


VARIOUS AUTHORS



THE DARK AGES
COLLECTION

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COLLECTION**

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**HISTORY OF THE LATER
ROMAN EMPIRE, by J.B.
Bury**

CHAPTER I: THE CONSTITUTION OF THE MONARCHY

THE continuity of history, which means the control of the present and future by the past, has become a commonplace, and chronological limits, which used to be considered important, are now recognised to have little significance except as convenient landmarks in a historical survey. Yet there are what we may call culminating epochs, in which the accumulating tendencies of the past, reaching a certain point, suddenly effect a visible transformation which seems to turn the world in a new direction. Such a culminating epoch occurred in the history of the Roman Empire at the beginning of the fourth century. The reign of Constantine the Great inaugurated a new age in a much fuller sense than the reign of Augustus, the founder of the Empire. The anarchy of the third century, when it almost seemed that the days of the Roman Empire were numbered, had displayed the defects of the irregular and heterogeneous system of government which Augustus had established to administer his immense dominion. His successors had introduced modifications and improvements here and there, but events made it clearer and clearer that a new system, more centralised and more uniform, was required, if the Empire was to be held together. To Diocletian, who rescued the Roman world at the brink of the abyss, belongs the credit of having framed a new system of administrative machinery. Constantine developed and completed the work of Diocletian by measures which were more radical and more far-reaching. The foundation of Constantinople as a second Rome inaugurated a permanent division between the Eastern and Western, the Greek and the Latin, halves of the Empire — a division to which events had already pointed — and affected decisively

the whole subsequent history of Europe. Still more evidently and notoriously did Constantine mould the future by accepting Christianity as the State religion.

In the present work the history of the Roman Empire is taken up at a point about sixty years after Constantine's death, when the fundamental changes which he introduced have been firmly established and their consequences have emerged into full evidence. The new system of government has been elaborated in detail, and the Christian Church has become so strong that no enemies could prevail against it. Constantinople, created in the likeness of Rome, has become her peer and will soon be fully equipped for the great rôle which she is to play in Europe and Hither Asia for more than a thousand years. She definitely assumes now her historical position. For after the death of Theodosius the Great, who had ruled alone for a short time over a dominion extending from Scotland to Mesopotamia, the division of the Empire into two geographical portions, an eastern and a western, under two Emperors, a division which had been common during the past century, was finally established. This dual system lasted for eighty-five years, and but for the dismemberment of the western provinces by the Germans might have lasted indefinitely. In the constitutional unity of the Empire this arrangement caused no breach.

Again, the death of Theodosius marks the point at which the German danger, long imminent over the Empire, begins to move rapidly towards its culmination. We are on the eve of the great dismemberment of Roman dominion which, within seventy years, converted the western provinces into Teutonic kingdoms. The fourth century had witnessed the settlement of German peoples, as *foederati*, bound to military service, on Roman lands in the Balkan peninsula and in Gaul. Through the policy of Constantine Germans had become a predominant element in the Roman

army, and German officers had risen to the highest military posts and had exercised commanding political influence. Outside, German peoples were pressing on the frontiers, waiting for opportunities to grasp at a share of the coveted wealth of the Roman world. The Empire was exposed to the double danger of losing provinces to these unwelcome claimants who desired to be taken within its border, and of the growing ascendancy of the German element in the army.¹ The East was menaced as well as the West, and the great outstanding fact in the history of the fifth century is that the East survived and the West succumbed. The success of the Eastern government in steering through these perils was partly due to the fact that during this critical time it was on good terms, only seldom and briefly interrupted, with Persia, its formidable neighbour.

