

## The Royal Prerogative

(Prerogative: A hereditary or official right or privilege)

The Royal Prerogative is a body of customary authority, privilege, and immunity, recognized in countries such as the United Kingdom as belonging to the Sovereign alone. It is the means by which some of the executive powers of government, possessed by and vested in a monarch with regard to the process of governance of their state, are carried out.

While prerogative powers were originally exercised by the monarch acting alone, and do not require parliamentary consent, they are now always exercised on the advice of the Prime Minister or the Cabinet, who is then accountable for the decision to Parliament. There may be situations in which the monarch could choose to exercise the Royal Prerogative without the advice of the Prime Minister and the Cabinet. Such situations are rare, and generally only occur in emergencies or where existing precedent does not adequately apply to the circumstances in question.

### Definition

In the Kingdom of England (up to 1707), the Kingdom of Great Britain (1707–1800) and the United Kingdom (since 1801), the Royal Prerogative historically was one of the central features of the realm's governance. Constitutional theorist AV Dicey gives the standard definition of what prerogative powers are:

*... the remaining portion of the Crown's original authority, and it is therefore ... the name for 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 Ministers.*

### Ministerial exercise of the monarch's prerogatives

Today, some prerogative powers are directly exercised by ministers without the approval of Parliament, including, in the United Kingdom, the powers to regulate the civil service, issue passports and grant honours. Some prerogative powers are exercised nominally by the monarch, but on the advice of the Prime Minister, with whom the monarch meets on a weekly basis, and on the advice of Cabinet of the United Kingdom. Some key areas of the British system of government are still carried out by means of the Royal Prerogative, but its usage has been diminishing as functions are progressively made statutory.

Monarchy must be careful to still exist.

Contrary to widespread belief, the Royal Prerogative is not constitutionally unlimited. While the sovereign has the right to publish new law, it is a form of reserve power not constitutionally used. (Her Majesty, as Head of State of the United Kingdom and the other Commonwealth Realms, has the right to use the Royal Prerogative over any nation where she is Head of State.) In the *Case of Proclamations* (1611) during the reign of King James I/VI, English common law courts judges emphatically asserted that they possessed the right to determine the limits of the Royal Prerogative. Since the Glorious Revolution (1688), which brought co-monarchs Queen Mary II and King William III to power, this judicial interpretation has not been challenged by the Crown.

No new prerogative powers can be created; however, existing prerogatives such as the power of "Declaring War and Making Peace" can be modified to cover new situations, as seen in *ex p Northumbria Police Authority* (1989), which saw this prerogative evolved to include the ability to "keep the peace" and hence allow the Home Secretary to equip his forces with plastic baton rounds and CS gas.

Furthermore, where a discretionary prerogative power is justiciable, its exercise can be challenged by judicial review on the same grounds as that of discretionary powers vested in the executive by statute.

### Powers relating to the legislature

- The summoning, proroguing and dissolution of parliament and the calling of elections;
- Creating schemes for conferring benefits upon citizens where Parliament appropriates the necessary finance
- Granting Royal Assent to bills
- Legislating by letters patent
- Legislating by Orders-in-Council
- The grant of Charters of Incorporation, including Royal Charters to create universities
- The publication of all statutes, legislative instruments and Orders-in-Council

### Powers relating to the judicial system

- the powers of the Attorney General in relation to criminal proceedings, including the power to enter a nolle prosequi (thus dropping the case against the defendant)

- Appointing Queens Counsel
- Granting special leave for appeal to the Judicial Committee of the Privy Council
- Pardoning of convicted offenders
- Remitting or reducing sentences (clemency)
- The creation of new common law courts

### Powers relating to foreign affairs

- Accreditation and reception of diplomats
- Declaration of war
- Making of peace
- The negotiation of treaties
- Recognition of foreign states
- Right to take additional territory

### Powers relating to the armed forces and war

- The Monarch is commander in chief of the armed forces of the Crown
- Armed forces pay
- Decisions about control, organisation and deployment of the Armed Forces
- Maintenance of the Royal Navy
- the power to press men into the Navy, which the Government accepted had "fallen out of use altogether, probably forever"

### Appointments and honours

- The appointment and dismissal of ministers
- The appointment of Royal Commissions and Officers for any purposes
- The creation of peers
- The award of dignities and honours

