

What Manner of Persons Ought to Exercise the King's Prerogative (c.1604)

Thomas Egerton, 1st Baron Ellesmere

Transcript

British Library, Additional MS 22591, ff. 30r–30v

30r

What Manner of Persons ought to exercise the kings p[re]rogatiue writte by L[ord] Elismeere
That absolute pr[e]rogatiue, w[hi]ch is according to the kings plea sure revealed in his lawes
ought to be exercised and executed by anye Subiect to who[m] power shalbe given by the
kinge in anye place of Iudgem[en]t or Comission / w[hi]ch [th]e king by his lawe hath
ordeyned / In which the Iudge subordinate cannot wrong the people/ the Lawe laying downe
A measure/ by w[hi]ch everye Iudge should governe and execute: Against w[hi]ch Lawe/ if
anye Iudge p[ro]ceed/ he is by the questionable & punishable for his tra[n]sgression; In this
Nature are all Iudges & Comissioners/ and Iudges of the Land authorised In those Courts in
w[hi]ch the kinge in p[er]son is supposed to sitt/ whoe cannott make that trespase, Fellony
or Teason/ w[hi]ch the Land hath not made soe to bee/ neither ca[n] punishe the guiltie by
other punishm[en]t then the Lawes haue appointed: This pr[e]rogatiue and power as it is
over all the Subiects, they are without excuse; if they offend and suffer not ronge, if they be
iustlye punished by this pr[e]rogatiue/ the kinge governeth all sort[es] of people, according to
knowne will

The absolute pr[e]rogatiue w[hi]ch is in kings/ according to their pr[i]vate will, and
Iudgm[en]t, cannot be exercised by anye subiect/ neither is it possible, to giue such power
by Comission, or fitt to subiect [th]e people to the same: For the kinge in that he is the
Substitute of God ymediatly the Father of his people/ & head of the Com[m]on wealthe/ hath
by participac[i]on w[ith] God and his Subiects a discretion Iudgment, & feeling love towards
them over whom he raigneth onely p[ro]per to himselfe, as to his place and person/ whoe
seeing he cannot infuse into any other his wisdom and guifts, w[hi]ch God hath in respect
of his place and charge/ enabled him w[ith] all/ can neither subordinate anye other Iudge to
governe by that knowledge/ w[hi]ch the kinge can noe oth[er] Wise then by his knowne will
participate to him And if any such subordinat Iudge should obtaine comission/ according to
the discretion of suche A Iudge, to governe the people/ that Iudge is bound to thinke that to be
his sound discretion/ w[hi]ch the Lawe, in w[hi]ch the kinge knowne well sheweth vnto him
to be that Iustice w[hi]ch he ought to administer/ otherwise he might well seeme to esteeme
himselfe above the kings Lawes/ whoe will not governe by them/ or to haue A Power derived
from others then from the kinge, w[hi]ch in the kingdome will administer Iustice/ contrarye
to the Iustice of the Land Neith[er] can such A Iudge/ or Com[m]ission[er], vnder the name
of highe Authoritie/ Shrowd his owne highe affecte seeinge the Co[n]science & discretio[n]
of eu[er]y ma[n], is p[ar]ticuler & pr[i]vate to himselfe, So as the discretio[n] of [th]e Iudge
cannot be p[ro]p[er]ly or possiblie/ [th]e discretio[n] or co[n]scie[n]ce of the kinge, & if not
his discretio[n]/ neith[er] [th]e Iudgm[en]t, [tha]t is ruled by anoth[er] mans onely: therefore
it maye seeme/ they rather seeme to be kings, then to rule the people, vnd[er] [th]e kinge/
w[hi]ch will not administer Iustice by Lawe/ but by their owne wills: This administrac[i]on
in A Subiecte is derogatiue to the kings pr[e]rogatiue, for he administreth Iustice out of A