The diminished Roman Empire, now centering entirely in Constantinople, lasted for a thousand years, surrounded by enemies and frequently engaged in a struggle for life or death, but for the greater part of that long period the most powerful State in Europe. Its history is marked by distinct ages of expansion, decline, and resuscitation, which are easily remembered and help to simplify the long series of the annals of Byzantium.² Having maintained itself in the fifth century and won its way through the German peril, it found itself strong enough in the sixth to take the offensive and to recover Africa and Italy. Overstrain led to a decline, of which Persia took advantage, and when this danger had been overcome, the Saracens appeared as a new and more formidable force and deprived the Empire of important provinces in Asia, while at the same time European territory was lost to the Bulgarians and the Slavs (seventh century). Then a period of resuscitation in the eighth and ninth centuries led to a new age of brilliance and expansion (ninth to eleventh centuries). When the Saracens had ceased to be formidable, the Seljuk Turks appeared, and

the Empire found it difficult to hold its own against this foe as well as against the western powers of Europe, and the barbarians of the north. This period ends with the disaster of 1204, when Constantinople fell into the hands of the Crusaders, who treated the city with more barbarity than the barbarian Alaric had treated Rome eight hundred years before. After this the cycle begins anew; first, the period of revival at Nicaea, which became the temporary capital; then the recovery of Constantinople (1261), followed by a period in which the Empire could assert its power; finally, from the middle of the fourteenth century, the decline, and the last death-struggle with the Ottomans, ending in the capture of the city in 1453.

The State which maintained itself in unbroken continuity throughout the vicissitudes of more than a thousand years is proverbial for its conservative spirit. It was conservative in its constitution and institutions, in the principles and the fashions of its civilisation, in its religion, in its political and social machinery. It may be conjectured that this conservatism is partly to be attributed to the influence of the legal profession.³ Lawyers are always conservative and suspicious of change, and it would be difficult to exaggerate their importance and the power of their opinion in the later Empire. It was natural and just that their influence should be great, for it has well been observed that it was to the existence of a “judicial establishment, guided by a published code, and controlled by a body of lawyers educated in public schools, that the subjects of the Empire were chiefly indebted for the superiority in civilisation which they retained over the rest of the world.”⁴ But the conservatism of Byzantium is often represented as more rigid than it actually was. The State could not have survived if it had not been constantly adapting its institutions to new circumstances. We have seen how its external history may be divided into periods.

But its administrative organisation, its literature, its art display equally well-defined stages.

One more introductory remark. The civilisation of the later Empire, which we know under the name of Byzantine, had its roots deep in the past. It was simply the last phase of Hellenic culture. Alexandria, the chief city of the Hellenic world since the third century B.C., yielded the first place to Byzantium in the course of the fifth century. There was no breach in continuity; there was only a change of centre. And while the gradual ascendancy of Christianity distinguished and stamped the last phase, we must remember that Christian theology had been elaborated by the Greek mind into a system of metaphysics which Paul, the founder of the theology, would not have recognised, and which no longer seemed an alien product.

§ 1. *The Autocracy*

The Roman Empire was founded by Augustus, but for three centuries after its foundation the State was constitutionally a republic. The government was shared between the Emperor and the Senate; the Emperor, whose constitutional position was expressed by the title *Princeps* was limited by the rights of the Senate. Hence it has been found convenient to distinguish this period as the *Principate* or the *Dyarchy*. From the very beginning the *Princeps* was the predominant partner, and the constitutional history of the *Principate* turns on his gradual and steady usurpation of nearly all the functions of government which Augustus had attributed to the Senate. The republican disguise fell away completely before the end of the third century. Aurelian adopted external fashions which marked a king, not a citizen; and Diocletian and Constantine definitely transformed the State from a

republic to an autocracy. This change, accompanied by corresponding radical reforms, was, from a purely constitutional point of view, as great a break with the past as the change wrought by Augustus, and the transition was as smooth. Augustus preserved continuity with the past by maintaining republican forms; while Constantine and his predecessors simply established on a new footing the supreme Imperial power which already existed in fact, discarding the republican mask which had worn too thin.

