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## Political and legal status of the Byzantine Emperors (historical and ideological evolution of their powers)

*"We know what fear inspires your respectable power to the evil, and what care you provide about the world of church. That is why we are praying God to save your power for a long time, which usually protects piety, reigns peacefully over the universe, judges each citizen justly, conquers the raised hands of the enemies and makes obey your scepters "*  
*(From the message of the Council of Chalcedon to the Emperors Valentinian III and Marcian)*

*"As an eye belongs to the body, so the king, given by God to the work for the common welfare, is not separable from the world. He must take care of all people as his own members, so that they have time for good things and not to experience evil "(Deacon Agapit, VIth century.)*

### **I. Formation of the imperial power in Rome**

On January 13, 27 BC, having won the competitors, a dictator and a commander Octavian (27 – 14 BC) resigned his extraordinary power, but he retained the overall governing of the Roman state. No position, according to the Roman law, provided with such powers, and then Octavian accepted the title of "emperor", or informally princeps («first among the equal", "outstanding man with moral qualities") who, in his opinion, should legitimize the new state of affairs. Thus the imperial power was born. On May 29, 1453 during the siege of Constantinople last monarch of the Holy Roman (Byzantine) Empire, St. Constantine XI Palaeologus (1448-1453) died. Their names are associated with the beginning and the end of a historical era of human development, one and a half thousand-year era of the Roman monarchy, under gentle and caring tutelage of which Christianity was generated and propagated all over the world.

It would be quite wrong to suppose that the imperial power was formed artificially, solely by virtue of irrepressible ambitions of certain Roman leaders, by force and repression, which buried secular republican traditions. Objective circumstances led Rome to one-man rule. The system of power, which was active at that moment, based on the principle of collegiality and high political activity of Roman citizens, no longer ensured peace in the state. The republic could exist as long as its territory was limited by a relatively small area of Italy. But for the state, far-flung around the "Roman pools", the Mediterranean, the figure of a sole ruler who could ensure fairness and legality was really needed to stand above all.

The transition from the Republic to the Empire was far from accidental. Even before Octavian, Rome knew Maria (157-86 BC) and Sulla (138-78 BC), Caesar (100-44 BC) and Pompey (106 -48 BC), Crassus (115-53 BC) and Anthony (83-30 BC), who openly claimed for the sole power. And the population, nothing to say about the army, supported the usurpers. Even later, while the tyranny of some princeps, as it was, for example, during the reign of Emperor Caligula (37-41) - the horror of the Senate and the aristocracy, no one thought about returning to the republican era. It was obvious that era had irretrievably finished.

The words of the Emperor Galba (68-69), spoken by him on the day of the adoption by him of a young aristocrat Piso, in whom he wanted to regard his future successor, sounded quite unreal: "If the great body of the state could resist and keep the balance without the guiding hand of its single ruler, I would like to be worthy to initiate the republican government. However, we have long been already forced to follow the other way. "Or, as succinctly said one historian, "without the will of the supreme ruler the Roman Empire would inevitably fell apart."

Thus, the supreme imperial power was established. But to take the power in the Roman state was only half work. Octavian and his successors got a very urgent question: what their capacity should be, i.e. what rights and responsibilities they should be given. The right was the object of worship for the Romans, and therefore it was impossible to imagine that a ruler of the Roman state, even a hero like Octavian could act without following the legal regulation, was absolutely impossible. But there was no preconceived plan or theoretical doctrine on this matter; moreover, it is possible to state nowadays that no one among the first Roman emperors and their contemporaries could foresee what content autocratic power would receive in the nearest time. It is correctly marked that all the associations that are caused the word "emperor" in our mind, were completely alien to Octavian. He would incredibly be surprised to see the successors in a few decades, nothing to say about a later time.

Everything happened empirically by trial and mistakes, very often it was even without any philosophical understanding of events, and only much later it was with a new guiding star - Christian faith. It was not by chance the first emperors of Rome either assumed certain powers or discarded them for subjective reasons. For example, Octavian accepted the title *pater patriae* («father of the family") from the Senate, but he refused from the title of *dominus* («lord"). And the emperor Septimius Severus (193-211) returned this title in 199 and, moreover, he awarded his wife, Julia Domna Emessa, with the title of *mater castrorum* («mother camps").

It is also remarkable that, not finding usual analogies in the list of national positions, emperors often followed the way of making extremely uncertain titles, however, which should emphasize their special status. But it can not be related to the *nouveau riche* who came to power accidentally or uneducated soldiers. Just bearers of Imperial crown and their contemporaries tried to express in sensual uncertain terms those important and unclear that carried the idea being an emperor in the Holy Roman Empire. That State which included the whole civilized world.

Thus, the Emperor Caligula was called "the son of the camps", "the father of the troops," "Caesar the good and the great", and once he was almost named king. Being not satisfied with the old Magnification which were not adequate to the greatness of his power, the Emperor Domitian (81-96) ordered to add to his titles "dominus et deus" («lord and god»). And the emperor Trajan (98-117) added the term "optimus" («the best»). Later, this tradition to add "non-legal" titulature to the name of the emperor, which were unusual for the Roman rational mind, was widespread - relevant examples will be given below.

To make imperial power not only a legal and legitimate political institution, but really the sole, supreme one, it had to make a long way of searching. As we shall see, it took several centuries to form the status of Roman (Byzantine) emperor and it followed a number of ways, sometimes they intersected with each other, and sometimes they added each other. In the first place, they restored the prerogatives of the ancient Roman kings. Then, emperors joined the competence of national authorities to their authorities. And finally, they made in the nature of the imperial power those powers that were previously simply not relevant in the republican period. In this respect the Christian period of the Roman (Byzantine) Empire is a special phenomenon.

## **II. Imperial status in the pre-Christian period**

Due to the unprecedented nature of imperial power even Octavian had to settle the problem to adjust the legal and political foundations of the Roman Republic for the new trends. He wanted to be neither a king, having a sustainable prejudice for it, nor a dictator, because dictatorship was an extraordinary position according to the Roman law. In addition, even Octavian himself and many of his successors were convinced that the source of power in the state was the Roman people and the Senate, acting on its behalf. The ancient chronicler preserved the performance of the Emperor Tiberius (14-37) in the Senate for us, where there were these words: "I have said not once, and I repeat, father - senators are like kind and beneficent rulers, who are obliged to you with such vast and full power, they must always be the servants for the Senate, sometimes - for all the people, and sometimes - for individual citizens."

This fact imposed a kind of internal restrictions on the holder of the imperial title in the formation by him of his legal capacity. However, it should be said, the way of legitimizing of the status, invented by Octavian, was quite simple and not without grace. He joined together the powers of some higher authorities in the Roman state, added to them powers of ancient kings and collectively placed them under the imperial power. It proved to be quite acceptable for contemporaries and coincided with their ideas about being an emperor.

In general, it should be noted that the term "emperor" had an ancient origination. Ultimate authority in Rome was called the Imperium (imperium), and this term represented supreme administrative, judicial and military power. The Romans distinguished two types of imperium. Military imperium (imperium

militiae) assumed the carrier to have the broadest powers a mile from Rome. As it was believed there every Roman citizen could potentially be in the enemy territory, and therefore he was like following the war regime. Civil Imperium (imperium domi) was provided to the highest officials of the city government. Claiming the imperium, thus Octavian clearly showed that, although his powers were still uncertain, but the supreme power in the state was now associated exclusively with his personality, as emperor.

Some powers of emperors copied prerogatives of the Roman kings, but where else sole authority could seek an analogy, only in the royal power of ancient Rome? Namely in previous centuries kings focused their entire sovereign power in their hands, including commanding the army, control of internal order, carrying out of public ceremonies, the right of the court and making the punishment.