private direction being not capeable of A generall direcc[i]on howe to vse the kings pleasure/
in causes of p[ar]ticuler respecte/ w[hi]ch if noe oth[er] then the kinge himselfe can doe/
howe can it be soe [tha]t any ma[n] shuld desire that, w[hi]ch is vnfitt and vnp[ro]fitable, but
[tha]t it must p[ro]ceed out of some exorbitant affection/ the rather seeing such places to be
full of trouble & and being alltogether vnneccessare: noe man will seeke to thrust himselfe into/
but for hope of Gaine/ Then is not anye prerogatiue oppugned but mayntayned, though it
be desired, [tha]t eu[er]y subordinate Magestrate, maye not be made supreame, whereby hee
maye steele off the harts of the people/ take fro[m] the kinge the

respect

30v

respect, due to him onely/ or Iudge the people other wise then the kinge himselfe doth For
thoughe the Prince be not bound to render anye accompt to the Lawe for Iustice/ w[hi]ch
hee in p[er]son doth adminst[r]e yet everye subordinate Iudge must render an account to
the kinge by his Lawes, howe he hath administred iustice/ in the Place where in he is sett/
but if he hath power to rule, by his pr[i]vate direcc[i]on/ for w[hi]ch there is noe Lawe/
how can he be questioned by A Lawe if in his pr[i]vate Censure he Offend, therefore it
should seeme/ that in givinge such authoritie the kinge ordayneth not subordinate Magistrats
but absolute kinges: And what doth the Kinge leave to himselfe/ who giueth as much to
another, as himselfe hath: neither is there A greater bond to tye the Subiecte to this Prince
in p[ar]ticuler/ then when he shall haue recourse to him/ in his p[er]son/ or in his power for
releife of the wrongs, w[hi]ch from pr[i]vate men be offered: or for reformat[i]on of the
oppressions w[hi]ch anye subordinate magistrate, shall impose on the people: there ca[n]
be noe offence in the Iudge/ whoe hath power to execute/ according to his discretion/ when
the discretion/ of anye Iudge shalbe thought fitt to be vnlimited/ and therefore there can be
therein noe reformat[i]on/ whereby the kinge in this vseth noe pr[e]rogatiue to gaine his
Subiects right, the Subiecte is bond to suffer helpesse wrong/ and the discontent of the People
is cast vpon the kinge the lawes being neglected/ w[hi]ch w[i]th their Equitie in all other
causes and Iudgment[es] interpose themselves. Nowe Custome cannot conforme that which
is vnreasonale in it selfe/ wisdom will not allow that/ which is manye wayes dau[n]gerous,
and noe way p[ro]fitable: Iustice neu[er] approues that governem[en]t wherein it cannot be/
but wrong must be comitted, neither can there be anye rule by w[hi]ch to try it/ or meane for
reformation[n]: therefore whosoever desireth government must seeke such/ as he is capeable
of/ not such as seeme to himselfe most easie to execute: for in appearance it is easie to him/
[tha]t knoweth not lawe, nor Iustice to rule as he listeth/ his will neu[er] wanting to it self,
but it is soe safe and blameles, both for the Iudge & people, that Iudges be appointed w[hi]ch
knowe the Lawe/ and that they be lymitted to governe according to the Lawe/

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Other manuscript witnesses

- Harvard Law School, MS 4006, ff. 1r–9v
- Harvard Law School, Small Manuscript Collection Egerton, Thomas [Hollis #2110483]
- Hatfield House, CP 242, ff. 10r–12r
- Northamptonshire Record Office, FH/N/C/0578, ff. 1r–2r
- University College, MS 152 [on deposit at the Bodleian], ff. 136–140
- Woburn Abbey, MS 23, p27

Seventeenth-century print exemplars

- Francis Bacon, *An essay of a king, with an explanation what manner of persons those should be that are to execute the power or ordinance of the kings prerogative* (1642) [Wing B282A, Wing B282], pp. 5–8

Modern print exemplars

- Louis A. Knafla, *Law and Politics in Jacobean England: The Tracts of Lord Chancellor Ellesmere* (Cambridge, 1977)

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<https://mpese.ac.uk/t/EgertonPrerogative1604.html>