The autocracy brought no change in the principle of succession to the throne. Down to its fall in the fifteenth century the Empire remained elective, and the election rested with the Senate and the army. Either the Senate or the army could proclaim an Emperor, and the act of proclamation constituted a legitimate title. As a rule, the choice of one body was acquiesced in by the other; if not, the question must be decided by a struggle. Any portion of the army was considered, for this purpose, as representing the whole army, and thus in elections in Constantinople it was the troops stationed there with whom the decision lay. But whether Senate or army took the initiative, the consent of the other body was required; and the inauguration⁵ of the new Emperor was not complete till he had been acclaimed by the people. Senate, army, and people, each had its place in the inaugural ceremonies.

But while the principle of election was retained, it was in actual practice most often only a form. From the very beginning the principle of heredity was introduced indirectly. The reigning Emperor could designate his successor by appointing a co-regent. In this way Augustus designated his stepson Tiberius, Vespasian his son Titus. The Emperors naturally sought to secure the throne for their sons, and if they had no son, generally looked within their own family. From the end of the fourth century it became usual for an Emperor to confer the Imperial title on

his eldest son, whether an adult or an infant. The usual forms of inauguration were always observed; but the right of the Emperor to appoint co-regents was never disputed. The consequence was that the succession of the Roman Emperors presents a series of dynasties, and that it was only at intervals, often considerable, that the Senate and army were called upon to exercise their right of election.

The co-regent was a sleeping partner. He enjoyed the Imperial honours, his name appeared in official documents; but he did not share in the actual government, except so far as he might be specially authorised by his older colleague. This, at least, was the rule. Under the Principate the senior Emperor distinguished his own position from that of his colleague by raising to himself the title of Pontifex Maximus. Marcus Aurelius tried a new experiment and shared the full sovereignty with Lucius Verus. This division of the sovereignty was an essential part of the system of Diocletian, corresponding to the geographical partition of the Empire which he introduced. From his time down to A.D. 480, the Empire is governed by two (or even more) sovereign colleagues, who have all equal rights and competence, and differ only in seniority. Sometimes the junior Emperor is appointed by the senior, sometimes he is elected independently and is recognised by the senior. Along with these there may be co-regents, who exercise no sovereign power, but are marked out as eventual successors. Thus the child Arcadius was for nine years co-regent with the Emperors Valentinian II and Theodosius the Great. No formal title, however, raised the sovereign above the co-regent, though the latter, for the sake of distinction, was often called "the second Emperor," or if he was a child, "the little Emperor."⁶ When towards the end of the fifth century the territorial partition of the Empire came to an end, the system of joint sovereignty ceased, and

henceforward, whenever there is more than one Augustus, only one exercises the sovran power.⁷

But the Emperor could also designate a successor, without elevating him to the position of co-regent, by conferring on him the title of Caesar. This practice, which since Hadrian was usual under the Principate,⁸ and was adopted by Constantine, is not frequent in the later Empire.⁹ If the Emperor has sons, he almost invariably creates his eldest son Augustus. If not, he may signify his will as to the succession by bestowing the dignity of Caesar. The Emperor before his death might raise the Caesar to the co-regency.¹⁰ If he died without having done this, the Caesar had to be elected in the usual way by the Senate and the army. This method of provisional and revocable designation was often convenient. An Emperor who had no male issue might wish to secure the throne to a son-in-law, for instance, in case of his own premature death. If he conferred the Caesarship and if a male child were afterwards born to him,¹¹ that child would be created Augustus, and the Caesar's claim would fall into abeyance.