Later, when the royal regime ceased its existence, these powers were given to the Senate (lectio senatus), as a body, which on behalf of the Roman people carried some senior government functions. It was also responsible for some issues such as religion and worship, giving emergency powers to the state officials, higher financial management, general management of the provinces, the appointment of a dictator, international relations and taking higher measures of social security. Gradually these powers were expanded as People's Assemblies - the highest legislative authority of Rome became worse and worse and fell into decay.

Other royal functions were given for specially created supreme magistrates. There were two consuls, elected by the people headed them. They commanded the troops, summoned the national assembly and made justice, on behalf of the people they made worshipping as well as watched auspices (auspicia). Strictly speaking, the consuls were "minor tsars", even external signs of their differences were copied from the kings' ones. Consuls were elected for one year and then they terminated the powers. To aid the consuls the post of proconsul with broad powers was introduced.

Two censor (censoris) from among the former consuls, who are appointed for a period of 18 months, performed very honorable duties. Their responsibilities included: supervision the morality of Roman citizens, census of civilians, property condition assessment of citizens and their distribution by Centuries and tribes, drawing up a list of senatorials, supervision of temple erections and cemeteries, public financial management. Furthermore, all debates for treasury, lease of public lands, renting at the mercy of state taxes, supervision of public buildings and imposing on the perpetrators specific penalties were in competence of the censors.

Since 367 BC the system of higher magistrates also included praetors (praetor), which were considered junior colleagues of consul. Their first task was to provide internal civil order in the state. Subsequently, from policing functions Praetor organically became entitled to execute judicial power that had been derived from the consular powers. All justice was made by two special Pretoria: one of them regulated the disputes between foreign citizens, the other one - between the Romans (praetor peregrinus and praetor urbanus).

Since none of the laws was perfect, there was a necessity to clarify the application of a legal act systematically, so Pretoria did it. When the number of similar complaints became larger, solutions of praetors were declared in the form of edicts made on display for public. Time passed and a certain set of Pretoria's solutions was made, which was named *edictum tralaticium*.

By the end of the republican system public meetings almost lost their significance, that's why edicts of praetors regarding the application of the law became importance as the main sources of law. Besides them justice was carried out by *kurul ediles*, the main task of which was to keep the city clean as well as public events to do it they were entitled to regard administrative and minor criminal cases, and in the provinces – it was done by the rulers. The whole set of rules made in the result of praetors' practice (*jus praetorium*) and aediles' one (*jus aedilicium*) made *jus honorarium*.

In addition to the ordinary senior magistrates, the position of dictator was made, who received unlimited power for six month time. In 453 BC at the request of the plebeians the post of the public tribune was made; their number did not remain unchanged and gradually it was increased from 2 to 10. Although tribunes did not relate to the Magistracy and did not have *imperium*, they had significant powers, including the right to impose veto on the decisions of the consuls and the regulations of the Senate, as well as the inviolability of the person.

Now some of the king's powers were returned to their original owner, but it happened not immediately, but gradually. Octavian himself was satisfied with the republican titles. As he could not remain an indefinite consul without exposing old Roman traditions to the revision, he refused from the Consulate and took a lifetime tribune powers. The people and the army liked it, as they did not love the aristocracy. And to compensate the gap in his power, Octavian restored the old right of the tribunes to have the armed militias close at hand. Thus, he actually became equal with the consuls, who commanded the army. Initially, all the power of Octavian Augustus was based on two pillars: the high command for *imperium* and the title of tribune of the people that provided him with personal integrity. It goes without saying, the Emperor was the supreme commander and the army was entirely subordinated to him. A little later, as we shall see, he expanded his powers at the expense of the former royal prerogatives.

The emperors, followed Octavian, also made great efforts to concretize their powers. In particular, as the supreme commander, the emperor quickly got the right to control the provinces, where the Roman troops quartered («*provinciae Caesaris*»). The rest of the province remained under the control of the Senate («*provinciae Senatus*»). To guide "their" provinces emperors established their own provincial administration. But the parallelism of power was so unnatural for Rome that during the ruling of Trajan (98-117) the emperor became the chief inspector for the state of affairs in all provinces without exception, having seized these powers from the Senate.

Then Emperors gained the right to settle the issues of war and peace, which previously were the responsibility of the Senate. Giving individuals the status of a

Roman citizen also became their competence. Gradually the legislative power of the emperor was formed as well as his right for the highest criminal and civil court.

Security of the person of the emperor, as the tribune of the people, was located very close to the dispensation - release of a person from the law. Obviously that in the opposite case the Senate could adopt any legal act which effectively deprived the ruler of Rome intact. Indeed, during the reign of Domitian (81-96), the Senate recognized that right for the powers of the king.

Starting with Octavian, drastic changes took place in the hierarchy of legal acts. In the days of the republic legislation was divided into the following groups of instruments: *leges*, as a law adopted by the Roman people, *senatus consulta* - Senate resolutions and *jus honorarium* - precedent right, worked out by the Judiciary. During the ruling of the emperor Octavian, the decrees of the emperor were equal with *leges* of the Senate, i.e. the laws in the literal sense of the word. And later imperial constitutions got the single significance, dividing into 4 groups: *edicta* - general statutes of emperors, *mandata* - instructions for the officials, *decreta* - solutions of the emperor as the supreme judge of the state, and *epistolae* - answers and explanations on controversial points of the law.

However, the differences between them disappeared gradually and during the ruling of the Emperor Hadrian (117-138) all imperial decrees were granted "the law» like powers (*legis vicem*), deriving their significance from the legal act (*lex imperio*), with which each emperor was given the power.

It is easy to notice that the legislative capacity of the emperor appeared on the basis of authority of former magistrates. For example, the edicts of the Emperor were the prototypes of praetors' edicts, whose functions he took over with the judiciary. However, very quickly serious differences began to take place between them: in the edicts of magistrates the general rules for the most efficient functioning of his office were given, but the edict of the emperor gave general legal norms which had legal power.

Even now, after the accession national positions to the title of Emperor, his power was not absolute. Republican Judiciary retained the powers for a long time, and there were situations when individuals complained to the consuls for the emperor (!). However, it was only in the beginning of the imperial era. The further, the more and more concentrated in their hands all the power. Imperial competence was expanded as soon as the legal capacity of the Senate and the Republican government of the Empire was decreased.

A very extraordinary resolution of the Roman Senate during the ruling of Vespasian (69-79), directly describing the imperial capacity, can be examined by the present day people.