Royal Prerogative gradually becoming legal process (statute law)

powers used to belong to Queen

Judges

Head

Prime Minister



## The prerogative in times of emergency

- Declaration of an emergency
- Requisitioning of ships
- Powers in the event of a grave national emergency, including the power to enter upon, take and destroy private property

## Miscellaneous prerogatives

- Choice of the numbering of monarchs
- Franchises for markets
- Guardianship of infants
- Issue and revocation of passports
- Mining precious metals
- Mintage of coinage
- Printing
- Right to bona vacantia
- Treasure trove

## Other examples of prerogative powers

Among the powers possessed by the monarch in the United Kingdom under the Royal Prerogative are:

- The expulsion of a foreign national from the United Kingdom
- The appointment of bishops and archbishops in the Church of England
- The printing of the authorised Church of England version of the Bible
- The exercise of jurisdiction over numerous Royal foundations of all kinds

The prerogative also traditionally included duties, not just rights. The foremost of these were the defence of the realm and the keeping of the Queen's peace.

In regard to the monarch's prerogative of the awarding of dignities and honours, in practice most British Orders of Chivalry are conferred on the advice of the Prime Minister. However, the monarch retains the exclusive right of conferring the Order of the Garter, the Order of the Thistle, the Order of Merit, the Royal Victorian Order and the Royal Victorian Chain, along with the grant of alms.

The monarch is also immune from prosecution in the courts, though the scope of the immunity that once attached to the Crown has reduced. (The ostensible logic for this is that the Queen is present in all courts and acts as the prosecuting authority in most criminal cases, either directly or indirectly: she cannot therefore sue or prosecute herself or judge her own case. However, this logic can be said to be flawed because there appears no problem in judging her own cases as prosecutor, or as claimant in civil litigation. The explanation most commonly offered in texts on Crown immunity is that "the Queen can do no wrong", and therefore cannot be held liable for breaches of contract or in tort). In particular, several Acts of Parliament have allowed agents of the Crown (i.e., government employees) to be sued in the courts. The Queen's daughter, the Princess Royal, actually has a criminal record (for not keeping her dog under control).

Although many powers are included in the royal prerogative, some powers are notable for their absence, although they could theoretically be included under the Royal Prerogative. In particular, the British monarch does not have the power to deprive an individual of his or her life, liberty or property as these rights are said to derive from the Fundamental Laws of England. As a consequence, the monarch does not have the power to tax without the consent of Parliament and this has significantly limited the power of the monarchy. The unsuccessful efforts of Charles I of England to raise money to finance the royal administration through royal prerogative sources not subject to parliamentary approval (such as the collection of ship money) were among the major causes of the English Civil War.

Among the more esoteric royal prerogatives are:

- The power to order a subject not to leave the realm
- Crown ownership of wild unmarked white swans swimming in open and common waters
- Crown ownership of royal fish, meaning sturgeons, dolphins, porpoises and whales.

## Criticisms

Before British involvement in the 2003 invasion of Iraq, Prime Minister Tony Blair, in a major break with precedent, sought parliamentary approval for British participation in the war.

However, Parliament's decision was in constitutional terms *advisory*, as the actual decision would be taken by the exercise of the Royal Prerogative. Blair indicated that should Parliament not approve, he would not formally advise Queen Elizabeth II to exercise the Royal Prerogative. Given that Blair had an overwhelming Labour majority in the British House of Commons and had the support of the opposition Conservative Party, there was little likelihood that Parliament would vote down the motion recommending participation in the war. It remains to be seen whether a future government with a small majority or in a minority in the House of Commons will seek parliamentary approval before the exercise of the Royal Prerogative. Clare Short has proposed a Private Member's Bill that would remove the declaration of war from the royal prerogative.

Former left wing Labour MP Tony Benn campaigned for the abolition of the Royal Prerogative in the United Kingdom in the 1990s, arguing that all governmental powers in effect exercised on the advice of the Prime Minister and cabinet should be subject to parliamentary scrutiny and require parliamentary approval. His attempts were unsuccessful, with later governments arguing that such is the breadth of topics covered by the Royal Prerogative that requiring parliamentary approval in each instance where the prerogative is currently used would overwhelm parliamentary time and slow the enactment of legislation.

