is the proper duty and function of the House of Commons’ and regretting that he felt unable to resist Roebuck’s motion on the government’s behalf. War Secretary the Duke of Newcastle warned Lord Raglan before the vote that ‘it is almost certain that the government will be beaten’ and that ‘if so, we shall of course all resign’. Newcastle was right; after three days of debate, Roebuck’s motion carried by 305 to 148. Both Newcastle and Prime Minister the Duke of Aberdeen resigned.

Beyond the power to establish an inquiry, MPs possess the additional right to make inquiries, to ask questions of ministers both orally and in writing, and to expect a reply. For the most part, questions asked in the House of Commons itself involves enacting a political ritual rather than actually holding ministers to account. The existence of the power is significant nonetheless. It has in the past forced governments to explain their conduct in parliament.

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58 Hansard House of Commons Debates (1855) 4th Ser., Vol. 136, Col. 1232, 29 January.
May 1803 Henry Addington’s government published papers about the looming war with Napoleonic France in order to boost parliamentary support. In March 1854 MPs heard an explanation of the war with Russia read from the Throne in order to explain the outbreak of fighting in Crimea. In September 2002 Prime Minister Blair recalled parliament during the summer recess for a debate on the government’s intelligence about Iraq’s Weapons of Mass Destruction. Knowing they will have to answer questions about different aspects of policy, in a public forum, forces ministers to keep abreast of developments relevant to their brief (which, in the Prime Minister’s case, runs across the full remit of government). Knowing they will have to defend their decisions gives ministers an incentive to make better decisions; it is easier to defend a good decision than a bad one.

MPs have in the past used the device of a humble address to the throne to request that the government uses prerogative powers in a particular way. In the twenty-first century this mechanism has been used to demand the publication of government papers relating to the process of leaving the EU. Former Clerk of the House of Commons Sir David Natzler told the Exiting the EU Committee that no other use of the humble address could be considered orderly; ‘you can get papers with a humble address…You cannot order the Government to do stuff’. That power is, nevertheless, potentially significant in light of recent debates. Successive governments have refused to publish advice from the Law Officers about the legality of military deployments in international law. This refusal poses particular problems in the aftermath of the Iraq War. The Chilcot Report described the Blair government’s approach

to legal advice on that occasion as “far from satisfactory”\textsuperscript{64}. When the Attorney-General’s legal advice leaked during the 2005 general election campaign, many MPs considered its nuanced discussion of the shortcomings of the government’s position inconsistent with the categorical summary statement published ahead of the invasion in March 2003. The convention that governments do not publish their legal advice suffered a blow on 4 December 2018 when the House voted by 311 to 293 to censure ministers for failing to publish the Attorney-General’s advice on the implications of leaving the EU under the terms negotiated in the draft Withdrawal Agreement, as demanded in an humble address agreed by the House on 13 November\textsuperscript{65}. The government complied the following day. Similar use could thus be made of a humble address to demand the publication of legal advice relating to the use of force in future – provided, as ever, that a majority of MPs supported the demand. That prospect might, in turn, lead ministers to be more forthcoming about the legal grounds for military action in future – though doing so would make giving the sort of categorical assurances about legality that MPs typically demand hard.

In the eighteenth century, however, the humble address played a more expansive role – and private conversations the author has had with House of Commons clerks suggest some believe that Natzler’s blanket judgement was too narrow. MPs approved both the outbreak and the conclusion of the American War through a humble address. On 2 February 1775 they voted by 296 to 106 ‘humbly to beseech his Majesty, that his Majesty will take the most effectual measures to enforce due obedience to the laws and authority of the supreme

legislature’ in Massachusetts. On 27 February 1782 they approved by acclamation an address calling on George III to bring the conflict to a close.

Confidence

Prior to Prime Minister Cameron’s defeat over Syria in August 2013, each of the occasions on which MPs successfully overrode the government on a question of military action involved a loss of confidence. Following Conway’s motion in 1782, George III vowed to continue the war regardless. Although the government survived a confidence vote on 15 March by 236 to 227, it looked set to lose a second vote on 20 March. Lord North, having finally persuaded the King to accept his resignation, announced that he was stepping down before that debate got under way. Although George III himself considered abdication – the Royal Archives holds a draft statement in the King’s own hand announcing his retirement to Hanover – in the end he changed his mind. As we have already seen, the Duke of Aberdeen and the Earl of Rosebery considered the votes against their governments in 1855 and 1895 reflected their having lost the confidence of the House, and resigned. Aberdeen may well have been right, it seems Rosebery probably was not. Neville Chamberlain won the vote at the end of the Norway debate in May 1940, but saw his majority reduced from over two hundred to just eighty-one. Between that loss of support, and the statements made in the debate, he concluded he lacked the support necessary to go on. A similar claim could be made about Prime Minister Anthony Eden in 1956. Despite the government winning a confidence vote on 8 November, Eden resigned on 9 January 1957, citing his poor health; his Cabinet colleagues’

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67 Debrett’s Parliamentary Register (1782) Vol. 6: 310ff, 27 February.
responses made clear they understood Suez was at least part of the cause. By contrast to these examples, the Cameron government survived defeat over Syria because it had not lost the general confidence of the House.