"Let him have the right to enter into a contract with whom he wants to, like the divine Augustus, Tiberius Julius Caesar Augustus and Tiberius Claudius Caesar Augustus Germanicus had done before (predecessors of Vespasian. - AV);

And let him have the right to convene the Senate, to make reports, to postpone the affairs and to propose the solution to the Senate after the discussion or after a simple vote as it had been done before by the divine Augustus, Tiberius Julius Caesar Augustus and Tiberius Claudius Caesar Augustus Germanicus;

And according to his will, authority and order, instruction or in his presence , let the senate meeting take place, the order of all ceremonies will remain the same as if the Senate is convened on the general legal basis;

And let those whom he recommends to the senate and to the people of Rome, when they seek Masters, powers, authority or commission, and whom he gives his support and promises to be taken into account, i.e. let them be elected by the electoral assembly not on the basis of the usual procedures;

Let him have the right and the powers to do and perform everything that he considers necessary in the interest of the state, divine and private affairs, as the divine Augustus, Tiberius Julius Caesar Augustus and Tiberius Claudius Caesar Augustus Germanicus had had the right for;

And let him not be bounded by laws or plebiscite, where it was said that they were not applicable for the divine Augustus, Tiberius Julius Caesar Augustus and Tiberius Claudius Caesar Augustus Germanicus;

And let the Emperor Vespasian Caesar August have the right to do everything that on the basis of any law the divine Augustus, Tiberius Julius Caesar Augustus and Tiberius Claudius Caesar Augustus Germanicus had to do;

And let everything that is done, decided or ordered by the Emperor Vespasian Caesar Augustus or anyone else on his orders or on the instructions also be lawful and obligatory, as if all these are done on the orders of the people or the plebs;

And let him not be obliged to give the people explanations, let no one allow to settle any case against him in his presence. "

This document is notable for two reasons. First, the Senate resolution clearly refers to legal practice, which was formed during Vespasian predecessors' period on the imperial throne, and produced a specific legal act, the senate decree. And, secondly, the fact that the Conventional princeps's competences, such as the military, judicial, administrative authorities, provincial administration, were not mentioned. Consequently, they are no longer subject to debate and they are considered inalienable prerogative of the imperial status. It is reasonable to consider that it was Vespasian who joined all the powers of the former emperors together, having added a few more important functions to them.

But the concentration of higher powers inevitably led to the confrontation between the Senate and the emperors. So, Princeps had another problem to overcome that the Senate was not the source of the powers. The solution of this problem allowed them, in addition, to ensure effective control of the Senate itself.

In this regard the fact of getting censorship dignity by the emperors had very important consequences. From now on they were no longer bound (even formally) to popular sovereignty. Earlier the princeps was considered to be a legitimate representative of the people, and his enthronement was based on the decision of the national assembly. As this action could hardly actually take place due to the large number of Roman citizens, its functions were performed by the Senate. But now, using the status of the censor, who was repeatedly appropriated, the emperor changed the composition of the Senate. Vespasian did so, having added one more thousand of outstanding new provincials to the ancient Roman families.

The powers of the censor were so significant that the emperor, who had acquired this status, turned the Senate from the body of the carrier state of the sovereignty into some kind of the State Council. While ruling of the Emperor Domitian title censor became a lifelong one and Principate finally became monarchy. By controlling the composition of the Senate and removing specific individuals at his will, Domitian completely deprived this body any powers to elect the emperor. It stands to reason, from a legal point of view it would be completely illogical.

The disposition of the public funds was of great importance to separate the emperor from the Senate and to subordinate it to his power. In Roman law, the state treasury was called *erarium* (*aerarium Saturni*). But in the imperial period, along with *erarium* it was called *Fisk*, where income from taxes imposed by the emperors was put. *Fisk* was considered to be private property of the Emperor, as the first person of the Roman people, while the manager of the *erarium* was Senate. Although fiscal property was considered private one, the emperor was obliged to use it exclusively for public purposes.

Over the time, when most of expenditures were centralized, the previous division of public funds by source of income in the Senate and the Emperor lost its meaning. Now everything was united in the hands of the emperor as *fisk*, the owner of which he became. Moreover, the imperial throne got the status of a permanent legal entity, institution (legal entity was considered the Roman state itself), the subject of which was the ruling emperor as a physical person. This fact directly effected the financial position of the emperors.

While the ruling of the emperor Severus (193-211) there was held an essential separation of the fiscal property from the imperial crown one and from the imperial private one. Henceforth princeps became the manager of the three kinds of property: the crown one, the fiscal one and the private one, which is at his disposal in favor of his children and relatives. Privileges which had been given to the Treasury, were turned into private property of the Emperor and even of the Empress one - a true sign that these privileges rooted in the nature of sovereignty, the holder of which were the Emperor and the Empress. In this respect, all three types of property – the Crown one, the fiscal one and the private one had a privileged position as the property administered by the monarch.

This moment was very important. Because of the unification of the personal property of the emperor and the treasury of the Roman state, the latter, from the legal point of view, disappeared as a legal entity and all its legal position was dissolved in the personality of the emperor.

After that the emperor became consul, tribune of the people, Pretoria, censor and legislator at the same time, he called himself "Caesar, pious, happy August" as Macrinus (217-218) did, without asking the Senate about it.

But that's not all. Combining the powers in the hands of the emperor of the republican magistrates was developed alongside with the process of sacralization of imperial status. This was more than all the others put together, made the royal status closer to imperial one. The high priest of the Roman people, pontifex



maximus, who acknowledged the legendary Roman king Numa Pompilius (715-673 / 672 BC). But, wishing not to depend on kings, after the expulsion of Tarquinius Superbus (534-509 BC) the Romans established the position of rex sacrorum («sacred king», "king of rites"), to which they gave the king's powers. And for some rites previously done only by kings, even a special post of rex sacrificulus («king-donor») was introduced.

And now the epithet "August", taken by Octavian, reminded all the Romans about the legendary Romulus (753-716 gg. BC), the founder of Rome, «augusto augurio», introduced in the Aesir. Thus, Octavian was confessed as the second founder of Rome - he was even offered to take the name "Romulus", but he refused. It is easy to understand why in 12 BC Octavian rejected half-solutions and became pontifex maximus.

In the future, the process of sacralization and even deification of emperors developed easily and naturally. Even Caligula demanded to call himself a god, and the Senate obediently called him "the Latin Jupiter." And then the tradition of classing emperors after the death to the ranks of the gods became quite popular for the Romans. Now the emperor not only gained control over public morals, but his status became sacred.

Over time, the emperor was more and more identified with Rome and the Roman people. And his honor and dignity were carefully preserved by the law "Regarding insulting of greatness", on the basis of which hundreds of aristocrats at various times were killed because they encroached the power of the princeps. This law was adopted in the Republican era, in 104 BC. They say, it was made by Apuleius Saturninus, a tribune of the people, who proposed to apply it to the incapable generals, who caused damage to the honor and the power of the Roman people, and Rome. While ruling of Octavian, this law was renamed «Lex Iulia maiestate» and directed against a person who raised his hand to the emperor, as a representative of the whole Roman people.

It was fair to say that the Roman emperor was not an Oriental despot, he was the supreme officer of the Empire. Imperial power was considered by his contemporaries not as a personal privilege, but as a duty and service. "The Emperor personified the Empire, and therefore the power of the emperor, as well as his person, were equally sacred and the subject of religious worship. The greatness of the state was embodied in the emperor. He was not the master of the state, but its first servant; to serve to the state was his duty.

Therefore, according to his high position, he had to lead a life that was not similar to the life of ordinary mortals, and to be modest and moderate. His personal fortune was dissolved in the state one. Everything that belonged to the emperor belonged to the state as well; all that belonged to the state also belonged to the Emperor. "

The long-lasting conflicts between patricians and plebeians did not give any confidence for the citizens in the republican system. On the contrary, the belief that only the emperor could become a guarantor of fairness and stability was very common among the Roman people. Here is a typical episode. As the story goes, once a Roman woman asked of the Emperor Hadrian fair trial, but he came by and

said that he had no time. "Then do not be the emperor!" - cried the woman. The ruler turned and took her complaint.

Of course, not all Roman emperors followed these great principles. But on the eve of the Christianity, the public imagination made just such a perfect image of the Roman emperor. This fact imposed particular moral responsibility on the first Christian emperors of Rome.

