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J. B. Bury

Excerpt

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## THE CONSTITUTION OF THE LATER ROMAN EMPIRE

THE forms of government which are commonly classified as absolute monarchies have not received the same attention or been so carefully analysed as those forms which are known as republics and constitutional monarchies. There is a considerable literature on absolute monarchy considered theoretically, in connexion with the question of Divine Right, but the actual examples which history offers of this kind of government have not been the subject of a detailed comparative study. Montesquieu, for instance, treats them indiscriminately as despotisms. Probably the reason lies in the apparent simplicity of a constitution, by which the supreme power is exclusively vested in one man. When we say that the monarch's will is supreme, we may seem to

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say all there is to be said. The Later Roman Empire is an example of absolute monarchy, and I propose to shew that so far as it is concerned there is a good deal more to be said.

The term absolute monarchy is applied in contradistinction to limited or constitutional monarchy. I understand the former to mean that the whole legislative, judicial, and executive powers of the state are vested in the monarch, and there is no other independent and concurrent authority<sup>1</sup>. The latter means that besides the so-called monarch there are other political bodies which possess an independent and effective authority of their own, and share in the sovran power. These terms, absolute and constitutional monarchy, are unsatisfactory, from a logical point of view. For they group together these two forms of government as subdivisions of the class monarchy, implying or suggesting that they have much more real affinity to one another than either has to other constitutions. This is evidently untrue:

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a constitutional monarchy is far more closely allied to a republic like France than to an absolute monarchy like Russia. The English constitution, for instance, in which legislation is effected by the consent of three independent organs, the Crown, the Lords, and the Commons, might be described more correctly as a triarchy than as a monarchy; and it seems to be unfortunate that monarchy should have come to be used, quite unnecessarily, as a synonym for kingship. "Limited monarchy," as Austin said long ago, "is not monarchy<sup>2</sup>"; monarchy properly so-called is, simply and solely, absolute monarchy. We have however an alternative term, "autocracy," which involves no ambiguities, and might, I venture to think, be advantageously adopted as the technical term for this form of government in constitutional discussions. And "autocracy" has a special advantage over "absolute monarchy." Autocracies are not all alike, in respect to the power actually exercised by the autocrat. Although not limited by any bodies pos-

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sessing an independent authority, he may be limited effectually in other ways. Now we can properly speak of more or less limited autocracies, whereas it is an impropriety of language to speak of more or less absolute monarchies, as “absolute” admits of no degrees.

Originally, and during the first three centuries of its existence, the Roman Empire was theoretically a republic. The Senate co-existed with the Emperor, as a body invested with an authority independent of his; but the functions which it exercised by virtue of that authority were surrendered one by one; it became more and more dependent on him; and by the end of the third century the fiction of a second power in the state was dropped altogether, although the Senate was not abolished<sup>3</sup>. From that time forward, under the system established by Diocletian and Constantine, until the fall of the Empire in the fifteenth century, the government was simply and undisguisedly an autocracy.

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Now one broad distinction between autocracies may be found in the mode of accession to the throne. The sovereignty may be hereditary or it may be elective. If it is elective, the sovereignty is derived from the electors who, when the throne is vacant, exercise an independent and sovereign authority in electing a new monarch. If it is hereditary, if the right of the autocrat depends entirely and indefeasibly on his birth, then we may say that his sovereignty is underived; the succession is automatic, and there is no moment at which any other person or persons than the monarch can perform an act of sovereign authority such as is implied in the election of a sovereign. This difference may involve, as we shall see, important consequences.

