

## HEAD OF THE STATE

By "Head of the State" is meant the supreme executive authority of the State. It is now well recognised that every State must have such a chief executive. In many cases the King was originally the repository of all powers in the State. He was the law-giver, the executor of the law and the judge. But gradually, one by one, these powers were delegated by him to others and in some cases he even disappeared. Where he disappeared, the problem arose of having a suitable substitute. Even Cromwell found it necessary to evolve the office of a Lord Protector. The need was particularly felt in the international sphere. There were certain duties, *e.g.*, receiving foreign potentates and ministers which it was impossible for a body of men, like a Cabinet or a Parliament, to perform simultaneously. Thus the various types of non-hereditary executives we come across in the present day represented the various attempts made by constitution-makers to instal uncrowned kings in places which were once occupied by crowned ones.

It may be that in certain States in matters official the head of the State is no more than a distinguished "rubber stamp"; but even a rubber stamp has its use. A familiar test which is, therefore, adopted by text-book writers is to ask whether the executive is real or nominal. In some cases the real and nominal blend in one person, as in the U. S. A.; there is then really no nominal executive. But in the vast majority of cases it is possible to distinguish between the formal head of the State and the real executive. We are concerned here more

with the nominal or formal executive. [The real executives of modern democracies have been dealt with in the chapter on Democratic Executives. (See Chapter 12, pp. 202-231 of this volume.)]

Professor J. H. Kraus in *The Crisis of German Democracy*, 1932 (p. 171) says that there are five possible types of State heads which, named in the sequence of their importance, can be characterised under the following terms:

- (1) the representative head of the State;
- (2) the head of the State bureaucracy;
- (3) the guardian of the constitution;
- (4) the highest equalising factor in the balance of the State machinery; and
- (5) the leader of the people.

This classification reveals the various purposes for which the head of the State is constituted. The heads of the different States fall under one or more of these types according to the particular emphasis which the constitution places upon their functions.

## THE UNITED KINGDOM

In the United Kingdom, there is, as everybody knows, a constitutional monarchy. Most executive authority is legally vested in the King and is exercised in his name. But every official act of the King is done on the responsibility of a minister. On this is based the doctrine that the King can do no wrong; for what he does some minister is held responsible.

The legal position of the Crown has been little affected by the passage of time. It remains nearly the same as in 1872, when Bagehot gave the following startling enumeration of the legal powers of the Crown:

“The Queen could disband the army (by law she cannot engage more than a certain number of men); she could dismiss all the officers, from the General Commanding-in-Chief

downwards; she could dismiss all the sailors too; she could sell off all our ships of war and all our naval stores; she could make a peace by the sacrifice of Cornwall and begin a war for the conquest of Brittany. She could make every citizen in the United Kingdom, male or female, a peer; she could make every parish in the United Kingdom a university; she could dismiss most of the civil servants; she could pardon all offenders. In a word, the Queen could by prerogative upset all the actions of civil government, within the government, could disgrace the nation by a bad war or peace and could, by disbanding our forces, whether land or sea, leave us defenceless against foreign nations."

This passage illustrates the vast reserve of the powers vested in the King of England. The fact that no monarch in his senses would on his own even attempt to exercise these powers is another matter.

The powers of the Crown of the present day are derived from custom and from statute. The functions of the King may be dealt with briefly under three heads: (a) non-political; (b) political; and (c) formal.

(a) The Crown has been described as the pivot of the "dignified part of the constitution" and the following claims have been made for the institution of monarchy: A monarchy calls forth feelings which no republic can evoke. It appeals to the sentiments of the people more than any other form of government. It provides an "intelligible headpiece" and is valuable in excluding competition for the leadership of the society. Above all, the Crown acts as the guardian of the "invisible" constitution. It "acts as a disguise", for "it enables the real rulers to change without heedless people knowing it".

