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Conceptual and Methodological Prolegomena to the Study of Byzantine Polity-Law

ABSTRACT – This article offers conceptual and methodological prolegomena to the study of Byzantine polity-law. It defines the legal-conceptual framework and evidentiary conditions under which such a reconstruction may proceed. It discusses the terminology applicable to such a study and the basic content of Byzantine polity-law, with particular emphasis on the sources that may be evaluated according to explicit criteria. On that basis, the article points to the need for a significant re-reading of Title 1 of the Eisagoge within that framework.

1. Introduction – 2. Byzantine public law and the source-problem – 2.1 Continuity of Law – 2.2. Byzantine public law – 3. Terminology and the limits of analogy – 3.1. The 'Constitution' – 3.2. The organization of the polity from the pre-modern to the modern world – 3.3. Modern terminology for the past? – 4. Reconstructing Byzantine polity-law: source hierarchy and test questions – 4.1. The Organization of the Polity in Byzantium – 4.2. Constitutional and Legal Perception – 4.3. Core Content of Byzantine Polity-Law – 4.4. Criteria for understanding Byzantine polity-law – 5. Title 1 of the Eisagoge as a constitutional source-cluster – 6. Conclusion.

1. This study addresses the conceptual dimension of the organization of the Byzantine polity from a juristic perspective. It does not seek to resolve in detail the full range of problems involved in reconstructing Byzantine polity-law, still less to deal with questions of political history as such. Its purpose is prior to those tasks: to define the problem more precisely, to delimit its scope, and to clarify the conceptual and methodological conditions under which the Byzantine legal sources relating to the polity may be understood in a coherent manner. The importance of such a prolegomenon extends beyond Byzantine legal history itself to the wider history of European legal culture [1].

[1] On the need to place Byzantine law within a broader European perspective and on its

Byzantium did not merely preserve the Roman legal inheritance; it also reshaped it under new political, social, and religious conditions. In that sense, the study of Byzantine polity-law helps illuminate a historical and legal stratum of legal thought and institutional experience that is of particular importance for the broader European history of public power and political organization.

The principal difficulty is not simply that Byzantium lacked a formal written constitution in the modern sense. It lies, rather, in the fact that the rules governing the organization of the polity must be identified across a heterogeneous body of evidence, only part of which consists of direct legal sources, and that all of this material must be interpreted according to a specific methodology, primarily a legal one.

Any account of Byzantine polity-law, or of a Byzantine constitutional order, must first explain by what criteria the relevant norms are to be identified, how they are to be distinguished from political practice or ideological representation, and to what extent modern legal terminology may be used by analogy without distorting the historical material.

By 'Byzantine polity-law' I mean, in an analogical sense, the constitutional core of Byzantine public law: that body of rules and principles which concerns the formation, organization, limitation, and exercise of public power within the Empire. It includes, above all, norms relating to imperial authority, co-rule, regency, and the principal institutions and offices through which the polity was ordered and administered. In that sense, Byzantine polity-law may, by analogy, be understood as approximating what modern constitutional theory calls the material or substantive constitution, though without implying either a formal constitution or the rights-centred structure of the modern constitutional state.

As regards terminology, a discussion of modern constitutional vocabulary is necessary here not because such categories may be transferred uncritically to Byzantium, but in order to define the limits within which legal historians, historians, philologists, and political theorists may legitimately employ them when approaching Byzantine legal materials. It is also necessary in order to explain why the study of Byzantine law remains important for modern jurists, at least on historical, methodological, and conceptual grounds.

The existing literature has produced a large body of historical, institutional, and juristic insight; yet, unless the problem is first formulated with greater precision and its conceptual limits are more clearly defined, that material cannot readily yield a coherent understanding of Byzantine polity-law.

This article advances three claims. First, modern constitutional categories cannot be transferred wholesale to Byzantium. Second, a narrower analogical

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significance for reconstructing the common legal past of Europe, see D. PENNA, *Byzantine Law: The Law of the Eastern Roman Empire*, Cambridge, 2026.

vocabulary can still be used. Third, Byzantine polity-law must be reconstructed from a mixed body of direct and indirect sources, evaluated by reference to their normative value, historical context, relation to political practice, and legal character.