When the Emperor had more than one son, it was usual to confer the title of Caesar on the younger.¹² Constitutionally this may be considered a provision for the contingency of the death of the co-regent. Practically it meant a title of dignity reserved for the members of the Imperial family. Sometimes the co-regency was conferred on more than one son. Theodosius the Great raised Honorius to the rank of Augustus as well as his elder son Arcadius. But it is to be observed that this measure was not taken till after the death of the West Emperor Valentinian II, and that its object was to provide two sovrans, one for the East and one for the West. If the division of the Empire had not been contemplated, Honorius would not have been created Augustus in A.D. 393. To avoid a struggle between brothers, the obvious

policy was to confer the supreme rank on only one. Before the reign of Basil I in the ninth century, there were few opportunities to depart from this rule of expediency, and it was only violated twice, in both cases with unfortunate consequences.**13**

But the Caesarship was not the only method employed to signalise an eventual successor. In the third century it became usual to describe the Caesar, the Emperor's adopted son, as *nobilissimus*. In the fourth, this became an independent title, denoting a dignity lower than Caesar, but confined to the Imperial family. On two occasions we find *nobilissimus* used as a sort of preliminary designation.**14** But it fell out of use in the fifth century, and apparently was not revived till the eighth, when it was conferred on the youngest members of the large family of Constantine V.**15** In the sixth century Justinian introduced a new title, *Curopalates*, which, inferior to Caesar and *nobilissimus*, might serve either to designate or simply to honour a member of the Imperial family. We find it used both ways.**16** It was a less decided designation than the Caesarship, and a cautious or suspicious sovrain might prefer it.

The principle of heredity, which was thus conciliated with the principle of election, gradually gave rise to the view that not only was the Emperor's son his *legitimate* successor, but that if he had no male issue, the question of succession would be most naturally and satisfactorily settled by the marriage of a near female relative — daughter, sister, or widow,— and the election of her husband, who would thus continue the dynasty.**17** There was a general feeling of attachment to a dynasty, and the history of the Later Empire presents a series of dynasties, with few and brief intervals of unsettlement. During the four centuries between 395 and 802, we have five

dynasties, which succeed one another, except in two cases,**18** without a break.

Though there was no law excluding women from the succession, yet perhaps we may say that up to the seventh or eighth century it would have been considered not merely politically impossible, but actually illegal, for a woman to exercise the sovran power in her own name. The highest authority on the constitution of the early Empire affirms that her sex did not exclude a woman from the Principate.**19** But the title Augusta did not include the proconsular Imperium and the tribunician potestas, which constituted the power of the Princeps, and it is not clear that these could have been conferred legally on a woman or that she could have borne the title Imperator. It is said, and may possibly be true, that Caligula, when he was ill, designated his favourite sister Drusilla as his successor;**20** but this does not prove that she could legally have acted as Princeps. Several Empresses virtually shared the exercise of the Imperial authority, bore themselves as co-regents, and enjoyed more power than male co-regents; but their power was *de facto*, not *de jure*. Some were virtually sovran, but they were acting as regents for minors.**21** Not till the end of the eighth century do we find a woman, the Empress Irene, exercising sovranity alone and in her own name.**22** This was a constitutional innovation. The experiment was only once repeated,**23** and only in exceptional circumstances would it have been tolerated. There was a general feeling against a female reign, both as inexpedient and as a violation of tradition.**24** Between the fourth and eighth centuries, however, two circumstances may have combined to make it appear no longer illegal. The Greek official term for Imperator was Autokrator, and in the course of time, when Latin was superseded by Greek, and Imperator fell out of use and memory, Autokrator ceased to have the military associations which were

attached to its Latin equivalent, and the constitutional incompatibility of the office with the female sex is no longer apparent. In the second place, female regencies prepared the way for Irene's audacious step. When a new Emperor was a minor, the regency might be entrusted to his mother or an elder sister, whether acting alone or in conjunction with other regents. Irene was regent for her son before she grasped the sole power for herself.

The title of Augusta was always conferred²⁵ on the wife of the Emperor and the wife of the co-regent, and from the seventh century it was frequently conferred on some or all of the Emperor's daughters. The reigning Augusta might have great political power. In the sixth century, Justinian and Theodora, and Justin II and Sophia, exercised what was virtually a joint rule, but in neither case did the constitutional position of the Empress differ from that of any other consort.