(b) It is not easy to describe the political functions of the Crown. A good deal depends upon the character of the monarch. The regime of Queen Victoria provides ample evidence to show how an exceptionally capable Sovereign, strong of will and greatly devoted to duty, backed up by the



experience gained during a long reign, left a profound impression upon the government of the day. In the words of Gladstone, "the acts, the wishes, the example of the Sovereign in this country are a real power. An immense reverence and tender affection await upon the person of the one permanent and ever faithful guardian of the fundamental conditions of the constitution".

(c) Of the formal prerogatives of the Crown the following are the more important, namely, (i) the right of dissolution, *i.e.*, the right to appeal from Parliament to the people; (ii) the right to refuse a dissolution, *i.e.*, the right to appeal from the Ministry to Parliament; and (iii) the right to select his chief adviser, that is, the Prime Minister. These rights are, no doubt, circumscribed by many considerations, but no one can deny that these rights exist.

Mention may also be made here of three other rights enumerated by Bagehot: the right to be consulted, the right to encourage and the right to warn. "A King of great sense and sagacity would want," he wrote, "no other." The letters of Queen Victoria afford various instances where this masterful Sovereign exercised all these rights.

## CANADA, AUSTRALIA AND SOUTH AFRICA

In each of these Dominions the *de jure* head of the State is the King of England, but in every Dominion he is represented by a Governor-General.

Under the old colonial system the Governor-General represented the Crown, that is, the Home Government. He was all-powerful. Gradually, just as the power of the King at home was first checked and finally taken over by a Cabinet responsible to Parliament, so also the power of the Governor-General in the colonies passed from his hands into the hands of the people of the colonies. With the history of the transition from the colonial system to the responsible

government of the present day we are not concerned. What has to be noted is that the Governor-General came to occupy in the Dominions a position similar to that of the King in England. He represented a mere formal head of the State. After the Imperial Conference of 1926, the Governor-General in a Dominion ceased to represent the government of Britain (considered as Cabinet) and became merely a representative of the King, with the result that the government of the United Kingdom had to appoint another official, called the High Commissioner, in a Dominion to act as a liaison officer between the Dominion and the Home Government.

In Canada and Australia, the Governor-General, whenever there is a vacancy in the office, is appointed by the King primarily, if not solely, on the advice of the Dominion Cabinet. But in South Africa, the Governor-General is appointed on a commission countersigned by the Prime Minister of the Union and not by a British Secretary of State. The Union Government is thus solely responsible for this appointment. The term of office of the Governor-General in all the three Dominions is five years.

The Cabinet is the *de facto* executive in the Dominion. In all political matters the Governor-General acts only on the advice of the Cabinet. He does not preside over the business meetings of the Cabinet, which are summoned in the name of the Prime Minister. The Governor-General acts merely as the constitutional head of the government advised by ministers.

## IRELAND

In Ireland there is no Governor-General but a President. When the new constitution was passed in 1937, all references to the King and in the main to the Governor-General were omitted from it, but the Executive Council was authorised to avail itself, for diplomatic and consular appointments and international agreements, of any organ used for



these purposes by other members of the British Commonwealth, though that term was avoided. Therefore, it is rather difficult to define the exact position which Ireland occupies in the British Commonwealth. Mr. De Valera claimed that Ireland was a republic, while His Majesty's Government treats it as part of the British Commonwealth.

The Irish executive is of the British responsible type, that is to say, it is a parliamentary executive. The President is, therefore, the formal head of the State and, save as otherwise provided in the constitution, all powers and functions conferred on the President by the constitution are to be exercised by him only on the advice of the government of the day.

The President is elected by the people. The electorate is the same as that for the Dail. The election is by secret ballot on the system of proportional representation with the single transferable vote. He holds office for seven years from the date on which he enters upon his office, unless before the expiration of that period he dies or resigns or is removed from office, or becomes permanently incapacitated, such incapacity being established to the satisfaction of the Supreme Court consisting of not less than five judges. A person is eligible for re-election to that office but only once. He may not leave the State during his term of office save with the consent of the government. He may be impeached for stated misbehaviour. A proposal in either House of the legislature to prefer a charge against the President may not be entertained unless upon a notice of motion in writing signed by not less than 30 members of that House. And such proposal may be adopted by a House only upon a resolution of that House, supported by not less than two-thirds of the total membership thereof. When a charge is preferred by one House, the other House is to investigate the charge or cause the charge to be investigated. The President has the right to appear and to be represented at the investigation of the charge. If, as a result of the investigation, a

resolution is passed, supported by not less than two-thirds of the total membership of the House of the legislature by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained and that the misbehaviour, the subject of the charge, was such as to render him unfit to continue in office, the resolution operates to remove the President from his office.