### **III. Status of the Byzantine emperors, Christian era**

So that's how the formation of imperial status looked in the pre-Christian era. However, it is impossible to state that the competence of the Emperor was a complete legal structure. Rome, although it was the Empire in fact, it was not the Empire spiritually; it lacked historiosophic understanding of its role, self-awareness as the only power and civilized strength. The idea of the universal empire was understood by the Romans very simply; its depth, the very destiny of Rome, the LORD, chosen for a high goal - to gather all humanity into one family, one catholic Church, were not available even for Roman consciousness. In Roman territorial expansion there was the right for strength, the desire to extend its authority to the horizon.

In recent decades of the pagan period and in the early Christian era Roman society continued to clarify the scope of the legal capacity of the emperor, and I must say, it was not without success. Many higher Roman magistracy either drastically changed their status or disappeared. In 330 with the establishment of Constantinople and when the emperor moved to the new capital significant metamorphosis took place in the senatorial class, which had previously entirely consisted of the aristocracy. While the ruling of St. Constantine the Great (306-337), the patricians (Greek variation of the Latin word "patrician") became those people who thanks to their good service received grace and confidence of the emperor. After receiving this or that position in the higher echelons of power, they became the patricians; and, as a rule, preferences were given to civil officials, and not the military ones. Granting this title or not was entirely in the competence of the emperor.

The patricians quoted so high that the Emperor Zeno (474-475, 476-491) in one of the laws directly stated that "there would not be allowed to anyone to get the great honor of the patricians that surpassed any other preveliges, if he had not previously possessed the honor to be a consul or to get the post of the prefect of Constantinople, Master militum or Master officiorum. Only those persons who got these posts now or in the future, were allowed to receive the title of a patrician. "

As a result, the powers of the Senate were changed as well. It was no longer a body, embodied the sovereignty of the people (these powers were given to the emperor), but it was still an important legitimizing force, which gave the legitimacy to the most important decisions. The Senate did not elect the emperor, but very often its decrees were the subject of the beginning of a new government. By the 62<sup>nd</sup> novel of the emperor St Justinian the Great (527-565) the functions of the highest court of appeal were given to it.

In those cases, when the emperor died without leaving a heir, the Senate often chose the successor and played the role of the national announcer proclaiming his name to the army. At the same time the Senate fell completely out of malcontents of the imperial power, as it had been during the early Empire period and became among the most trusted authorities, not legislative one but the deliberative one.

The system of state ruling was changed as well as the title system of the emperor. Those powers, which had been given to him mechanically adding one title to the other ones, became inalienable prerogative of the ruler himself. For example, in the IIIrd century there was no title of the public tribune any more, whose powers had become ordinary for the imperial titles. The title of the censor lost its importance too and as the emperor, as the supreme guardian of morals and pontifex maximus started to provide general guidance of affaires related to public morals and religion.

But although the emperors no longer needed titles of "Consul", "Praetor," etc., as it had been before, nevertheless, some of them were still used for some time, due to healthy conservatism of the Romans. In 322 Emperor St. Constantine the Great even made a law in which it was stated any legal act had no legal force without specifying the date of its adoption and the name of the consul, in whose consulate it was adopted.

However, on the whole Roman magistracy became titles that the emperors encouraged aristocrats or barbarian leaders. But very often, wishing to demonstrate the full power, the emperors themselves took the title of consul. At some moment of the time being the Consul became imperial par excellence that was easily confirmed by statistics. It was estimated that from IV to VI centuries there were 145 consuls, 75 of which were direct emperors and their family members. It was significant that among the rest of the consuls of this period only 24 were military people and 32 of them were civil officials. However, being Consular sharply devalued and became a kind of ceremonial ritual upon accession to the throne of the emperor.

In 541 because of the natural devaluation of consular rank, St. Justinian the Great decided to abolish this title. However, while the ruling of the emperor Justin II (565- 574), the consular Institute was suddenly restored, but it had already lost its former importance. Sometimes consulate was used as a tactic. In particular, after the death of his father due to the extreme circumstances young Constantine IV (668-685) took it in order to emphasize that from now on he ruled the Roman state. Yet under the emperor Leo VI the Wise (886-912) Consulate finally disappeared from the list of Roman titles.

On 09th October 340 Emperor Constantius (337-361), who ruled the eastern part of the Roman Empire, issued the law establishing the praetorship in Constantinople that in the new capital of the state senators had to carry out the responsibilities of Pretoria. The Senate had to appoint praetors from now on. But soon Magistracy turned from the responsibility, from which any future senator began his career, into the tax service of the existing senators.

Further filling of imperial status with specific content directly depended on the Christian faith assimilated in Rome. Imperial power found its justification not in

the mood of the crowd, self-centeredness of separate rulers or fragmented philosophies. Beginning with St. Constantine the Great, the nature of the imperial authorities was being tried to discover basing on the texts of Scripture and with the help of church traditions, separating from the old republican notions about power and the state.

There were no competitors for the power for Roman emperors when they became the sole rulers of the vast empire. Henceforth and forever the army subordinated to them, justice belonged to them, as well as public administration, issues of international and domestic affairs. Regulation of trade, social security matters and citizenship, taxation and pardoning - all these issues now were in the competence of the emperor. But for a while all these still represent a mosaic which lacked the main thing - the idea of royal power.

Special step in this regard was the reign of St. Justinian the Great, in which it was conceived and formulated (by himself and by his contemporaries) holistic and complete doctrine of imperial power on the basis of the Christian doctrine. By this time, practice of church state cooperation, the great and magnificent "symphony of powers" made so that the whole life of Byzantine society as a whole and of each Roman citizen was penetrated by Christianity.

Christianity became the basis of the Roman Empire, which descendants called the Byzantine one, in order to separate Christian period from the pagan one. All social political and legal relationship, including civil ones were subjected to a thorough revision in terms of Orthodoxy. "Polity" itself was considered a sacred concept and in 1314 in one of his paper the emperor Andronicus II Palaeologus (1282-1328) wrote that the people on the ground (i.e., in the polity) were allowed to imitate the Heaven. In other words, the Roman Empire was the prototype of the kingdom of the heaven.

Naturally, this belief appeared not in the XIVth century, but much earlier, and St. Justinian fully shared it. And that was why the Roman king began with assimilation of the Emperor to Christ. And from the point of view of the Catholic Church the Roman Empire providentially was made by God for the restoration of humanity in Christ, and its meaning was inseparable from autocratic form of government. Similarity between the title of the Byzantine emperor - "autocrat" - and the title of the Savior - "Pantocrator" was too much to be needed in proof.

Externally the Roman Empire consisted of a countless number of peoples and nations. They lived with their national enclaves, which in turn made internal division of the towns and the cities for rural settlements and provinces. It was an incredible mechanical "porridge" organic unity to which was given exclusively by the Roman Emperor and the Church. And the words of one remarkable researcher in this respect are very true and accurate. "Imperial power, - he wrote - was interpreted in the Middle Ages as the most perfect form of manifestation of the human community as *communitas perfectissima*, it was understood not as related *regnum* ("royal power") and *autarkic civitas* ("State"), but as transcendental, and therefore a higher, more comprehensive unity of a very special kind, which promoted peace and justice in the relationship between inward-looking communities. "

So, there was only one God, and there was only one Empire. Consequently, by the nature of things there was only one emperor from which all other rulers had rights for their territories and ruled on his will. Christ was the only king of the universe, and the sacred meaning of the term "Emperor" was now associated with the royal ministry of Christ. To have two or three equivalent emperors - was meaningless, as there could not be two or more empires.

Since the times of Irakli I the Great (610-640) the Roman (Byzantine) autocrats got the title of "king faithful to Christ." A traditional term "Emperor" which had been used since pagan times, disappeared for a time being. In 629 the name "basil", which although was the synonym of "emperor", but it had its own meaning, was added to the titles of the Roman (Byzantine) emperor. The term "basil" allowed to personalize the Byzantine king among all other rulers and kings, as the only legitimate emperor of the universe. Basil was the only legitimate emperor, i.e. Roman. Later the old and the new titles were reunited and Byzantine kings began to be called "God King and Emperor of the Romans faithful to Christ."