The diadem was definitely introduced by Constantine,²⁶ and it may be considered the supreme symbol of the autocratic sovereignty which replaced the magistracy of the earlier Empire. Hitherto the distinguishing mark of the Emperor's costume had been the purple cloak of the Imperator; and "to assume the purple" continued to be the common expression for elevation to the throne. The crown was an importation from Persia, and it invested the Roman ruler with the same external dignity as the Persian king. In Persia it was placed on the king's head by the High Priest of the Magian religion.²⁷ In theory the Imperial crown should be imposed by a representative of those who conferred the sovereign authority that it symbolised. 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 Emperor seems to have felt some hesitation in receiving the diadem from the hands of a subject, and the selection of

one magnate for the office was likely to cause jealousy. Yet a formality was necessary. In the fifth century the difficulty was overcome in an ingenious and tactful way. The duty of coronation was assigned to the Patriarch of Constantinople. In discharging this office the Patriarch was not envied by the secular magnates because he could not be their rival, and his ecclesiastical position relieved the Emperor from all embarrassment in receiving the diadem from a subject. There is, as we shall see, some evidence that this plan was adopted in A.D. 450 at the coronation of Marcian, but it seems certain that his successor Leo was crowned by the Patriarch in A.D. 457. Henceforward this was the regular practice. But it was only the practice. It was the regular and desirable mode of coronation, but was never legally indispensable for the autocrat's inauguration. The last of the East Roman Emperors, Constantine Palaeologus, was not crowned by the Patriarch; he was crowned by a layman.**28** This fact that coronation by the Patriarch was not constitutionally necessary is important. It shows that the Patriarch in performing the ceremony was not representing the Church. It is possible that the idea of committing the office to him was suggested by the Persian coronations by the High Priest. But the significance was not the same. The chief of the Magians acted as representative of the Persian religion, the Patriarch acted as representative of the State. If he had specially represented the Church, his co-operation could never have been dispensed with. The consent of the Church was not formally necessary to the inauguration of a sovereign.

This point is further illustrated by the fact that when the Emperor appointed a colleague, the junior Augustus was crowned not by the Patriarch but by the Emperor who created him.**29**

When Augustus founded the Empire, he derived his Imperial authority from the sovereignty of the people; and the

essence of this principle was retained throughout the duration not only of the Principate but also of the Monarchy; for the Imperial office remained elective, and the electors had the right of deposing the Emperor. But though these rights were never abrogated, there was a tendency, as time went on, to regard the majesty and power of the monarch as resting on something higher than the will of the people. The suggestion of divinity has constantly been the device of autocrats to strengthen and enhance their power; and modern theories of Divine Right are merely a substitute for the old pagan practice of deifying kings. Augustus attempted to throw a sort of halo round his authority by designating himself officially *Divi Filius* consecration faded, and disappeared entirely with the fall of the Julio-Claudian dynasty. With Aurelian, who foreshadows the new Monarchy, the suggestion of divinity again appears.**30** Diocletian and his colleague Maximian are designated as gods and parents of gods.**31** The official deification of the Emperor, which seemed in sight at the beginning of the fourth century, was precluded by Christianity; but the consecration of the ruler's person was maintained in the epithets *sacred* and *divine*; and the Emperors came to regard themselves rather as vicegerents of God than as rulers set up by their people. Justinian, in one of his laws, speaks of the Emperor as sent down by God to be a living law.**32** In the ninth century Basil I tells his son, "You received the Empire from God."**33**