## FRANCE

A brief reference may be made here to the position of the French President, both under the old constitution of 1875 and under the new constitution which has just been approved by the people of France.

The President under the constitution of 1875 has been made famous by a classic aphorism of Sir Henry Maine. "There is no living functionary," he wrote, "who occupies a more pitiable position than a French President. The old Kings of France reigned and governed. The constitutional King of England, according to M. Thiers, reigns, but does not govern. The President of the United States governs, but he does not reign. It has been reserved for the President of the French Republic neither to reign nor yet to govern." This statement was substantially true; the real executive in France was the Cabinet and the President was merely a figurehead.

He was elected for seven years, not by the people but by the two Houses of the French Parliament, sitting together as a National Assembly. He was re-eligible for election any number of times. Under the previous constitution the President had been responsible to the legislature, but the inconvenience and danger of this principle soon became apparent and, therefore, when the constitution came to be revised in 1875 he was made "irresponsible" except in the case of high treason. If accused of high treason, the President could be



impeached by the Chamber of Deputies and tried by the Senate. The Senate had the power to order his dismissal and to impose suitable penalties. Save as above, the President was, for the duration of his term, irremovable. In the executive sphere he could act only through his ministers who under the constitution were to countersign every decree of his. His position was, in fact, merely that of "a constitutional King for seven years".

Under France's latest constitution the President of the republic will be elected for seven years by the two Houses of the legislature. Among his powers are the following:

He designates the Prime Minister and confirms the latter's choice of ministers. He presides over the Council of Ministers, the Council of Magistrates, now less dependent on political parties, and the Supreme Council of National Defence. He confirms the dissolution of the Assembly if the government has been outvoted twice within 18 months after the first 18 months of its existence. All his edicts must be countersigned by the Prime Minister and another minister.

## THE WEIMAR CONSTITUTION OF GERMANY

Under the Weimar Constitution of 1919 the Reich President was elected by the whole German people by secret, equal and direct ballot, men and women being entitled to vote. The fathers of this constitution deliberately discarded the French system of the Parliament electing the President, as such a system was, in the words of Hugo Pruess, "false parliamentarism". According to him, real parliamentarism postulates two organs of State which are on an equal footing, *e.g.*, Parliament and President, and this can only be achieved if the President is elected not by the Parliament but directly by the people.

Any German over 35 years of age may be elected to the Presidency. It was not necessary, as in the U.S.A., for the



President to be born on German soil; it was sufficient if he was a German citizen. Nor was there any restrictive provision, as in the old French Constitution, prohibiting a member of one of the reigning families of Germany from becoming the President.

To be elected a President, a candidate had to receive an absolute majority of the votes cast. If at the first election no candidate received a majority of votes, a second ballot was held. This second ballot was not necessarily confined to the two candidates who obtained the highest number of votes in the first ballot; it was even permissible for a candidate to contest the election for the first time at the second ballot. For instance, in 1932, President von Hindenberg was in fact put up as a candidate only at the second ballot.

The term of office of the President was seven years, which was much longer than the term of the Reichstag which, at the most, could extend only to four years. He could be re-elected any number of times, but his term of office could be terminated prematurely by deposition. Such deposition was to be proposed by the Reichstag by a resolution which required two-thirds majority and was decided by the people. In case the verdict of the popular vote went in favour of the President, he could remain in office for a further term of seven years and the Reichstag was automatically dissolved. The President or any of his ministers could be impeached for violation of the constitution or a Reich law by two-thirds vote of the Reichstag, the trial being held in a special court, the Staatsgerichtshof. In case of any temporary incapacity of the President, the Chancellor was to act as his constitutional substitute.