2. Byzantine public law and the source-problem

2.1. A basic premise of Byzantine political and legal thought prevailing in the Eastern Roman Empire (known as the *Byzantine Empire*) was the conviction that it constituted the uninterrupted continuation of the Roman Empire at all levels [2], and above all in the sphere of law [3].

It is precisely in the field of law that this continuity becomes most clearly perceptible [4]. Byzantine law succeeded classical Roman law, having been rebuilt upon its foundations. Thus, the continuity of law from Rome to Constantinople (New Rome) [5] constituted a fundamental pillar of the Byzantine legal order. This perception was always embedded in the Byzantine belief that continuity from Rome to Constantinople underpinned their claim to be the sole legitimate heirs of the Roman Empire.

Naturally, this continuity never prevented emperors from enacting new provisions. They produced new law in order to regulate contemporary social relations, to codify the law (almost always intervening in the legislative materials

[2] For the Byzantine Empire and the Byzantines, see H.G. BECK, *Das byzantinische Jahrtausend,* München, 1978. Also C. MANGO, *Byzantium: The Empire of New Rome*, London, 1980 (later reprints); A. CAMERON, *The Byzantines*, Malden-Oxford-Victoria, 2006; R.J. LILIE, *Einführung in die byzantinische Geschichte*, Stuttgart, 2007; P. SCHREINER, *Byzanz: 565-1453*[4], München, 2011.

[3] On Byzantine law, S. TROIANOS, *Die Quellen des byzantinischen Rechts* (transl. D. SIMON, S. NEYE), Berlin-Boston, 2017, p. 1-43 and passim. See also, Z. CHITWOOD, *The Birth of Byzantine Law*, in *A Companion to Byzantine Law From the Foundation of Constantinople (330) until the End of the Macedonian Dynasty (1056)* (*eds*. E. PAPAGIANNI, D. PENNA), Leiden-Boston, 2025, p. 3-15; B. STOLTE, *Byzantine Law: The Law of the New Rome*, in *The Oxford Handbook of European Legal History* (*eds*. H. PIHLAJAMÄKI, M.D. DUBBER, M. GODFREY), Oxford, 2018, p. 230-249. Recently, see also D. PENNA, R. MEIJERING, *A Sourcebook on Byzantine Law. Illustrating Byzantine Law through the Sources*, Leiden-Boston, 2022 and PENNA, *Byzantine Law*, cit.

[4] S. TROIANOS, Εισηγήσεις βυζαντινού δικαίου, Athens, 2014, p. 23; and TROIANOS, *Die Quellen*, cit., p. 1 (nt. 1) and p. 14-15. See also, P.E. PIELER, *Byzantinische Rechtsliteratur*, in *Die hochsprachliche profane Literatur der Byzantiner*, (*ed*. H. HUNGER), 2, München, 1978, p. 343-480, esp. p. 343 and B. STOLTE, *Legal Thought*, in *The Cambridge Intellectual History of Byzantium* (*eds*. A. KALDELLIS, N. SINIOSSOGLOU), Cambridge, 2017, p. 141-166.

[5] A. KALDELLIS, *The Byzantine Republic. People and Power in New Rome*, Cambridge-London, 2015, p. ix-xiii and 32-33, frames Byzantium as the continuation of the Roman res publica and assigns explanatory priority to its Roman political dimension.

being codified), and to introduce, inter alia, rules of administrative law and, more rarely, written provisions concerning the constitutional order of the Empire.

2.2. In full accordance with the Byzantine understanding of law and its role in ensuring the orderly operation of the polity, the stability and thus the strength of the Empire – with all that this naturally entailed for the society composing it – the Byzantine legal order encompassed rules of public [6] law, some unwritten and others written. Classical Rome, moreover, was likewise governed by such rules [7]. The manner in which law was enacted, interpreted, and applied in Byzantium, together with the findings of modern research concerning the function and effectiveness of legal texts – especially legislation – constitutes a critical subject of legal-historical inquiry [8].