## Controversial contemporary uses of the Royal Prerogative

In the United Kingdom the power to issue passports remains under the Royal Prerogative. The Government has used the Royal Prerogative to deny passports to citizens whom the US government had held, and released, from the American prison in the US Naval base at Guantanamo Bay.

## Questions:

1. How relevant is the power of the monarch today?
2. Does the PM have too much prerogative power?

## Separation of powers

The separation of powers, also known as *trias politica*, is a model for the governance of democratic states. The model was first developed in ancient Greece and came into widespread use by the Roman Republic as part of the uncodified Constitution of the Roman Republic. Under this model, the state is divided into branches or estates, each with separate and independent powers and areas of responsibility. The normal division of estates is into an executive, a legislature, and a judiciary.

The opposite of separation of powers is the fusion of powers, often a feature of parliamentary democracies. In this form, the executive, which often consists of a prime minister and cabinet ("government"), is drawn from the legislature (parliament). This is the principle of responsible government. Although the legislative and executive branches are connected in parliamentary systems, there is often an independent judiciary. Also, the government's role in the parliament does not give them unlimited legislative influence.

### Montesquieu's tripartite system

The term is ascribed to French Enlightenment political philosopher Baron de Montesquieu. Montesquieu described division of political power among an executive, a legislature, and a judiciary. He based this model on the British constitutional system, in which he perceived a separation of powers among the monarch, Parliament, and the courts of law. Subsequent writers have noted that this was misleading, because Great Britain had a very closely connected legislature and executive, with further links to the judiciary (though combined with judicial independence).

Montesquieu did specify that "the independence of the judiciary has to be real, and not apparent merely". "The judiciary was generally seen as the most important of powers, independent and unchecked", and also considered the least dangerous. Some politicians decry judicial action against them as a "criminalization" of their behavior, but such "criminalization" may be seen as a response to corruption, collusion, or abuse of power by these politicians.

### Comparison with fusion of powers

In democratic systems of governance, a continuum exists between "Presidential government" and "Parliamentary government". "Separation of powers" is a feature more inherent to presidential systems, whereas "fusion of powers" is characteristic of parliamentary ones. "Mixed systems" fall somewhere in between, usually near the midpoint; the most notable example of a mixed system is France's (current) Fifth Republic.

In fusion of powers, one government (invariably the elected legislature) is supreme, and the other estates are subservient to it. In separation of powers, each estate is largely (although not necessarily entirely) independent of the others. *Independent* in this context means either that selection of each estate happens independently of the other estates or at least that each estate is not beholden to any of the others for its continued existence.

Accordingly, in a fusion of powers system such as that of the United Kingdom, first described as such by Walter Bagehot, the people elect the legislature, which in turn "creates" the executive. As Professor Cheryl Saunders writes, "...the intermixture of institutions [in the UK] is such that it is almost impossible to describe it as a separation of powers." In a separation of powers, the national legislature does not select the person or persons of the executive; instead, the executive is chosen by other means (direct popular election, electoral college selection, etc.) In a parliamentary system, when the term of the legislature ends, so too may the tenure of the executive selected by that legislature. Although in a presidential system the executive's term may or may not coincide with the legislature's, their selection is technically independent of the legislature. However, when the executive's party controls the legislature, the executive often reaps the benefits of what is, in effect, a "fusion of powers". Such situations may thwart the constitutional goal or normal popular perception that the legislature is the more democratic branch or the one "closer to the people", reducing it to a virtual "consultative assembly", politically or procedurally unable—or unwilling—to hold the executive accountable in the event of blatant, even boldly admitted, "high crimes and misdemeanors."

## United Kingdom

Although the principle of separation of power plays a role in the United Kingdom's constitutional doctrine, the UK constitution is often described as having "a weak separation of powers" despite its constitution being the one to which Montesquieu originally referred. For example, in the United Kingdom, the executive forms a subset of the legislature, as did—to a lesser extent—the judiciary until the establishment of the Supreme Court of the United Kingdom. The Prime Minister, the Chief Executive, sits as a member of the Parliament of the United Kingdom, either as a peer in the House of Lords or as an elected member of the House of Commons (by convention, and as a result of the supremacy of the Lower House, the Prime Minister now sits in the House of Commons) and can effectively be removed from office by a simple majority vote. Furthermore, while the courts in Britain are undoubtedly amongst the most independent in the world, the Law Lords, who are the final arbiters of judicial disputes in the UK, until recently sat simultaneously in the House of Lords, the upper house of the legislature, although this arrangement ceased in 2009 when the Supreme Court of the United Kingdom came into existence. Furthermore, because of the existence of Parliamentary sovereignty, while the theory of separation of powers may be studied in Britain, a system such as that of the UK is more accurately described as a "fusion of powers".