The President was the Commander-in-Chief of the army and navy, and represented the Reich in foreign affairs; but a declaration of war could be made only by the legislature, while alliances and treaties required its assent. The President had the power to appoint and dismiss the Chancellor and

ministers as well as all the officers, civil and military. He had the right to pardon in any case decided by the German Supreme Court in the first instance or by any other court in Germany. In the sphere of legislation he promulgated the Reich laws. Under certain circumstances he could order a plebiscite to be held and, within the limits of article 48 of the constitution, could even legislate. But all his decrees and orders had to be countersigned by a minister, who thereby accepted responsibility for them. The position of the President was, therefore, strictly based on the model of a parliamentary executive.

### SWITZERLAND

The executive of the Swiss Confederation is a peculiar one. The constitution provides that the supreme directing and executive power of the Confederation is exercised by a Federal Council composed of seven members. It has been said that the constitution of the Swiss Republic "confides the executive authority neither to a President nor to a Premier; neither to a Cabinet nor to an autocrat". The Swiss executive can be classified neither under parliamentary nor under non-parliamentary executives. In fact, it appears to have succeeded in combining the merits and excluding the demerits of both the parliamentary and fixed executive systems. The Federal Council, as the Swiss executive is called, is a body consisting of seven members who are elected by the two Houses of the legislature, sitting together as a National Assembly. They are elected at the beginning of each new National Council for the duration of that Assembly, namely, three years. The Federal Council is completely renewed after every general election of the National Council. In the Federal Council power is not concentrated in any one man; it is held equally among the seven members. There is, as it were, a diffusion of executive power among a body of



men. But every year the Federal Assembly nominates one of the members of the Federal Council as the President of the Confederation who presides over the Council and another as the Vice-President of the Council. The outgoing President cannot be elected President or Vice-President for the following year, nor can the same member act as Vice-President for two consecutive years. Usually the Vice-President succeeds the President and the two offices rotate among the members of the Federal Council. The President gets a salary equal to about £60 a year more than each of his colleagues during his term of office.

“By the actual arrangement, the work of the President of the Confederation has been considerably diminished. He is of course still head of a department, which may no doubt be that of foreign affairs, though he can equally direct one of the others, such, for instance, as war or finance. But his presidential functions have been lessened by relieving him of a number of matters of mere administrative procedure and of the duty of giving numerous audiences to foreign representatives and other persons. He still opens all correspondence addressed to the Federal Council, distributes the business among the different departments, presides at the sittings of the body and signs the notes and other official correspondence in its name. He still receives foreign representatives on certain occasions, such as the delivery of letters from the heads of their countries and the presentation of their letters of credence and recall. He also continues to take the first place, ranking before his colleagues, upon public occasions. It is thus clear that the President of the Confederation has not a tithe of the power entrusted to the President of the United States. He may, indeed, without any disrespect, be likened to the chairman of a board.” (Adams & Cunningham: *The Swiss Confederation*, 1889).

## THE UNITED STATES OF AMERICA

The American President provides a perfect illustration of a non-parliamentary or fixed executive. According to the constitution, the “executive power shall be vested in the

President of the U. S. A.," and "he shall hold office during the term of four years . . . together with the Vice-President chosen for the same term".

The method of election both of the President and the Vice-President is provided for by the constitution with great precision. "This process of election," wrote Hamilton, "affords a moral certainty that the office of the President will seldom fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications."

The constitution contemplates that the election should be indirect. It provides first for an electoral college, the members of which are chosen in each State to a number equal to the number of representatives from the State to the two Houses of Congress. The actual method of choosing these electors is left to the discretion of each State legislature. All the State legislatures have directed that the presidential electors shall be chosen at the polls by the qualified voters of the State. The electors meet in each State to nominate and cast votes for the presidential and vice-presidential candidates. The votes are sent to the President of the Senate and are counted in the Houses of Congress sitting in a joint session.

The constitution intended to confer a wide discretion on the presidential electors in the choice of a President; but, in practice, an elector dare not cast his vote for any other than the official nominee of his party.