Roman emperor was not only like Christ, but he was also appointed according to the will of God. Although, depending on the circumstances, the instruments of His providence could be the army, the Senate, the bishops or the people - these details did not matter. The Emperor was chosen, and his kingdom was from Christ. The idea of public sovereignty, elected nature of the emperor by the Senate (though it was purely formal or nominal) went into the irretrievable past. In 325 AD even the fathers of the Ecumenical Council of Nicaea addressed to the Emperor St. Constantine the Great: "Blessed be the God, who chose you as the king of the earth." Following them, the Emperor St. Marcian (450-457) wrote to the fathers of the IVth Ecumenical Council of Chalcedon in 451: "When by the Divine definition we were elected to the throne ..." and hereinafter.

To evaluate the imperial capacity of that time the Roman king became the sole and uncontested legislator in the Empire. He assumed the right to issue edicts, which had been prerogative of Roman magistrates, and for a while his edicts had power together with those ones. But unlike previous Pretoria acts, the acts of the Emperor were granted the status of *lex generalis*, i.e. they became law in the usual sense of the word and had the leading position in the hierarchy of the sources of law.

Absolute features were soon given to the lawmaking activity of the emperors, though some acts adopted by the Senate, were still preserved. According to the laws of the emperors Valentinian II (375-392), St. Theodosius the Great (379-395) and Arcadia (394-408), the legislature was still divided between the senate and the emperor: "While the Senate resolutions on their own received constant power, but we are pursuing the same goal with our laws." The Senate retained some likeness of legislative functions for some time. And adopting one or another legal act, emperors sent it to the Senate for formal approval and publication.

But this dualism existed before the emperor St. Justinian the Great, who radically outlined his lawmaking prerogatives: "As according to the ancient law, which is called the king's one, the right, and the power of the Roman people are

given to the emperor, and we do not share the law into parts relating to the different creators to make it entirely ours. "

Since the reign of this amazing and brilliant emperor a new kind of legislation was made that belonged exclusively to the emperor - novella (Novellae Constitutiones), which resembled much of the Roman law, made systematic during the reign of St. Theodosius II the Younger (408-450), and during the reign of St. Justinian into codes.

Not the Roman senate and the people gave the right to create laws to the emperor, but it was God, so the emperor was above the law. This belief seemed firm for many centuries, including clergy and hierarchy. Patriarch of Antioch and a famous canonist Theodore Balsamon (1193-1199) and Archbishop Demetrios Bulgarian Homatin (XIIIth century) stated that the king was not subjected to any laws or rules, i.e. he was above them (interpretation by Balsamon of the rules 19, 20, 21, 22, 23 of the council of Carthage).

Due to this, the law became more mandatory for all citizens and judges, governors and military commanders. Of course, following the formal legal logic, the emperor, as a source of the law, was not subjected to it. But following the rules, as it was required by the moral law of Christ, made the emperor legitimate ruler. And it was a true idea that not every power was legitimate for Byzantine consciousness but the one that respected the law. "The legitimate ruler should try to comply with the laws. In short, legitimacy is made by following the law. "

This moral requirement to the Emperor was well known for the owners of the highest title of the Empire. In one of the epistles the emperors St. Theodosius II and Valentinian Junior III (423-455) wrote: "Our credibility depends on the authority of the law, being decent to the greatness of the ruler and for the princeps to declare himself obliged by the law. And, in fact more than power is obedience of the Princeps position to the law. And by saying this edict, we state that we do not allow what we ought to. "

Disappearance of the republican magistrates and accumulation of the power in the hands of the emperor led to the fact that his power took absolute features. Now the emperor owned three major functions: representative, executive and administrative - legislative. Being a God chosen autocrat, he represented the Roman Empire. By his status, appearance and majesty the king inspired confidence to all nations which surrounded him in greatness and eternity of the Roman Empire. Finally, being the bearer of supreme executive power the king got the unlimited right to judge his people, to shift from government positions, etc.

From the formal legal side, the power of the emperor became restricted by nobody and nothing. This idea was brilliantly outlined by St. Justinian the Great in the novella 133: "There is nothing inaccessible to control for the king received from God the total care of all the people. Emperor should take supreme care and concern to save his people. "And further: "God put so high the emperor's dignity over human affairs, that the emperor could correct and organize all new phenomena and lead to appropriate conditions and to the rules."

All these even with some corrections can be called customary for public awareness of those ancient times. At least, oriental despotism, from which the

Byzantine people borrowed splendor of the court and many details of the imperial etiquette, were based on the absolute power of their kings. But further St. Justinian proclaimed another program thesis, now and forever becoming a "calling card" of the Byzantine monarchy, the emblem of the Byzantine Empire, a model for many centuries for the eastern and western monarchs. Having finished the previous sentence, the saint King wrote in the above given novella: "The Emperor is the guardian of the canons and the divine law. Via Cathedrals of priests the king proclaims the faith. "

It was not just a current statement for the future, but a statement of fact of an active participation of the predecessors of St. Justinian the Great, among whom there were seven holy emperors and empresses in matters of church governing and providing the purity of the church doctrine. The words of St. Justinian the Great could supported by all the Byzantine kings without any exception: " Our concern was and is to preserve the peace of the Holy and Apostolic Church, as it is required by justice and condemn what is in some respect against to Orthodox faith" However, they did not only share his opinion, but also strictly followed this principle in life.

Only 200 years had passed since the Romans were allowed to profess Christianity - a minute on the clock of eternity. But the Church convinced with the help of bad examples that without the emperor its normal functioning and operation was impossible. Although for many centuries the church legitimacy of the Roman emperors was settled by legal custom, it did not prevent them from being responsible for the affairs of the Catholic Church.

However, participation of the emperor in the activities of the Church was regulated not only by the legal custom, but also by specific rules of law. In 1380 or in 1382 Emperor John V Palaeologus (1341-1391) demanded that the bishop of the capital and the Synod of the Church articulated their powers. As a result, the Act was passed, by which the king consolidated the right to choose a person to metropolitan post from three candidates presented by the Synod. Moreover, the emperor was actually given the right to determine the composition of the synod, regulating, which of the provincial bishops might be in Constantinople, and for whom it was prohibited. The emperor had the right to move bishops from the post to the post, to change the boundaries of the bishop and metropolitan territories and also to appoint fifteen higher ranks in the Patriarchate of Constantinople. However, for the capacity of the emperor it was out of importance whether by law or by legal custom their powers were determined, as they usually had the same power.

All Ecumenical Councils without any exception were convened by the emperors, they also approved their acts. "Among so many former Councils, to which all the Bishops, presiding in the churches, came, none of the Cathedrals was gathered by order of any of those bishops: not by order of the Pope of Old Rome, not by the Patriarch of Constantinople, not by the Pope of Alexandria, not by the Pope of Jerusalem, or whoever else but all councils were gathered by the king's order. The king had the right of their convocation and without king's order nothing was made. So once again if it was necessary to convene the Council for the study of truth, it should be so, and according the royal decrees they gathered together in

the place where it was ordered. And the king sat in the middle of them to discuss among them "- Emperor Theodore II Laskaris (1254-1258) wrote to Pope Alexander IV (1254-1261) in 1256. And it was the indisputable truth for everybody - even the pope did not dare to enter into a dispute with the Emperor on the subject.