The development of the British constitution, which is not written down in one document, is based on this fusion in the person of the Monarch, who has a formal role to play in the legislature (Parliament, which is where legal and political sovereignty lies, is the Crown-in-Parliament, and is summoned and dissolved by the Sovereign who must give his or her Royal Assent to all Bills so that they become Acts), the executive (the Sovereign appoints all ministers of His/Her Majesty's Government, who govern in the name of the Crown) and the judiciary (the Sovereign, as the fount of justice, appoints all senior judges, and all public prosecutions are brought in his or her name).

The British legal systems are based on common law traditions which require:

- Police or regulators cannot initiate complaints under criminal law but can only investigate (prosecution is mostly reserved for the Crown Prosecution Service), which prevents selective enforcement, e.g. the 'fishing expedition' which is often specifically forbidden.

- Prosecutors cannot withhold evidence from attorneys for the defendant; to do so results in mistrial or dismissal. Accordingly, their relation to police is no advantage.
- Defendants convicted can appeal, but no new evidence can usually be introduced, restricting the power of the court of appeal to the process of law applied.

## Checks and balances

To prevent one branch from becoming supreme, and to induce the branches to cooperate, governance systems that employ a separation of powers need a way to balance each of the branches. Typically this was accomplished through a system of "checks and balances", the origin of which, like separation of powers itself, is specifically credited to Montesquieu. Checks and balances allow for a system based regulation that allows one branch to limit another, such as the power of the Judiciary to interpret or even challenge the decisions of Govt. decisions under judicial review.

## Key questions

D Grade question: What is meant by the 'separation of powers'?

C Grade question: Describe how the term separation of powers applies to the UK

B grade question: Why is the separation of powers important in a democracy?

A grade question: Explain the argument that Britain has a *weak separation of powers* and what might be done to improve the 'democratic deficit' in this area.

A\* Grade question: How does the separation of powers in this country compare with that of two other democracies and how does the UK compare by this measure of democracy?



— UK doesn't just pool sovereignty does not just pool it from the EU — it is a necessary economic

## UK Sovereignty in a global context

National sovereignty, sometimes used to mean national independence, has to be viewed against the background of the interdependence of modern states. When the concept of the modern nation state emerged about 400 years ago, the Sovereign, Emperor or King, was relatively free of constraints on his freedom of action. But even then trade and alliances made this freedom relative. The history of the 20th century is one of growing interdependence. In the 21st century even the only superpower, the USA, finds itself with limits on its freedom of action.

The role of Parliament is an issue. The advocates of an absolute definition of parliamentary sovereignty argue that the acid test is whether Parliament remains free to change or reverse decisions that the UK Government has approved in the EU Council or even Treaties that Parliament has itself ratified. Many treaties contain an abrogation clause, with a period of notice. In such cases there is no problem. In the case of the EU, where the treaties are intended to be permanent, the situation is less simple. The UK Parliament could certainly legislate to overthrow an EU measure, but the European Court would rule this action illegal. If the Government of the day, supported by Parliament, refused to comply, there would be a major crisis and, failing a compromise, Britain would find itself on a path which would lead to withdrawal. No one could prevent the UK Parliament from deciding to leave the EU, despite its ratification of the Treaty of Accession and the 1975 referendum (though there would be significant costs).

There are other uses of the word sovereignty. Nation states are said to give up part of their sovereignty, for example by signing a Treaty or by agreeing to an EU Directive which removes the right of decision from the national government or parliament in a particular field. Or they are said to share or pool sovereignty by agreeing to common action through EU institutions, thus participating in decisions taken by the EU in accordance with its procedures, and no longer retaining the right to act unilaterally. In this use of sovereignty it virtually means the same as freedom to decide unilaterally.