On this analytical basis, such rules may be understood as extending across the principal branches of what modern jurists would call public law. They included

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[6] On the distinction between public and private law – traced to Roman jurist Ulpian's formulation that *ius publicum* concerns the organization and functioning of the state, whereas *ius privatum* governs relations among individuals –, see P. PAVLOPOULOS, «Η ιστορική καταγωγή της διακρίσεως του Δικαίου σε Δημόσιο και Ιδιωτικό», in Νομικές Μελέτες (*ed*. P. PAVLOPOULOS), Athens-Thessaloniki, 2023, p. 3-18; G. FALCONE, *Un'ipotesi sulla nozione ulpianea di ius publicum*, in *Tradizione romanistica e Costituzione*, II (*cur*. M.P. BACCARI, C. CASCIONE), Napoli, 2006, p. 1167-1195; J.H. MERRYMAN, R. PÉREZ-PERDOMO, *The Civil Law Tradition; An Introduction to the Legal Systems of Europe and Latin America*[4], Stanford, California, 2018 and J.-F. GAUDREAULT-DES BIENS, N. KARAZIVAN, *The 'Public' and the 'Private' in the Common Law and Civil Law Traditions: Legal Traditions as Reasoning Templates for the Regulation of Religion?*, in *Journal of Comparative Law*, 7.3, 2012, p. 222-251.

[7] See indicatively A. WATSON, *Law and Society*, in *Beyond Dogmatics. Law and Society in the Roman World* (*eds*. J.W. CAIRNS, P.J. DU PLESSIS), Edinburgh, 2007, p. 9-35, here 23, according to whom: «Rome had criminal law, and administrative and constitutional law». See also M. VARVARO, *Senatus consultum 'ultimum' und Erklärung zum Staatsfeind zwischen Recht, Rhetorik und Politik im spätrepublikanischen Rom*, in *Senatus consultum ultimum e stato di eccezione. Fenomeni in prospettiva* (*cur*. P. BUONGIORNO), Stuttgart, 2020, p. 85-108.

[8] See TROIANOS, *Die Quellen*, cit.; E. PAPAGIANNI, *Gesetzgebung und Rechtpraxis*, in *Byzanz: Historisch-kulturwissenschaftliches Handbuch*, *Der Neue Pauly, Supplemente Band* (*ed*. F. DAIM), 11, Stuttgart, 2016, p. 417-468, here p. 417-424; D. SIMON, *Legislation as Both a World Order and a Legal Order*, in *Law and Society in Byzantium: Ninth-Twelfth Centuries* (*eds*. A. LAIOU, D. SIMON), Dumbarton Oaks, 1994, p. 1-25; G. DAGRON, *Lawful Society and Legitimate Power:* Ἔννομος πολιτεία, ἔννομος ἀρχή, in *Law and Society in Byzantium*, cit., p. 27-52; M.TH. FÖGEN, *Legislation in Byzantium: A Political and a Bureaucratic Technique*, in *Law and Society in Byzantium*, cit., p. 53-70 (esp. p. 61 ss.); M.TH. FÖGEN, *Gesetz und Gesetzgebung in Byzanz: Versuch einer Funktionsanalyse*, in *Ius commune*, 14, 1987, p. 137-158; and the ad hoc study S. TROIANOS, Ο βυζαντινός άνθρωπος και το νομικό του περιβάλλον, in Ψηφίδες Ιστορίας Δικαίου απώτερης και νεώτερης (*ed*. S. TROIANOS), Athens, 2013, p. 17-53. On chrysobulls as fundamental sources of Byzantine law, see V.A. KOLLIAS, Τα χρυσόβουλλα στο βυζαντινό δίκαιο. Από την εμφάνισή τους μέχρι το *1204*, Athens, 2020.

norms governing the organization of the polity, the functioning of the state apparatus (administrative law), as well as rules of criminal law and regulations concerning the Empire's relations with other 'states', within the framework of its foreign policy and its 'international' relations.

Among these rules, those that would, according to modern classifications, fall within administrative law, criminal law, and the law regulating interstate relations – particularly on the basis of interstate agreements – were primarily written. Conversely, the rules governing the form, organization, and functioning of the polity were predominantly unwritten. The same was also true for the constitution of classical Rome, the res publica, which was structured and operated on the basis of unwritten yet coherent and effective legal norms [9]. As A. Berger observed, the term *res publica* «corresponds in a certain measure to the modern conception of the state, but is not synonymous with it» [10].