Not only dogmatic issues were in the competence of the imperial power, they actively carried out canonical lawmaking activity. The canons, adopted directly by St. Justinian the Great, St. Nicephorus Phocas I (963 - 969), Constantine VII Porfirogenitus (913-959), Leo VI the Wise (886-912), Alexius I Comnenus (1081-1118), Manuel I Comnenus (1143-1180), Isaac II Angelos (1185 -1195, 1203-1204) and by other emperors forever became the part of the canon law of the Catholic Church. Besides councils of bishops they also had the right to canonize saints, which they used very rarely. In particular, Leo VI the Wise canonized his deceased spouse St. Feofaniya.

As the patriarch of Antioch Theodore Balsamon wrote regarding the rule 69 of Trullan Council, with "the appeal to the Holy Trinity" Patriarchs were appointed and removed. It should be noted that any alternative firmly established order of selection or appointment of the patriarch was not known in Byzantium.

In addition, the emperors established the procedure for election of bishops. The first time it was made by the emperor St. Justinian the Great, who turned to this issue three times - in 535, 546 and 565 AD and established the necessary arrangements with his laws (novellas 6 and 137). And four centuries later the emperor St. Nikephoros II Phokas published one more novel, according to which the king decided to determine the nominees for appointment to the Episcopal posts personally and the Episcopal Cathedral had only to test candidates and to make Episcopal consecration with them. In 1107 Alexios I Komnenos also published a novella, which regulated the election of bishops and other clergy. Having stated that "the Christian Church was brought to the dangerous situation, as the hierarchical rank every day was in worse and worse state," the emperor called himself the supreme guardian of religious orders.

If the person and the work of Alexius I Comnenus have already been mentioned, it must be said that he was not against of interfering in the activities of the Patriarch of Constantinople. In 1112 he published a novel, which defined the rights of the patriarch towards monasteries. In accordance with this law, the patriarch pledged to control and correct spiritual misunderstandings and ruining in all the monasteries of Byzantium, whoever they belonged to. For these purposes the Patriarch of Constantinople was allowed to enter all the monasteries or send the representatives exercising control over the monastic life.

"Foreign" Bishop, as he called himself, St. Constantine I the Great, more and more became the bishop of the "internal affairs" of the Church, taking an active part in the development of the Orthodox faith. Not wonder the Emperor Isaac II Angelos took the title of epistimonarch i.e. "Experienced ruler of the Church", "the Dean of the Church." Thus clearly stating that although the king was not a priest, but it was he who was at the head of church governing and was personally responsible to Christ for the state of affairs in the Church.



In accordance with the competence emperors directly determined administrative - territorial division of the Church, assigning, in particular, at the discretion, the title of the Archdiocese individual bishops, as it was regulated by the rule 12 of the IVth Ecumenical Council. In comments for the rule 17 of the IVth Ecumenical Council and for the canon 38 of the Council in Trullo the following was stated: "This rule specifies that the towns and cities erected by king's order to be honored in religious way as prescribe in the royal order, i.e. they had the advantage of the bishop or the Archdiocese (because church distribution should follow ... the king's orders). By this rule the king was granted to establish new bishops and other ones to turn into the Archdiocese ... at his consideration. "

The first experience was given by St. Justinian the Great in this regard. He made a new diocese in his "native land" in the province of Dardania, having given the status of the ecclesiastical center of the northern diocese of Illyricum to it. A small village was soon transformed into a flourishing city, decorated with public buildings, and it received the name of the First Justinian. In 535 the emperor gave the rights of the Metropolitan to the bishop by his decree and he appointed him the guardian of the patriarchal throne. Only in 538 Pope Vigilius (537-555) confirmed by his act that the emperor had identified with the position of the public law.

And the emperor Constans II (641-668) recognized the autocephaly of the bishop of Ravenna in 664 and its independence from the Roman department. Earlier this situation had only bishops of Mediolanum (Milan) and of Aquileia due to historical traditions which were formed with the help of the emperors.

Another large-scale precedent took place in the time of Emperor Leo III Isaurian (717-741), when he reassigned the whole archdiocese of the Roman chair to the Patriarch of Constantinople with his decree, among them were: Epirus, Dacia, Illyria, Thessaly, Macedonia.

As a rule when there were discussions between the departments regarding to which patriarch the territory was subordinated, the solution of the problem was at the discretion of the autocrat. It was so, in particular, while deciding the issue on the spiritual development of Bulgaria, that was settled on the Council of Constantinople "in the church of Hagia Sophia" in 879-880. And this time the position of the emperor, and that was Basil I the Macedonian (867-886), determined the outcome of the dispute, despite the fierce resistance of the authoritative Roman Chair.

It was traditionally stated that the issue of patriarchal hierarchy of departments was settled on the Ecumenical Councils, and that was true. But the emperors were often directly engaged in the subject, by their acts defining the supremacy of a particular department. In particular, in 545 St. Justinian the Great determined as follows by his novella 131: "Basing on the rules of the Holy Councils, we order the holy bishop of ancient Rome to be the first above all, and the bishop of Constantinople, New Rome, to take the second rank after the throne of ancient Rome and to be above all others." Then the patriarchs of Alexandria, Antioch and Jerusalem followed. Then the hierarchy of the other bishops was determined.

And while the ruling of Pope St. Gregory the Great (590-604), Phocas (602-610), supported the pontiff in his age-old dispute with the Department of Constantinople, and to the joy of Rome and to make the patriarch of the capital upset he publicly demanded to recognize "the Apostolic See of the blessed Apostle Peter as the head of all the churches." It should be noticed that these two precedents subsequently were often referred to by the Roman See, defending its sovereignty.

Explaining the reason of such an extensive legal capacity of the emperor, Homatin wrote: "The emperor, who is called the supreme ruler of the church, stands above definitions of the Councils. By these definitions he receives proper power. He is the measure with respect to the ecclesiastical hierarchy, the legislator for the life and behavior of the priesthood, disputes between bishops and clergy are in his jurisdiction and the right to appoint to the chairs as well. He can appoint bishops to metropolitans and bishoprics to metropolitan department. With the exception of the religious services there emperor was granted all the privileges of the other bishops, on the basis of which his ecclesiastical orders get canonical authority. As ancient emperors signed: pontifex maximus, should be considered as such and the current emperor, as the anointed of God, for the sake of the king's anointing. Just as the Savior, being anointed is honored as the High Priest, and the emperor, as the Anointed, is crowned by the grace of priesthood. "

Finally, completing to list the brightest and most important powers of the emperor, we should say that he had an unprecedented right to participate in worship. Let's pay attention to the comment of Theodore Balsamon to Rule 12 of the Synod of Ancyra: "The emperors and patriarchs must be respected as teachers of the Church for the sake of their dignity, which they received through the anointing of the world. Hence there is the power of the faithful emperors to instruct Christian nations and like a priest to make offerings to God. Orthodox emperors come into the Holy Altar whenever they want and they have burned incense and make the sign of the cross with trikiri as bishops. They offer catechetical studying to people that is allowed for one of the local bishops ... And as the reigning emperor has been anointed to the Lord because of anointing to the kingdom, and Christ, and our God is the bishop as well, then the Emperor is given Bishops talent as well. "

The same should be said about the liturgical works of kings and their preaching activity. The emperors St. Justinian the Great, Theophilus (829-842), Leo VI the Wise and Theodore II Laskaris devoted much time to writing sermons and church hymns. The "words" of Leo VI for the Nativity of the Virgin, her taking to the temple, Annunciation, Purification, Christmas, Palm Sunday, Exaltation of the Holy Cross, the Resurrection and the Ascension of Christ, on the descent of the Holy Spirit and Pentecost, Assumption, All Saints' Week, The Beheading the head of John the Baptist, in honor of St. John Chrysostom and St. Nicholas of Myra, and "word" to all Christians were preserved- in total - 19 sermons. Among unpreserved compositions the works -"The fate of", "the Head of virtue," "moral right" are well known. In addition, Leo VI the Wise attributed

polemic with Saracen prince Omar. Typically, these sermons were read in the churches to his officials, but often the king himself went to the pulpit with the text.