All countries, both inside and outside the EU, have given up or pooled some sovereignty. Mrs Thatcher was right when she said, at the time of the 1975 Referendum on Europe:

*"Almost every major nation has been obliged by the pressures of the post-war world to pool significant areas of sovereignty so as to create more effective political units."*

Examples are NATO, the UN or the WTO. Nations come together to protect the environment, resist threats to international peace and security, promote free trade and investment and defend human rights, to name but a few. Each time a country joins an international organisation or signs a Treaty, it restricts its freedom of action and thus gives up a part of its sovereignty or independence, even if only a small part. Countries are prepared to pool sovereignty in particular areas because they recognise the practical benefits of doing so. Approaching common problems by participating in collective decision making with appropriate partners in reality gives countries more effective control over global events and problems than they could possibly hope to wield were they to continue to act alone.

It is often forgotten how much sovereignty/independence Britain has shared outside the EU. In each case, we have done so to secure benefits for the people of this country. NATO of course is the prime example since the ability to defend itself is central to the concept of the nation state and its sovereignty. Britain is committed to intervene in the common defence if another member is attacked, and the degree of cooperation is such that we have disposed of our forces in such a way that it would now be extremely difficult for most member states to take military action alone in all but the most limited of scenarios. The Council of Europe agrees conventions, of which that on Human Rights (with its Court to adjudicate) is of huge importance. That on Torture allows inspections of prisons without warning. The Treaty on Conventional Forces in Europe imposes monitoring forces and limits their number, location and activities. In the economic field the IMF can impose conditions if a country gets into financial trouble (the UK has not been immune!). The WTO has strict policies –

and much more besides. The idea that we would have unfettered sovereignty outside the EU is not correct.

There are those who argue that globalisation, multinational corporations and organisations, the internet, the speed of modern transport and communications etc mean that the concept of the sovereign state does not have a future. But the abolition of the nation state does not figure on any serious agenda. Ask any European politician whether his or her country is a sovereign nation state and you will receive an emphatic 'yes' for an answer, even if further probing would reveal consciousness of the limitations on its freedom of action. The ability to decide nationally on a whole range of matters, such as taxation, social security, health and education, are still important to most people.

Nevertheless in several countries, including the US and the UK, the idea of rolling back the frontiers of international co-operation has gained some ground. Isolationists speak as though sovereignty was not only absolute, but an absolute good. They ignore the fact that in the modern world it has become necessary to give up some freedom of action to achieve common ends. If there were no international rules about hunting whales, there would be no whales! In the particular case of the EU, the Single European Act of 1985, negotiated by Margaret Thatcher, with its huge increase in the fields covered by majority voting and the nearly 300 Directives required to complete the Single Market which followed, was a major sharing of sovereignty. This was required if the non-tariff barriers to the free movement of goods, services, capital and people were to come down. That the Single Market is a good thing is not in dispute and sharing of sovereignty was indispensable to achieve it.

The reality is that both in the EU and elsewhere, pooling of sovereignty to achieve shared objectives will certainly need to continue. Drugs, international crime, money laundering, trade, the environment and action against terrorism are only some of the things that require common action. The judgement as to whether to act in common or not in each case will continue to be made on the basis of practical arguments about efficacy. It is the role of the Heads of Government to ensure that the democratically elected representatives of the member states remain the driving force behind EU action. But many things do not require any pooling of sovereignty. Indeed there is a growing

consensus in the EU that some things are better dealt with nationally. Delors himself, the arch-demon of anti-European ideology, has said to the French Senate:

*"areas like education, health, employment, and social security, in short everything which creates social cohesion, must remain national competencies".*

The key question is whether an important share in EU decisions in fields which require joint action makes it worthwhile to continue the argument on the inside rather than alienating our European partners and having a limited freedom of action outside. This is where we can plainly see the strength of the argument that it is important to gain and retain influence.

To conclude, sovereignty is a dynamic concept. It is in practice relative, not absolute. Much sovereignty has been shared already, but nothing essential to the well-being and sense of identity of the people of the member states has been lost. The sovereign nation state will be with us for the foreseeable future, even if its influence over some areas of policy will be much less than in the past. Meanwhile countries will best protect and further their interests by not hesitating to exercise some of their sovereignty collectively to achieve their aims.