Among the above sub-divisions of public law, the fields so far studied most systematically are primarily Byzantine criminal law [11] and the 'international' law of the period, namely the rules and agreements governing the Empire's relations with foreign powers. The latter are attested above all in interstate treaties, many of which were issued in the form of chrysobulls [12]. Byzantine diplomacy, in turn, continues to be studied systematically by historians, legal historians, philologists, and scholars of related disciplines [13].

By contrast, the legal study of the provisions of Byzantine public law regulating the constitutional order and those belonging to Byzantine administrative law has been pursued less systematically. This is due, on the one hand, to the fact that

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[9] A. DIMOPOULOU, Ρωμαϊκό Δίκαιο: Αναδρομή στις πηγές του σύγχρονου δικαίου, Athens, 2020, p. 64-65. See also M. VARVARO, in P. BUONGIORNO, M. VARVARO, *Percorsi di storia del diritto romano*[2], Napoli, 2025, esp. p. 57-105.

[10] A. BERGER, s.*v. res publica*, in *Encyclopedic Dictionary of Roman Law*, Philadelphia, 1953, p. 679.

[11] For Byzantine criminal law, see TROIANOS, Εισηγήσεις, cit., p. 149-224, with bibliography, among which special mention should be made of SP. TROIANOS, Ὁ 'Ποινάλιος' τοῦ Εκλογαδίου. Συμβολὴ εἰς τὴν ἱστορίαν τῆς ἐξελίξεως τοῦ ποινικοῦ δικαίου ἀπὸ τοῦ *Corpus Juris Civilis* μέχρι τῶν Βασιλικῶν, Frankfurt am Main 1980. See also E. PAPAGIANNI, Οι αξιόποινες πράξεις και ο κολασμός τους στις Νεαρές του Λέοντος Σοφού, in *Melanges en l'honneur de Kalliope (Kelly) A. Bourdara* (*eds.* I. TZAMTZIS, CH. STAVRAKOS, P. ANTONOPOULOS*)*, Athens-Thessaloniki, 2021, p. 647-672, and C. BOURDARA, Καθοσίωσις καὶ τυραννίς. Το πολιτικό αδίκημα στο Βυζάντιο, Athens, 2015.

[12] See D. PENNA, *The Byzantine Imperial Acts to Venice, Pisa and Genoa, 10th-12th Centuries. A Comparative Legal Study*, The Hague, 2012 with references and KOLLIAS, Τα χρυσόβουλλα, cit.

[13] Indicatively see V. VLYSIDOU, S. LAMPAKIS, M. LEONTSINI, T. LOUGGIS, Σεμινάρια περί βυζαντινής διπλωματίας, Athens, 2006. The same applies to the study of the 'warlike Byzantium'. See, indicatively, G. CHATZELIS, *Stratagems and the Byzantine Culture of War: the Theory of Military Trickery and Ethics in Byzantium (c. 900-1204)*, in *Byzantinische Zeitschrift*, 115.3, 2022, p. 719-768, with bibliography.

information concerning these provisions is scattered throughout the Byzantine legal sources, while, so far as the evidence suggests, rules of public law were almost never systematized in Byzantium. This is connected with the characteristics of Byzantine law, one of its fundamental features being its case-based (casuistic) character, inherited from Roman law, which regulated a legal order 'typically' different from modern legal systems and constituted, in essence, new law built upon an older foundation [14].

On the other hand, the particular scholarly interests of Byzantinists engaged in the study of what are usually described as 'institutions' have also played a decisive role. Most often, this occurs in the context of research prompted by the study of an institution – for example the Senate or the regency –, an office – for example an imperial official and his administrative functions –, or more generally certain historical events, including episodes of contested accession, usurpation, deposition, or succession crisis, in which the practical and normative conditions of imperial authority become especially visible. In such cases, scholarly interest tends to focus primarily on literary sources, usually historiographical and chronicle texts that describe how events unfolded, or on other historical evidence (such as seals, etc.), while the direct sources of Byzantine law – that is, the legislative and, more broadly, normative texts themselves – are presented only in parallel (and more rarely examined in depth). Indeed, the legislative texts as such, whether preserved directly or known through indirect (mainly historiographical) sources, are analyzed less frequently.