Not less fruitful was the emperor in the church hymnography. He wrote the verses in "Praise" on Lazarus Saturday, two verses on Good Friday, the verses in the morning for a week "my soul, having hated the divine anointing," 5 verses for "Lord, I ask to you" for the evening, 11 gospel verses among them the well-known hymn "Come, people, to worship the Lord." He wrote the song "the second coming of Christ", later put into music.

Theodore II Laskaris also tried his talent in theology and hymnography. He wrote the Great Prayer of Our Lady, the canon "Submerge the Pharaoh opponent of carts ...", which became the part of the Slavic Oktoikh and Psalms. He wrote many troparia and matched musical tunes, touching the soul of every Christian believer.

Not paying much attention to the details, it is necessary to notice that Byzantine emperors soon began to exercise all the powers which were canonically assigned to the bodies of church governing and the priesthood, including bishops, except the one - sacraments, however, the Roman kings never claimed for them.

Sometimes, though rarely, the emperors willingly limited their capacity, passing their powers to other state bodies. A classic example is the story of establishing of «the Ecumenical court" in 1296 which had never existed in the Roman state by the Emperor Andronicus II Palaeologus. Having gathered people in the temple, the basil noted weakness and corruption of judicial institutions. And then he announced about his decision to establish a special court composed of 12 judges - 6 priests and 6 senators.

All civil cases were under his jurisdiction, including the cases of members of the royal family. The document stated that although the king was above the law and any coercion, and he was allowed to do everything, but Andronikos II despised this situation and gave himself into the hands of the law and the Universal Court. Thus, the emperor refused from the part of his judicial powers and limited his capacity. And though soon the court did not live up to the expectations and was abolished, this precedent was very important for our research.

In theory the capacity of the king should not differ from the one of an ordinary Roman citizen for the worse. But in fact, not all and not always considered so. In this regard, there is one memorable example.

One day the emperor Theophilus saw a ship direction to the harbor of Constantinople. He asked whose ship it was and he learned that the ship belonged to his wife, the queen of St. Theodora (842-856). The next day the basil went to the port, where the ship he was interested in, was anchored, he knew what cargo was there and then he gathered together the senators and asked who of them needed bread or other domestic provisions. All the dignitaries said they did not have any need in anything. "Do not you know, - continued the king, - that the August, my wife, turned me, the king by God's grace, into the ship owner? And who has ever seen a Roman king or his wife to be merchants? ". After that, the emperor ordered

all the sailors on the ship to leave it and to burn the ship with all the goods there. In other words, the emperor decided that to be the king was incompatible with the possibility for him and his family members to be engaged in business activities and to be enriched in this way.

In general, it is necessary to note that there were a great number of sources and even laws defining the imperial capacity, but it could not be considered "closed" in its content, i.e. fully defined and described. There could always be situations which had not been known before. So, the contemporaries formed a mosaic portrait of the royal power on the basis of specific precedents the assessment of which were the Church and the general welfare of the Byzantine state.

#### **IV. Capacity and capability of the Emperor**

That is the whole history of the formation and maintenance of the status of Roman (Byzantine) Emperor. Meanwhile, we still face with a number of important issues. For example: since what period of time the emperor could be regarded as sole ruler of the Empire? To answer this question, let us recall that the usual legal personality arises from the moment of the creation and disappears with the cessation of the existence. But when it comes to royal persons of Byzantium, it is necessary to distinguish the status of imperial power, as constant and rising above all political and sacred institutions and the capacity of a particular sovereign, i.e. his personal ability to exercise the rights and responsibility for his own actions. If the status is unchanged eternal attribute and quality of imperial power, then the individual, a separate basileus gets the royal capacity from the moment of accession. Now the only thing to understand is what act legalized the status of the applicant for the kingdom.

As there were no well-known laws regarding it, we should be guided by the precedents, subsequently made into legal customs. And here we can find a lot of surprises. Coronation of the person, of course, was a compulsory act of recognition his royal capacity. But did not many princes, crowned for kingdom, lost their rights later for it? The answer is rhetorical, of course.

There is nothing to say about confirmation of a person by the patriarch. It is known that without doing this sacrament the king was not considered as such. Moreover, it was done exclusively by the Patriarch of Constantinople. But Emperor John VI Cantacuzene (1347-1354) was crowned on May 21, 1346 by the Patriarch Lazarus (1334-1368) of Jerusalem, believing his status to be flawed. Therefore on May 13, 1347 the Patriarch of Constantinople made the second procedure to crown Cantacuzene John VI and his wife Irene for the throne of the Roman Empire.

However, as we know, the last Byzantine emperor St. Constantine XI (1448-1453) was crowned on January 6, 1449 in the absence of the possibility not by the Ecumenical Patriarch of "New Rome", but only by the metropolitan of Mystra. This fact nobody accused him of.

The election of the emperor by the Senate, by the army, by the people, or by the Hierarchy also was not the reason for the monarch capacity: a lot of cases are known where such persons simply did not even begin to reign. Noble origin was not a reason for it as well. A lot of princesses and princes, as well as persons adopted by the emperors destined to reign, and did not become basils.

The only answer is that if there were certain essential qualities, if necessary procedures were carried out, the main condition for the candidate to reign was general agreement (explicit or tacit) of the people, the hierarchy, the army and the aristocracy. Without it, no anointing, coronation, sympathy of the Senate, the army or the origin played any important role. In this respect Byzantium showed us an example of the public monarchy.

The average Byzantine was in no way a slave of the emperor carrying out his will unconsciously. He naturally felt the hierarchy of the world and the society, and therefore endowed his king with a whole set of the most important powers. But as a Christian, first he always felt a free citizen of the great motherland, of the Roman Empire. "The spirit of independence and consciousness of self-esteem reflected in the treatment with the Emperor, who usually did not consider to persecute his citizens for free tone in the speech in relation to the sovereign and to claim for eastern servility for himself. The Emperor always listened to their jokes, advice, comments, sometimes expressed in a vivid way and they hurt the personality of the sovereign greatly. "

If Byzantine society came to the conclusion that the ruling monarch did not correspond to the ideal of a just king, his fate was usually sad. The Emperors Zeno and Basiliscus (475-476), St. Mauritius (582-602) (even he!), Phocas, Iraklon (641), Justinian II Rinotmet (685-695, 705-711), Leontius (695-698), Theodosius III (715-717), Michael III (842-867), Michael V Calafat (1041-1042), Michael VI Bringas (1056-1057), Michael VII Doukas Parapinak (1071-1078), Nikephoros III Botaneiates (1078-1081), Andronikos I Komnenos (1183-1185) as some other basils were left by the people as those who lost the public confidence and moral hierarchy and lost the power and some of them even their life.

But the classic example, when popular support kept the rulers on the throne, was the story of the last representatives of the Macedonian dynasty brilliant Zoe (1042-1050) and Theodora (1042-1056), whom the Byzantines literally saved from the power of the usurper and restored on the throne. On April 19, 1042 Constantinople burst out with shouts of the crowd of thousands of people, "We do not want to have Kalafat as our king! Return our mother Zoe to power, she is our legitimate queen by origin! Let's destroy and spread the bones of Kalafat! Where are you, our only, noble soul with a beautiful face? Where are you, one of the all worthy of the state, Madam, legitimate heir to the kingdom, whose father was the king, as well as the grandfather, the grandfather of the father? ". It settled the case in favor of the noble sisters.