"As a matter of practice, the presidential electors in each State are nominated by the political parties, one slate of presidential electors by each party organisation. This is done at State party conventions, or at primaries. Then at the November election in each presidential year, the qualified voters mark their ballots for the one or the other of these party slates. The ballots are usually arranged so that by marking a single cross the voter can indicate his preference for the whole column of Republican or Democratic presidential electors as the case may be.

"Thus in New York a single cross indicates the voter's choice for the entire forty-eight presidential electors of the Republican



party or the Democratic party. Strictly speaking, therefore, the President and Vice-President are *not* elected in November. Only the presidential electors are elected at that time. The official election of President and Vice-President takes place at the hands of these electors who meet in their respective States and vote as will be explained a little later." (*The Constitution of the United States* by W. B. Munro, 1944, p. 74).

The author explains later that the electors meet in their respective States and cast their votes on the first Monday in the following January.

To be qualified for the office, the President must be a natural-born citizen of the U.S.A., not less than 35 years of age and resident in the country for at least 14 years. His salary (which is \$75,000) shall neither be diminished nor increased during his tenure of office. In case of a vacancy in the office of the President, caused by death or any other disability during his term, his place is taken by the Vice-President; and in the event of a vacancy occurring in respect of both the President and the Vice-President, the office is to be filled *ad interim* by the various members of the government according to a settled order fixed by statute. The President, the Vice-President and all civil officers of the U.S.A., are liable to be removed from office on impeachment for, and conviction of, treason, bribery, or other crimes and misdemeanours.

As to the genesis of the office, English writers lay much stress upon the British tradition. "It is tolerably clear," wrote Sir Henry Maine, "that the mental operation through which the framers of the American Constitution passed was this: they took the King of Great Britain, went through his powers and restrained them whenever they appeared to be excessive, or unsuited to the circumstances of the United States." (*Popular Government*, p. 212).

American writers have, however, taken pains to refute this; but the historical link with the past cannot be denied. In the words of Prof. Laski, "there is no foreign institution

with which in any basic sense it can be compared, because basically there is no comparable foreign institution. The President of the United States is both more or less than a King; he is, also, both more or less than a Prime Minister". (*American Presidency*, 1943, p. 23).

## THE UNION OF SOVIET SOCIALIST REPUBLICS

Like Switzerland the U.S.S.R. also occupies a unique position. The constitution does not provide for the office of a chief executive; on the other hand, the person who is spoken of as the President of the U.S.S.R., is the Chairman of the Presidium of the Supreme Soviet of the U.S.S.R., which is a sort of standing committee of the legislature. This rather curious state of affairs may be explained by the fact that in the Russian Constitution the demarcation between the executive and the legislature is not so clear-cut as in some of the other constitutions. It will be noticed that the Presidium of the Supreme Soviet exercises many of the executive powers which in British India are exercised by the Governor-General.

The Supreme Soviet of the U.S.S.R. elects, at a joint sitting of both Chambers, its Presidium, consisting of a Chairman, 16 Vice-Chairmen, a Secretary and 24 members of the Presidium. The Presidium is responsible to the Supreme Soviet in all its activities.

The Presidium has important functions. It convenes twice a year the sessions of the Supreme Soviet; interprets the existing laws and issues decrees, dissolves the Supreme Soviet, in case of the failure of the two Chambers to agree, and arranges for new elections; holds referendums on its own initiative or on that of one of the constituent republics; revokes the decisions and orders of the Councils of People's Commissars of the Union and of the constituent republics if they violate the law; in the intervals between the sessions



of the Supreme Soviet, removes from office and appoints People's Commissars of the U.S.S.R., subject to subsequent confirmation by the Supreme Soviet; bestows decorations and honorary titles; exercises the right of pardon; appoints and dismisses the high command of the armed forces; in the intervals between the sessions of the Supreme Soviet, has the power to declare a state of war and at all times to order mobilisation, to ratify and to denounce international treaties, to appoint and recall ambassadors, to receive the credentials and letters of recall of foreign representatives.