Under the Monarchy, the Emperor appropriated the full right of direct legislation, which had not belonged to him under the Principate.**34** The Princeps possessed the right of initiating laws to be passed by the comitia of the people, but from the time of Tiberius legislation was seldom effected in this way, and after the first century it was exclusively in the hands of the Senate. The Emperor, communicating his instructions in the form of an *oratio* to

the Senate, could have his wishes embodied in senatorial decrees (*senatus consulta*). But indirectly he possessed virtual powers of legislation by means of edicts and constitutions, which, though technically they were not laws, were for practical purposes equivalent.**35** The edict, unlike a law, did not necessarily contain a command; it was properly a public communication made by a magistrate to the people. But the legislative activity of the early Emperors was chiefly exercised in the form of constitutions, a term which in the stricter sense applied to decisions which were only brought to the notice of the persons concerned.**36** This term included the Imperial correspondence and especially the mandates, or instructions addressed to officials. These "acts" had full validity, and the magistrates every year swore to observe them.**37** But when an act required a dispensation from an existing law, the Imperial constitution was valid only during the lifetime of its author.

The power of dispensing from a law properly belonged to the Senate, and the earlier Emperors sought from the Senate a dispensation when necessary. Domitian began to encroach on this privilege. But the principle remained that the Princeps, who was constitutionally a magistrate, was bound by the laws; and when lawyers of the third century speak of the Princeps as *legibus solutus*, they refer to laws from which Augustus had formally obtained dispensation by the Senate.**38**

Under the Monarchy the Emperors assumed full powers of legislation, and their laws took the form occasionally of an *oratio* to the Senate, but almost always of an edict. The term edict covered all the decisions which were formerly called constitutions, mandates, or rescripts, provided they had a general application.**39** And the Emperor not only legislated; he was the sole legislator, and reserved to himself the sole right of interpreting the

laws.**40** He possessed the dispensing power. But he always considered himself bound by the laws. An edict of A.D. 429 expresses the spirit of reverence for law, as something superior to the throne itself, which always animated the Roman monarchs. "To acknowledge himself bound by the laws (*alligatum legibus*) is, for the sovrain, an utterance befitting the majesty of a ruler. For the truth is that our authority depends on the authority of law. To submit our sovranty to the laws is verily a greater thing than Imperial power."**41** Deep respect for the rules of law, and their systematic observance characterised the Roman autocracy down to the fall of the Empire in the fifteenth century, and was one of the conditions of its long duration. It was never an arbitrary despotism, and the masses looked up to the Emperor as the guardian of the laws which protected against the oppression of nobles and officials.**42**

The laws, then, were a limitation on the power of the autocrat; and soon another means of limiting his power was discovered. In the fifth century, the duty of crowning a new Emperor at Constantinople was, as we saw, assigned to the Patriarch. In A.D. 491 the Patriarch refused to crown Anastasius unless he signed a written oath that he would introduce no novelty into the Church. This precedent was at first followed perhaps only in cases where a new Emperor was suspected of heretical tendencies, but by the tenth century**43** an oath of this kind seems to have been a regular preliminary to coronation. The fact that such capitulations could be and were imposed at the time of elevation shows that the autocracy was limited.

The essence of an autocracy is that no co-ordinate body exists which is able constitutionally to act as a check upon the monarch's will. The authority of the Senate or the Imperial Council might constitute a strong practical check upon an Emperor's acts, but if he chose to disregard their views, he could not be accused of acting unconstitutionally.

The ultimate check on any autocracy is the force of public opinion. There is always a point beyond which the most arbitrary despot cannot go in defying it. In the case of a Roman Emperor, public opinion could exert this control constitutionally, by an extreme measure. The Emperor could be deposed. The right of deposition corresponded to the right of election. The deposition was accomplished not by any formal process, but by the proclamation of a new Emperor. If any one so proclaimed obtained sufficient support from the army, Senate, and people, the old Emperor was compelled to vacate the throne by *force majeure*; 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 sufficiently powerful following to render the proclamation effective and was suppressed, he was treated as a rebel; but during the struggle and before the catastrophe, the fact that the Senate or 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, as has been said,⁴⁴ "an autocracy tempered by the legal right of revolution."⁴⁵

The transformation of the Principate into the Autocracy was accomplished by changes in the titular style of the Emperors, in their dress, in the etiquette of the court, which showed how entirely the old tradition of the republic had been forgotten.