In the case of the Roman Empire, the Imperial dignity continued to be elective, as it had been from the beginning, and the method of election remained the same. When the throne was vacant a new Emperor was chosen by the Senate and the army. The initiative might be taken either by the Senate

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or by the army, and both methods were recognised as equally valid. It was of course only a portion of the army that actually chose an Emperor,—for instance, if the choice were made in Constantinople, the guard regiments; but such a portion was regarded as for this purpose representing all the troops which were scattered over the Empire. The appointment did not take the formal shape of what we commonly understand by election. If the soldiers took the initiative, they simply proclaimed the man they wanted. If the choice was made by the Senate, the procedure might be more deliberate, but there seems to have been no formal casting of votes, and the essential act was the proclamation<sup>4</sup>. It sufficed that one of these bodies should proclaim an Emperor to establish his title to the sovereignty; it only remained for the other body to concur; and the inauguration was formally completed when the people of Constantinople had also acclaimed him in the Hippodrome—a formality always observed and reminiscent

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of the fact that the inhabitants of the new capital of Constantine had succeeded to the position of the old *populus Romanus*<sup>5</sup>.

The part which the Senate played in the appointment of an Emperor, whether by choosing him or by ratifying the choice of the army, is constitutionally important. The Senate or *Synklétos* of New Rome was a very different body from the old *Senatus Romanus*. It was a small council consisting of persons who belonged to it by virtue of administrative offices to which they were appointed by the Emperor. In fact, the old Senate had coalesced with the Consistorium or Imperial council, and in consequence the new Senate had a double aspect. So long as there was a reigning Emperor, it acted as consistorium or advisory council of the sovrán, but when there was an interval between two reigns, it resumed the independent authority which had lain in abeyance and performed functions which it had inherited from the early Senate.

But it was not only when the throne was vacant that it could perform such functions.

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The right of election might be exercised by the Senate and the army at any time. It was a principle of state-law in the Early Empire that the people which made the Emperor could also unmake him, and this principle continued in force under the autocracy. There was no formal process of deposing a sovrain, but the members of the community had the means of dethroning him, if his government failed to give satisfaction, by proclaiming a new Emperor; and if anyone so proclaimed obtained sufficient support from the army, Senate, and people, the old Emperor was compelled to vacate the throne, retiring into a monastery, losing his eyesight, or suffering death, according to the circumstances of the situation or the temper of his supplanter; while the new Emperor was regarded as the legitimate monarch from the day on which he was proclaimed; the proclamation was taken as the legal expression of the general will. If he had not a sufficient following to render the proclamation effective and was sup-



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pressed, he was treated as a rebel; but during the struggle and before the catastrophe, the fact that a portion of the army had proclaimed him gave him a presumptive constitutional status, which the event might either confirm or annul. The method of deposition was in fact revolution, and we are accustomed to regard revolution as something essentially unconstitutional, an appeal from law to force; but under the Imperial system, it was not unconstitutional; the government was, to use an expression of Mommsen, “an auto-  
cracy tempered by the legal right of revolution.”

Thus the sovereignty of the Roman autocrat was delegated to him by the community, as represented by the Senate, and the army, and, we may add, the people of Constantinople<sup>6</sup>. The symbol of the sovereignty thus delegated was the diadem, which was definitely introduced by Constantine. The Emperor wore other insignia, such as the purple robe and the red boots, but the diadem was pre-eminently the symbol and expression of the

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autocracy. The dress only represented the Emperor or commander-in-chief of the army, and no formalities were connected with its assumption. It was otherwise with the crown, which in the Persian Kingdom, from which it was borrowed, was placed on the king's head by the High-priest of the Magian religion. In theory, the Imperial crown should be imposed by a representative of those who conferred the sovran authority which it symbolized. And in the fourth century we find the Prefect, Sallustius Secundus, crowning Valentinian I, in whose election he had taken the most prominent part. But the Emperors seem to have felt some hesitation in thus receiving the diadem from the hands of a subject; and the selection of one magnate for this high office of conferring the symbol of sovranity was likely to cause enmity and jealousy. Yet a formality was considered necessary. In the fifth century, the difficulty was overcome in a clever and tactful way. The duty of coronation was assigned to the Patriarch of Con-