### Exercise:

Make a table of organisations to which the UK appears to surrender some sovereignty to. In a second column list the powers surrendered and any limits on those powers held outside the UK

### Extension work:

Does the world need more or less pooled sovereignty?



There was going to be a European Constitution but all states had to sign. Ireland did not, after referendum so it was replaced with:

## The Lisbon Treaty 2007

→ European Parliament given greater power

On 13 December 2007, EU leaders signed the Treaty of Lisbon, thus bringing to an end several years of negotiation about institutional issues.

The Treaty of Lisbon amends the current EU and EC treaties, without replacing them. It will provide the Union with the legal framework and tools necessary to meet future challenges and to respond to citizens' demands.

1. **A more democratic and transparent Europe**, with a strengthened role for the European Parliament and national parliaments, more opportunities for citizens to have their voices heard and a clearer sense of who does what at European and national level.
  - A strengthened role for the European Parliament: the European Parliament, directly elected by EU citizens, will see important new powers emerge over the EU legislation, the EU budget and international agreements. In particular, the increase of co-decision procedure in policy-making will ensure the European Parliament is placed on an equal footing with the Council, representing Member States, for the vast bulk of EU legislation.
  - A greater involvement of national parliaments: national parliaments will have greater opportunities to be involved in the work of the EU, in particular thanks to a new mechanism to monitor that the Union only acts where results can be better attained at EU level (subsidiarity). Together with the strengthened role for the European Parliament, it will enhance democracy and increase legitimacy in the functioning of the Union.
  - A stronger voice for citizens: thanks to the Citizens' Initiative, one million citizens from a number of Member States will have the possibility to call on the Commission to bring forward new policy proposals.
  - Who does what: the relationship between the Member States and the European Union will become clearer with the categorisation of competences.
  - Withdrawal from the Union: the Treaty of Lisbon explicitly recognises for the first time the possibility for a Member State to withdraw from the Union.
2. **A more efficient Europe**, with simplified working methods and voting rules, streamlined and modern institutions for a EU of 27 members and an improved ability to act in areas of major priority for today's Union.
  - Effective and efficient decision-making: qualified majority voting in the Council will be extended to new policy areas to make decision-making faster and more efficient. From 2014 on, the calculation of qualified majority will be based on the double majority of Member States and people, thus representing the dual legitimacy of the Union. A double majority will be achieved when a decision is

taken by 55% of the Member States representing at least 65% of the Union's population.

- A more stable and streamlined institutional framework: the Treaty of Lisbon creates the function of President of the European Council elected for two and a half years, introduces a direct link between the election of the Commission President and the results of the European elections, provides for new arrangements for the future composition of the European Parliament and for a smaller Commission, and includes clearer rules on enhanced cooperation and financial provisions.
- Improving the life of Europeans: the Treaty of Lisbon improves the EU's ability to act in several policy areas of major priority for today's Union and its citizens. This is the case in particular for the policy areas of freedom, security and justice, such as combating terrorism or tackling crime. It also concerns to some extent other areas including energy policy, public health, civil protection, climate change, services of general interest, research, space, territorial cohesion, commercial policy, humanitarian aid, sport, tourism and administrative cooperation.

3. **A Europe of rights and values, freedom, solidarity and security**, promoting the Union's values, introducing the Charter of Fundamental Rights into European primary law, providing for new solidarity mechanisms and ensuring better protection of European citizens.
  - Democratic values: the Treaty of Lisbon details and reinforces the values and objectives on which the Union is built. These values aim to serve as a reference point for European citizens and to demonstrate what Europe has to offer its partners worldwide. → Human rights.
  - Citizens' rights and Charter of Fundamental Rights: the Treaty of Lisbon preserves existing rights while introducing new ones. In particular, it guarantees the freedoms and principles set out in the Charter of Fundamental Rights and gives its provisions a binding legal force. It concerns civil, political, economic and social rights.
  - Freedom of European citizens: the Treaty of Lisbon preserves and reinforces the "four freedoms" and the political, economic and social freedom of European citizens.
  - Solidarity between Member States: the Treaty of Lisbon provides that the Union and its Member States act jointly in a spirit of solidarity if a Member State is the subject of a terrorist attack or the victim of a natural or man-made disaster. Solidarity in the area of energy is also emphasised.
  - Increased security for all: the Union will get an extended capacity to act on freedom, security and justice, which will bring direct benefits in terms of the Union's ability to fight crime and terrorism. New provisions on civil protection, humanitarian aid and public health also aim at boosting the Union's ability to respond to threats to the security of European citizens.