The oriental conception of divine royalty is now formally expressed in the diadem; and it affects all that appertains to the Emperor. His person is divine; all that

belongs to him is "sacred." Those who come into his presence perform the act of adoration;**46** they kneel down and kiss the purple. It had long been the habit to address the Emperor as *dominus*, "lord"; in the fourth century the sovrans began to use it of themselves and *Dominus Noster* appears on their coins.**47**

Since the first century we can trace the use of *Basileus* to designate the Princeps, and *Basileia* to describe the Imperial power, in the eastern provinces of the Empire.**48** Dion Chrysostom wrote a discourse on the Basileia; Fronto calls Marcus Aurelius "the great Basileus, ruler of land and sea." Basileus was the equivalent of Rex, a title odious to Roman ears; but by the fourth century the Greek name had long ceased to wound any susceptibilities; it became the term regularly employed by Greek writers and in Greek inscriptions, and the Emperors began to employ it themselves. Usage soon went further. *Basileus* was reserved for the Emperor and the Persian king,**49** and *rex* was employed to designate other barbarian royalties.

The Imperial Chancery was conservative, and it was not till the seventh century that the Emperor designated himself as Basileus in his constitutions and rescripts.**50** The official Greek equivalent of *Imperator* was *Autokrator*, which was similarly used as a praenomen.**51** The mint of Constantinople continued to inscribe the Imperial coins with Latin legends till the eighth century.**52** The earliest coins with Greek inscriptions have *Basileus* and *Despotes*.

The general use of Despotes is one of the most characteristic oriental features of the new Empire. It denoted the relation of a master to his slaves, and it was regularly used in addressing the Emperor from the time of Constantine to the fall of the Empire. Justinian expected this form of address. The subject spoke of himself as "your slave." But this orientalism was a superficial etiquette; the

autocrat seldom forgot that his subjects were freemen, that if he was a *dominus*, he was a *dominus liberorum*.

A few words may be said here about the unity of the Empire. From the reign of Diocletian to the last quarter of the fifth century, the Empire is repeatedly divided into two or more geographical sections — most frequently two, an Eastern and a Western — each governed by its own ruler. From A.D. 395 to A.D. 476, or rather 480, the division into two realms is practically continuous; each realm goes its own way, and the relations between them are sometimes even hostile. It has, naturally enough, proved an irresistible temptation to many modern writers to speak of them as if they were different Empires. To men of the fourth and fifth centuries such a mode of speech would have been unintelligible, and it is better to avoid it. To them there was and could be only one Roman Empire; and we should emphasise and not obscure this point of view.

But it is not merely a question of constitutional theory. The unity was not only formally recognised; it was maintained in practical ways. In the first place, the Imperial colleagues issued their laws under their joint names, and general laws promulgated by either and transmitted for publication to the chancery of his associate were valid throughout the whole Empire.⁵³ In the second place, on the death of either Emperor, the Imperial authority of the surviving colleague was constitutionally extended to the whole Empire until a successor was elected. Strictly speaking, it devolved upon him to nominate a new colleague. After the fall of the Theodosian House, some of the Emperors who were elected in Italy were not recognised at Constantinople, but the principle remained in force.

The unity of the Empire was also expressed in the arrangement for the nomination of the annual Consuls. Each Emperor named one of the two consuls for the year.

As a general rule the names were not published together. The name of the Western consul was not known in the East, nor that of the Eastern in the West, in time for simultaneous publication.**54**

Many passages in our narrative will show that the Empire throughout the fifth century was the one and undivided Roman Empire in all men's minds. There were "the parts of the East," and "the parts of the West,"**55** but the Empire was one.**56** No one would speak of two or more Roman Empires in the days of the sons of Constantine; yet their political relation to one another was exactly the same as that of Arcadius to Honorius or of Leo I to Anthemius. However independent of each other or even unfriendly the rulers from time to time may have been, the unity of the Empire which they ruled was theoretically unaffected. And the theory made itself felt in practice.