Since the mid-nineteenth century, British governments have lived less often in fear of no-confidence votes. Prime Minister James Callaghan’s Labour government was the last defeated in this fashion, in 1979. Even after suffering a series of extraordinary parliamentary reverses on matters related to its efforts to take the UK out of the EU in early 2019, Prime Minister May’s government still survived a no-confidence vote on 16 January. Part of the reason for May’s survival lay in the passage of the Fixed-term Parliaments Act 2011. By stipulating the precise wording that a no-confidence vote must use, the Act disrupted the relationship between parliament and government. Prior to the Act, MPs could withdraw confidence through explicit, implicit, and designated confidence motions, and governments could interpret inconclusive outcomes as they saw fit. Under the Act, the Prime Minister retains the right to resign should they consider that they have lost the confidence of the House, but they are only able to do so if they can recommend a successor to the Queen. Unless the House has demonstrated a loss of confidence using the Act’s precise wording, the Prime Minister cannot ask the Queen to dissolve parliament and call a fresh election, the other way governments historically resolved such situations. North, Aberdeen and Rosebery all handed power to parliamentary rivals when they resigned (though in Aberdeen’s case he was already leading a government mostly comprising his nominal political opponents). Chamberlain and Eden, however, stood aside in favour of members of their own Cabinets. The difference

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69 Sir Norman Brook’s notebook, National Archives CAB/195/16, 9 January 1957.
appears to be, again, the rise of centrally organised parties in the late nineteenth century, and the concomitant collapse in the number of independent MPs. It was possible in earlier eras for sufficient numbers of MPs to switch allegiance from one faction to another to effect a change of governing party without an election. That scenario became far less plausible in the latter half of the twentieth century. This, in turn, makes it far less likely that any future government will resign if defeated on a question of military action.

Support

Despite its considerable historical importance, MPs’ power to express their active support of a government decision to use force has garnered relatively little attention in recent debates. Put simply, a government supported by the main opposition party or parties can make much more credible commitments to allies and threats to enemies than can one reliant on its own backbenchers alone. The reason for this is simple. Securing opposition support for a given military deployment sends a signal at the international level that even a change in government will not produce a change in policy course. At the domestic level, meanwhile, it neutralizes the action as a potential future electoral issue. When Tony Blair won MPs’ support for the invasion of Iraq, he also secured the opposition Conservative Party’s backing. While that did not prevent the Conservatives criticizing Blair’s conduct before and during the war, it did limit how effective their criticisms were. It is hard to base an election campaign around a war you previously voted strongly to support; Senator John Kerry experienced a similar challenge in running against President George W. Bush in 2004.

MPs have tended in recent years to regard the House of Commons role in purely negative terms; it is there to scrutinize, to hold to account, and in extremis to prevent action. At the
outbreak of the Korean War in 1950, however, Winston Churchill saw things somewhat differently. Having already made clear, as Leader of the Opposition, that he had ‘confidence that His Majesty’s Government will act up to their supreme international obligations’, he sought to introduce a motion supporting the government in taking action. As Prime Minister Clement Attlee told Cabinet on 4 July, ‘[the] Tories will table [a] Motion if we don’t. We’d better do it’. The resulting motion passed by acclamation – as the Cabinet hoped it would.

This power – to express active support for the government in using force abroad – remains available, and potentially significant. Its absence from recent debates arguably reflects a failure on the part of MPs to learn from history.

**Conclusions**

There are challenges associated with trying to learn about parliament by studying its history. These challenges are probably more surmountable for legal than for political analyses. From a legal perspective, the position of the House of Commons in the UK’s uncodified constitution has not changed very much since the seventeenth century. From a political perspective, by contrast, things have changed a great deal. Making comparisons between events as far apart as 1782 and 2018 means identifying what similarities and differences exist between the two periods, and being clear about how far they matter.

This paper suggests that parliament’s past matters both as a direct source of contemporary conventions, and as an indirect inspiration for what contemporary parliamentarians think their

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73 Sir Norman Brook’s notebook, National Archives CAB/195/8/16, 4 July 1950.
74 National Archives CAB/128/18/1, 3 July 1950, Minute 3.
powers are. While these two influences are obviously related, they operate separately. It argues, furthermore, that the most important moments in the relationship between parliament and the executive arose in the seventeenth century, and are codified in the Bill of Rights. It notes that the Reform Acts of 1832 and 1867, and the expansion of the franchise in 1918 and 1928, changed the composition of the House of Commons, and the relationship between its members. In particular, it identifies the decline of direct Crown influence after 1832 and the move from a House dominated by independent “country” members to one comprised almost entirely of formal party groupings in the late nineteenth and early twentieth centuries as critical moments. In sum, however, the paper argues that there is no inherent reason not to use historical evidence to understand the House of Commons’ contemporary role.

The paper goes on to identify five mechanisms through which MPs have historically influenced the use of force, and to discuss briefly how relevant those mechanisms might be in the present day. MPs have in the past exercised their rights to oversee government expenditure, to debate government policy, to inquire into government actions, to withdraw confidence from and actively to support the government. Each of those rights exists today, even if not in exactly the same form that they held at the start of the period studied. Looking at parliament in historical terms, in sum, reveals both what is possible, and how it has historically been made possible. That is potentially useful to contemporary parliamentarians and ministers alike.