Consequently, provisions of public law are dispersed across numerous Byzantine legislative texts (direct legal sources) of the entire Byzantine period [15]. Moreover, information concerning such public-law provisions is also found in other types of sources, such as literary and historiographical works, seals, coins, inscriptions, monumental painting etc., which constitute indirect sources for legal history. Those, although not legal enactments themselves, often provide crucial information about the texts of enactments [16].

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[14] Cf. PAPAGIANNI, *Gesetzgebung und Rechtpraxis*, cit., p. 417-424. For the Byzantine legal order as a legal system grounded, in principle, in written law, cf. Z. CHITWOOD, *Byzantine Legal Culture and The Roman Legal Tradition 867-1056*, Cambridge, 2017, p. 3-4.

[15] For Byzantine public law, see TROIANOS, Εισηγήσεις, cit., p. 271-276, and C. BOURDARA, *An Overview of Public Byzantine Law*, in Κωνσταντίνω Γ. Πιτσάκη: Μνήμης χάριν (*eds*. M. GIOUNI, L. PAPARRIGA-ARTEMIADI), Athens, 2023, p. 93-106.

[16] For the Byzantine legal sources, see TROIANOS, *Die Quellen*, cit., p. 22-38 and the relevant contributions in PAPAGIANNI, PENNA, *Companion*, cit. On the Byzantine historical sources, see L. NEVILLE, *Guide to Byzantine Historical Writing*, Cambridge, 2018 and the General Introduction (p. 1-20) and the extensive consolidated Bibliography (p. 936-1118) by J. SHEPARD (*ed*.), *The Cambridge History of the Byzantine Empire c.500-1492*, Cambridge, 2008.

The scattered and non-systematic character of the relevant Byzantine material should not, in itself, be regarded as surprising. In this respect, even modern legal orders often operate through dispersed normative arrangements rather than through a single unified body of rules, especially in the field of administrative law [17]. The point, however, is not to assimilate Byzantine and modern administrative law, but simply to caution against treating the absence of codified systematization as evidence of legal insignificance.

As regards administrative law, numerous individual studies, monographs, and scholarly contributions address questions of Byzantine administrative law, in particular matters of a fiscal nature, the administration of the provinces and the army, and the competences and titles of public officials [18]. The study of this field – as well as Byzantine studies in general – is also supported by important scholarly tools and research instruments [19].

3. Terminology and the limits of analogy

3.1. The concept of the formal constitution emerged historically at the end of the eighteenth century as a product of the great revolutions of that period, above all the American and the French, and is linked to the similarly modern concept of the state. The constitutional phenomenon itself is the outcome of the broader movement of constitutionalism, which was closely connected with the Enlightenment [20]. The legal use of the term constitution is itself a product of modernity [21].

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[17] For instance, see S. FLOGAITIS, in A. GERONTAS, S. LYTRAS, P. PAVLOPOULOS, G. SIOUTI, S. FLOGAITIS, Διοικητικό Δίκαιο[3], Athens-Thessaloniki, 2015, p. 15-16. Cf. F. UHLMANN (*ed*.), *Codification of Administrative Law: A Comparative Study on the Sources of Administrative Law,* Oxford, 2023.

[18] Indicatively, see A. HOHLWEG, *Beiträge zur Verwaltungsgeschichte des Oströmischen Reiches unter den Komnenen*, München, 1965, and E. GLYKATZI-AHRWEILER, *Recherches sur l'administration de l'empire byzantin aux XIème siècles*, in *BCH*, 84, 1960, p. 1-111.

[19] I. KARAGIANNOPOULOS, P. KATSONI, M. GRIGORIOU-IOANNIDOU, Λεξικό Βυζαντινής Ορολογίας. Οικονομικοί Όροι, vol. 1, Thessaloniki, 2000, and P. KATSONI, M. GRIGORIOU-IOANNIDOU, Λεξικό Βυζαντινής Ορολογίας. Οικονομικοί Όροι, vol. 2, Thessaloniki, 2015; A. KAZHDAN et al. (*eds*.), *The Oxford Dictionary of Byzantium*, New York-Oxford, 1991. Particularly useful is the online *Diachronic Interactive Lexicon of Greek - A Digital Library of Greek Lexicons*, under the direction of GR. PAPAGIANNIS (available at http://dialg.helit.duth.gr/, last accessed: April 2026).