§ 2. *The Senate. The Imperial Council*

Although the dyarchy, or double government of Emperor and Senate, had come to an end, and autocracy, as we have seen, was established without reserve or disguise, the Senate remained as an important constitutional body, with rights and duties, and, though it was remodelled, it maintained many of its ancient traditions. The foundation of Constantinople had led to the formation of a second Senate, modelled on that of Rome — a great constitutional innovation. Constantine himself had not ventured upon this novelty. He did found a new senate in Byzantium, but his foundation seems rather to have resembled the senates of important cities like Antioch than the august *Senatus Romanus*.**57** His son Constantius raised it from the position of a municipal to that of an Imperial body.**58**

The principles that senatorial rank was hereditary and that the normal way of becoming a member of the Senate itself was by holding a magistracy still remained in full force. The offices of aedile and tribune had disappeared, and by the end of the fourth century the quaestorship was on the point of disappearing. Hence the praetorship remained as the portal through which the sons of senators could enter the Senate. They not only could, but they were obliged. The sole duty of the Praetor now was to spend money on the exhibition of games or on public works. There were eight praetors in the East; the expenses were divided among them; and the Senate, which had the duty of designating them, named them ten years in advance, in order to enable them to economise or otherwise collect the necessary funds, as the cost of holding the office was extremely heavy.⁵⁹ The burden of the consulship was not so severe, but that supreme dignity was bestowed only on men who were already senators.

Men who were not born in the senatorial order could be admitted to the Senate in various ways, whether by a decree of the Senate itself or by the Emperor, who might confer either upon an individual or upon a whole class of persons an order of rank which carried with it a seat in the Senate. Persons thus co-opted by the Senate were liable to the burden of the praetorship, and likewise those whom the Emperor ennobled, unless special exemption were granted.

Exemption was granted frequently, and it took the form of *adlectio*.⁶⁰ This was the term used in the early Empire for the process by which the Emperor could introduce into the Senate a candidate of his own and make him a member of the aedilician, for instance, or of the praetorian class, though he had never filled the corresponding magistracy. In the fourth century these classes disappeared and were replaced by the three orders of *illustres*, *spectabiles*, and *clarissimi*, in each of which

there were certain subdivisions. The Emperor could confer these orders of rank on any one,⁶¹ and a person to whom he granted the *clarissime* became thereby a member of the lowest order of the Senate, and belonged to the *adlecti* who were exempt from the praetorship. Further, under the new administrative system which will be described in the following chapter, all the important offices carried with them the title *illustris*, or *spectabilis*, or *clarissimus*, and thus secured to their occupants eventually, if not immediately,⁶² seats in the Senate. And in some cases, though by no means in all, this admission by virtue of office carried with it exemption. Again, there were many classes of subordinate functionaries who received, when they retired from office, the *clarissime* or perhaps one of the higher titles, thus becoming senators, and these as a rule enjoyed exemption.

To resume: the Senate was recruited from men of senatorial origin, that is, sons of senators, and from men who, born outside the senatorial class, were ennobled by elevation to office, or on retiring from office, or occasionally by a special act of the Emperor or of the Senate. The praetorship was the front gate for entering the Senate, but there was also a back gate, *adlection*, of which the Emperor held the key, and a large and increasing number of the second section entered by this way.

One of Constantine's administrative reforms was the opening to senators of all the official posts, which hitherto had been confined to the equestrian order, so that the careers open to a young man of senatorial birth were far more numerous and varied. The equestrian order gradually disappeared altogether. On the other hand, men of the lowest origin might rise through the inferior grades of the public service to higher posts which carried with them the right of admission to the Senate. Thus an aristocracy was formed, which was recruited every year by men whose