European President  
Herman van Rompuy

decisions taken always at the lowest possible level.  
ec: local council.  
like the UK's elections

Council of Ministers was dominant

workers' rights, climate change, elected President

powerful minorities cannot overpower

international issues



4. **Europe as an actor on the global stage** will be achieved by bringing together Europe's external policy tools, both when developing and deciding new policies. The Treaty of Lisbon will give Europe a clear voice in relations with its partners worldwide. It will harness Europe's economic, humanitarian, political and diplomatic strengths to promote European interests and values worldwide, while respecting the particular interests of the Member States in Foreign Affairs.
- A new High Representative for the Union in Foreign Affairs and Security Policy, also Vice-President of the Commission, will increase the impact, the coherence and the visibility of the EU's external action.
  - A new European External Action Service will provide back up and support to the High Representative.
  - A single legal personality for the Union will strengthen the Union's negotiating power, making it more effective on the world stage and a more visible partner for third countries and international organisations.
  - Progress in European Security and Defence Policy will preserve special decision-making arrangements but also pave the way towards reinforced cooperation amongst a smaller group of Member States.

Baroness  
Aschande

European military  
presence?

STOP PRESS: The latest EU treaty ....

#### Treaty on Stability, Coordination and Governance (SCG) 2012

On 9 December 2011 at the European Council meeting, all 17 members of the eurozone agreed on a new intergovernmental treaty to put strict caps on government spending and borrowing, with penalties for those countries who violate the limits. All other non-eurozone countries except the United Kingdom said they were also prepared to join in, subject to parliamentary vote. Originally EU leaders planned to change existing EU treaties but this was blocked by British prime minister David Cameron, who demanded that the City of London be excluded from future financial regulations, including the proposed EU financial transaction tax (labeled a 'Tobin' tax). Britain's refusal to be part of the fiscal compact to safeguard the Eurozone constituted a *de facto* refusal (PM Cameron vetoed the project) to engage in any revision of the Lisbon Treaty at the expense of British sovereignty. On 31 January 2012 after several weeks of negotiations, all EU leaders except those from United Kingdom and Czech Republic endorsed the final version of the fiscal pact at the European summit in Brussels, though the Czech prime minister Petr Nečas said his country may join later. The new treaty will be signed in early March and will come into force once it has been passed by the parliaments of at least 12 countries that use the euro. Ireland may require a referendum.

preservation of UK  
parliamentary  
sovereignty.

P.I.G.S. → Portugal, Ireland, Greece, Spain

EU countries that sign the agreement will have to do so by 1 January 2013. Once a country has ratified the Treaty it has another year, until 1 January 2014, to implement a balanced budget rule in their binding legislation. Only countries with such rule in their legal code by 1 March 2013 will be eligible to apply for bailout money from the European Stability Mechanism (ESM). The aim is to incorporate it into EU law within five years of its entry into force.

#### Questions

Suggest five ways in which the Lisbon Treaty *may be seen* to erode the UK's national sovereignty. ①

How *might* it be argued that Cameron's veto in respect the SCG demonstrates the ability of parliament to preserve its sovereignty? ②

#### Extension task:

Do you think that UK sovereignty would be better described as 'de jure' 'de facto' or neither?

① • steps towards an EU military.  
• agree new policy for EU cannot always  
involve all countries?  
• EU very powerful: "greater  
President in lot national Parliament  
unelected."

② • he keeps his country alone and isolated

Writers of treaty want to rebalance power.



## The Unitary state: key terms

Devolution is the statutory granting of powers from the central government of a state to government at national, regional, or local level. It differs from federalism in that the powers devolved may be temporary and ultimately reside in central government, thus the state remains, *de jure*, unitary. ← UK

Any devolved parliaments or assemblies can be repealed by central government in the same way an ordinary statute can be. Federal systems, or federacies, differ in that sub-state government is guaranteed in the constitution.

