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

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What Manner of Persons ought to exercise the kings p[re]rogatiue writte by L[ord] Elsmeere

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[i]th God and his Subiects a discretion Iudgment, & feeling love towards them over whom he raigneth onlye p[ro]per to himselfe, as to his place and person/ whoe seeing he cannot infuse into any other his wisedome and guifts, w[hi]ch God hath in respect of his place and charge/ enabled him w[i]th all/ can neither subordinate anye other Iudge to governe by that knowledge/ w[hi]ch the kinge can noe oth[e]r 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[e]r 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[e]r [th]e Iudgm[en]t, [tha]t is ruled by anoth[e]r mans onlye: therefore it maye seeme/ they rather seeme to be kings, then to rule the people, vnd[e]r [th]e kinge/ w[hi]ch will not administer Iustice by Lawe/ but by theire 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[e]r 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 alltogither vnnecessare: noe man will seeke to thrust himselfe into/ but for hope of Gaine/ Then is not anye prerogatiue oppugned but mayntayned, thoughe 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 onlye/ 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[e]r 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 reformac[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 vnlimitted/ and therefore there can be therein noe reformac[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 theire Equitie in all other causes and Iudgment[es] interpose themselves. Nowe Custome cannot conforme that which is vnreasonale in it selfe/ wisedome 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 goverment must seeke such/ as he is capeable of/ not such as seeme to himselfe most easie to execute: for in appearance it is easye 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 orordinance 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