[20] R. BELLAMY, J. KING, *Introduction: Of Constitutions and Constitutional Theory*, in *The Cambridge Handbook of Constitutional Theory*, Cambridge, 2025; K. CHRYSOGONOS, *The Rise of Constitutionalism: A Global Perspective*, Oxford-Dublin, 2025.

[21] Cf. R. SCHMIDT, *Die Vorgeschichte der geschriebenen Verfassungen*, in *Zwei öffentlichrechtliche Abhandlungen als Festgabe für Otto Mayer* (*eds*. R. SCHMIDT, E. JACOBI), Leipzig, 1916, p. 89 ss.

In contemporary constitutional theory, the term 'material' or 'substantive' constitution denotes the body of legal rules and principles on the basis of which state power is formed, organized, and exercised. Even a formal constitution necessarily incorporates this material ordering of the state, by determining who may govern, the principles according to which public authority is structured, and the institutional framework within which valid law is made and applied [22]. At the same time, the constitution is identified with the rule-of-law state which it establishes and organizes. For that reason, it also consists of rules safeguarding constitutional rights, primarily individual rights and freedoms and political rights [23].

3.2. More generally, the term 'polity' is understood as a concept connected with the overall phenomenon of social coexistence organized according to law, since no organized political community of human beings can be conceived without a substantive constitution, whether written or unwritten; in other words, the polity is a society juridically organized as a legal order [24].

The term 'polity' has had a dual meaning since Antiquity: it denotes both the right or status of being a member of a legally organized city-state [25] and the manner in which that city is organized and governed, namely its system of government [26].

The broader framework of ancient Greek law as a plurality of legal orders of

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[22] BELLAMY, KING, *Introduction*, cit.; N.W. BARBER, *The Principles of Constitutionalism*, Oxford, 2018, p. 10-12.

[23] D. GRIMM, *Constitutionalism: Past, Present, and Future*, Oxford, 2016, Parts I and II.

[24] CHRYSOGONOS, Συνταγματικό Δίκαιο, cit., p. 13. D. TSATSOS, Πολιτεία, Athens 2021 (available at https://www.epoliteia.gr, accessed April 2026), p. 224 and 342; E. VENIZELOS, Μαθήματα Συνταγματικού Δικαίου, Athens-Thessaloniki, 2021, p. 1; M. FIORAVANTI, *Constitution: Historical Highlights* (transl. by G. GOTTLIEB), Frankfurt am Main, 2007, esp. p. 65-72; and C.H. MCILWAIN, *Constitutionalism: Ancient and Modern,* New York, 1947 (revised edition).

[25] For a recent synthetic account of ancient Greek law, see M. YOUNI, ATH. DELIOS, Αρχαίο Ελληνικό Δίκαιο, Athens 2023, http://dx.doi.org/10.57713/kallipos-135 (accessed April 2026), especially the chapters 'The origins of law in ancient Greece' and 'The courts of classical Athens'.

[26] P.J. RHODES, *Politeia*, in H. CANCIK, F.G. GENTRY, H. SCHNEIDER, CHR.F. SALAZAR, M. LANDFESTER (*eds*.), *Brill's New Pauly, Antiquity volumes*, s.v., here: http://dx.doi.org/10.1163/1574-9347_bnp_e1000460, notes that 'politeia' can denote «either the rights of citizenship exercised by one or more citizens (Hdt. 9,34,1; Thuc. 6,104,2) or a state's way of life, and esp. its formal constitution (Thuc. 2,37,2)». A. NESCHKE, *Constitution*, in *Brill's New Pauly*, cit., s.v., available at: http://dx.doi.org/10.1163/1574-9347_bnp_e12200850 argues that «the Greek word politeía (Antiph. 3,2,1; Thuc. 2,37; Pl. *Resp.* 8,562a; Aeschin. 1,5; Aristot. *Pol.* 3,1279a), which Plato (...) also paraphrases as κατάστασις τῶν ἀρχῶν καὶ ἀρχόντων ('appointment of offices and officeholders', Pl. *Leg.* 6,751a) and Aristotle (...) as τάξις τῶν τὴν πόλιν οἰκούντων ('regulation for the town's residents', Aristot. *Pol.* 3,1274b 34), is equivalent to the English term 'constitution', i.e. the state's form of government. *Politeía* may also mean citizens' rights (Hdt. 9,34), the totality of the citizens (Aristot. *Ath. Pol.* 54,3), the lifestyle of the community (Dem. *Or.* 19,184), or simply its government (Thuc. 1,127; Dem. *Or.* 18,87) (...)».

autonomous poleis, each possessing its own legal order, legislation, and public organs, has been thoroughly analyzed by legal historians [27].