→ USA - states can have different powers  
death penalty ←

The devolution can be mainly financial, e.g. giving areas a budget which was formerly administered by central government. However, the power to make legislation relevant to the area may also be granted.

more power to regions → Scotland - own edu. system + tax varying - devolution.

In politics, regionalism is a political ideology that focuses on the interests of a particular region or group of regions, whether traditional or formal (administrative divisions, country subdivisions, political divisions, subnational units). Regionalism centers on increasing the region's influence and political power, either through movements for limited form of autonomy (devolution, states' rights, decentralization) or through stronger measures for a greater degree of autonomy (sovereignty, separatism, independence). Regionalists often favor loose federations or confederations over a unitary state with a strong central government.

Regionalism may be contrasted with *nationalism*.

Separatism is a term usually applied to describe the attitudes or motivations of those seeking independence or 'separation' of their land or region from the country that governs them. To a lesser extent, separatism may also refer to social isolation or involvement in cliques. The term separatist movements usually refers to social movements that aspire to autonomy for a particular group of people from a dominant political institution under which they suffer.

→ N. Spain, Basque separatist → ETA  
→ NI - Sinn Féin → alone

Nationalism is a term referring to a doctrine or political movement that holds that a nation—usually defined in terms of ethnicity or culture—has the right to constitute an independent or autonomous political community based on a shared history and common destiny. Most nationalists believe the borders of the state should be congruent with the borders of the nation., although nationalists rarely believe that their own state should be made smaller. Extreme forms of nationalism, such as those propagated by fascist movements in the twentieth century, hold that nationality is the most important aspect of one's identity while some of them have attempted to define the nation in terms of race or genetics.

Nationalism has had an enormous influence on Modern history, in which the nation-state has become the dominant form of societal organization. Historians use the term *nationalism* to refer to this historical transition and to the emergence and predominance of nationalist ideology. Nationalism is closely associated with patriotism.

### Questions:

1. What is the difference between devolved power and federal power?
2. How would you define the position of the SNP, Plaid Cymru and Sinn Féin respectively: nationalist, separatist or regionalist?

### Extension work

- i. Find examples of federalist states and compare the powers of Federal assemblies to those with devolved powers
- ii. Find examples of separatist and nationalist parties outside of the UK



## Pooled Sovereignty

The European Union (EU) is unique. It is not a federal state like the United States of America because its member countries arguably remain independent sovereign nations. Nor is it a purely intergovernmental organisation like the United Nations because the member countries do pool some of their sovereignty — and thus could be said to gain much greater collective strength and influence than they could have acting individually.

A term used to denote the sharing of decision-making powers between states in systems of international cooperation. Whereas unanimous decision-making between states leaves sovereignty unscathed, given the right of any state to unilaterally veto decisions, pooling of sovereignty implies a departure from unanimous decision-making. The most prominent system of international cooperation in which sovereignty is pooled is the European Union (EU). In a number of issue areas which have been defined in the treaty and subsequent treaty amendments, the member state delegates in the Council, one of the EU's legislative organs, decide by a qualified majority. Qualified majority voting means that all EU members have a different number of votes within the Council of Europe depending on their size. Consequently, pooling creates the possibility that individual member states can be outvoted. The main reason why states choose to pool sovereignty is to reduce the likelihood of gridlock in policy areas

where—on average—states expect to be better off by pooling sovereignty than by retaining the unanimity rule. This has been the case particularly in the context of creating a European single market for goods and services. The introduction of qualified majority voting in these issues demonstrated that EU member states valued the benefits of the abolition of trade barriers more than those that would have been associated with retaining the right to veto. However, in policy areas which governments consider particularly sensitive for domestic or ideological reasons or where the potential gains from pooling sovereignty are uncertain, governments are likely to retain the right to veto (for example, foreign and security policy, and redistributive policies).

### Questions

C grade question:

What is pooled sovereignty?

B grade Question

What are the benefits for the EU member states of pooling sovereignty?

A grade question

How does the idea of pooled sovereignty impact on the notion of national sovereignty?

A\* grade question

Why are not all aspects of sovereignty pooled and how was this evident in the negotiations surrounding the Treaty on Stability, Coordination and Governance?

*EU would not work without pooled sovereignty.*  
*sharing of decision making powers.*  
*majority cannot overrule minority*  
*balanced - more to gain than lose*  
*some powers are only applicable as a country - EU controlling.*