The next question is not less interesting and important: why were situations in Byzantium universally admitted when one emperor was rejected those rights, which were easily recognized for the other basil? Did it mean that the capacity of the emperor varied depending on the individual?

But, as it was seen earlier, the legal capacity of the imperial power, as the highest organ of the state, was always the same, regardless who at this moment had it. Thus, not the capacity of royal power varied, and it was not its status but the capacity of a particular emperor, which sometimes was significantly different.

Variations on this subject occurred in dependence of whether this or that emperor corresponded to his high status or not, according to the opinion of the contemporaries. And this estimate could be in his lifetime and posthumously. Of course, the emperor had the right for life and property of every citizen of the Byzantine Empire, but his actions could be fair or not. Just imagine, emperor deprived official property and even life, sent into exile or, on the contrary, gave gifts and titles. Both the first and the second actions were within the royal capacity, and formally the basil acted according to the law. But his actions could be considered unfair, and therefore were subjected to cancellation.

Typically these audits were carried out with active participation or even by citizens of Byzantium, striving to evaluate those who had powers. The Roman emperor was not an absolute despot, who could do everything. From the moral point of view, the law of God, the church hierarchy, the Ecumenical Councils, as well as the "guardian of piety" - the Roman people were above him, passing easily into the legal and political fields. And the emperor perfectly recognized the limits of his powers which were invisible for the formal right.

If the emperor ruled fairly, the people and the church hierarchy willingly recognized the whole complex of his royal rights. Otherwise, he was considered as of limited competence in the management of the Church and the Empire. In other words, the capacity of the king depended on the purity of his faith, thoughts and actions, but the capacity of imperial power remained unchanged in volume. Unjust basil admitted (whether during his lifetime or afterwards) as not quite spiritually healthy, not quite the one he should be, and therefore, as a consequence, he was not capable for governing the state. For example, the fathers of the VIIth Ecumenical Council had no doubt that the kings of the Orthodox faith were the guardians and the protectors of the Church, and they were attributed to the dignity of Christ. And Iconoclastic kings could not ascribe be given the priestly status because even being deceived, they fell into heresy.

As you can see, everything was solved by reception or, in other words, free assimilation of certain imperial actions and decisions by the national consciousness. Church accepted what was useful for its members ("what was useful canonically"), even if such an order came from the king, whose acts on other issues it rejected as invalid ones. Therefore, there were cases when the hierarchy and society accepted single acts of the emperors who supported heretics, and vice versa. The same should also be said in regard of the acts and orders of the emperors, which concerned purely public sphere. Byzantine people did not accept separate decisions of the kings monotheists and iconoclasts on doctrinal matters, but they did not deny their rights to manage the Roman state. "A Byzantinian citizen was ready to follow and to obey completely to the monarch who was wise and liked his people. In those times there was not more obedient and appreciative

citizen than a Byzantine one in the moments when he entrusted the fate and his life to the autocrat philosopher, who wanted to make the life of his people better. "

And although in this case we are talking about the Christian emperors of Byzantium, this state of affairs has old Roman ideas about connection of morality with legal capacity as its history. As Romans believed, there was a number of rights, the use of which required moral purity from a person. Even the emperor Trajan believed that if the power of the princeps ceased to be moral, he had to be replaced by another one. The only thing remained to be done was to determine who would be the judge of his actions.

As mentioned above, the initial assessment of the moral status of a Roman citizen was made by a special censor, as indicated above, who could delete you from the list of senators, horsemen, etc. at his consideration. Similar functions were performed by consuls and praetors, who excluded people from the list of candidates for public office. Time passed, it was already the sunset of the Republic, more and more distribution received Pretoria infamia, i.e. accusation of a person in committing unworthy acts. Recognition of a person that he had convicted something dishonest by a court resulted in the deprivation him of all his political rights (*jus suffragii et jus honorum*). This man became *aerarius*, i.e., having the status of a Roman citizen, he lost all the political rights according to this status.

In the days of the Christian emperors acts showing apostasy of a citizen began to fall under infamia as well. As a result, they were deprived of all or a part of the political and civil rights.

It is also worth noticing that the rules of infamia were not fixed in any specific law and had the popular notions of justice and morality (*moribus*) as the basis. Connection of the Byzantine reception and the Institute of infamia is more than noticeable in the context we are interested in.

There is one more, not less important question: how were the powers in situations with several emperors divided, as well as in cases when the emperor was a small child?

It is easy to understand that this time the status of the imperial throne remained unchanged, but the efficiency varied depending on the circumstances. When the king was of little age, and there were many examples of such kind, there were mothers regents or third parties, recognized as regents or kings, who helped the emperor to rule the state. Thus, the regent of St. Theodosius II Junior was his sister St. Pulcheria (450-453), Michael III had his mother St. Theodore as a regent, for Constantine VI (780-797) that was his mother St. Irina (797-802), for Constantine VII that was Emperor Roman I Lakapin (919-944), for Basil II (976-1025) and Constantine VIII (1025-1028) that was St. Nicephorus Phocas, and then John I Tzimiskes (969-976), for John V that was his mother, Anna of Savoy.

Without any doubt, young heirs were recognized as kings and they were given proper attention due to their status. But they could not carry out their duties, and for a certain period of time their public capacity was given to others. It could quite correspond to the modern concept of legal capacity of underaged citizens, but there was one moment: almost all of the above were the guardians of the emperors,

i.e. imperial capacity was simultaneously (or parallelly) available both for young kings and emperors and empresses who were adults. But their capacity differed significantly.

There were also situations when several adult emperors ruled simultaneously. Michael IX Palaiologos (1295-1320) was a co-ruler with his father Andronikos II Paleologos Elder. In his turn, the father of Andronicus II, Michael VIII Palaeologus (1261-1282) after the crowing of his son to the throne allowed him to make imperial edicts. He even gave the king's royal scepter - a symbol of power to the boy.

The Emperor St. Marcian ruled together with St. Pulcheria, and they secretly shared the powers; royal capacity remained unchanged at the same time. St. Marcian took over the external defense of the state, to which enemies threatened, and his wife did internal management and leadership of the Church. The imperial power was also shared, although again informally and privately, by Andronicus III Junior (1328-1341) with his grandfather Andronikos II Palaiologos. However, there were many situations of such kind.

Sometimes it was caused by the ambitions of a few individuals, or by the necessity to ensure continuity of the power. But more and more often multipower took place by virtue of the natural necessity to make up the weak points of one person on the merits of the second king, as they together might best illustrate the image of the Roman emperor.

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In the literature it is often stated that the power of the emperor, as a kind of one-man rule, is something opposite to some public authorities, whose life takes place under the supervision and with the assistance of law. Sometimes as a model of autocratic tyranny, which despised the right and the law, for which self-interest and self-will were the most important issues, was called Roman (Byzantine) Empire. The tone of this kind of speeches is extremely offensive for this unprecedented Empire, which became the cradle of Christian civilization. Sometimes, as E. Gibbon did, the history of the Roman Empire is divided into two periods. The first one is pagan, a purely "Roman", progressive, famous for its law. And the second one is Christian, "Ember", which the law is not prevailed, but the "tyranny" of the Byzantine emperor.

Meanwhile, even on the basis of general considerations, it is difficult to agree with this judgment about Byzantium. This viewpoint is strengthened even more after studying the content and the origin of the royal capacity of the Byzantine rulers and establishing of its continuity from the Roman legal institutions.