In scholarship on ancient political thought, 'constitution' is commonly used to render Greek πολιτεία, in the sense of a city's constitutional order or form of government; the related term πολίτευμα is more variable, and may denote the regime itself, the organized polity, or the body of citizens who possess political authority [28].

It is also noteworthy that the body of arrangements which Aristotle described as πολιτεία ('politeia', polity) is expressed by the term 'substantive constitution' [29]. Indeed, according to Aristotle, πολιτεία μὲν γάρ ἐστι τάξις ταῖς πόλεσιν ἡ περὶ τὰς ἀρχάς, τίνα τρόπον νενέμηνται, καὶ τί τὸ κύριον τῆς πολιτείας καὶ τί τὸ τέλος ἑκάστης τῆς κοινωνίας ἐστίν (Tr. For a constitution [politeia] is the arrangement of offices in the cities – how they are distributed, what element holds sovereign authority within the constitution, and what is the end [purpose] of each political community) [30].

In contrast to the modern concept of the formal constitution, since the 18th century, which is inextricably linked to the guarantee of individual rights and freedoms 'vis-à-vis' the state, protecting the citizen from powerful state authority by limiting it, in Antiquity and, especially, ancient Greece the recognition of individual rights or freedoms was, in principle, not accepted [31]. This is because the modern understanding of such guarantees perceives rights as standing 'against' state power, something indeed inconceivable within the framework of the Greek

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[27] For a comparative treatment centered on Sparta, Gortyn, and especially classical Athens, see YOUNI, DELIOS, Αρχαίο Ελληνικό Δίκαιο, cit., with bibliography. For the city-states of Lesbos from the Archaic period to Roman rule, see A. DIMOPOULOU-PILIOUNI, Λεσβίων πολιτείαι: Πολίτευμα, θεσμοί και δίκαιο των πόλεων της Λέσβου: αρχαϊκοί, κλασικοί, ελληνιστικοί, ρωμαϊκοί χρόνοι, Athens, 2015.

[28] D. ULRICH, *Constitution, Types of*, in *Brill's New Pauly*, cit., available at: http://dx.doi.org/10.1163/1574-9347_bnp_e15309060.

[29] CHRYSOGONOS, Συνταγματικό Δίκαιο, cit., p. 13. Cf. H. MOHNHAUPT, s.*v. Constitution*, in *Brill's New Pauly,* cit., here: http://dx.doi.org/10.1163/1574-9347_bnp_e15308890.

[30] Arist. *Pol.* 1289a.15-18, *ed*. W.D. ROSS, *Aristotelis politica*, Oxford, 1957 (repr. 1964). See also, A. MANESIS, F. SPYROPOULOS, Το πολίτευμα της Αθηναϊκής δημοκρατίας, in Η Αθηναϊκή δημοκρατία. Μελέτες για το πολίτευμα και την ιδεολογία των Αθηναίων, Athens, 1995, p. 49-77. Furthermore, as E. ARNAOUTOGLOU, Θεμελιώδη δικαιώματα στην Ἀθηναίων Πολιτεία;, in ΕΚΕΙΕΔ, 40, 2007, p. 9-28, here 16, observes, with the necessary historical and conceptual qualifications, the Politeia of Athenians could be characterized in modern terms as a handbook of Athenian constitutional history.

[31] On the subject, see A. DIMOPOULOU, '*Fundamental Rights' and the Rule of Law in Ancient Greece and Rome*, in *Judicial Review, Fundamental Rights and the Rule of Law: The Construction of the European Constitutional Identity* (*eds*. M.G. RODOMONTE, L. DURST), London-New York, 2024, p. 3-18.

πόλις ('polis', city) [32].

In the Middle Ages, there were cases of attempts to limit the power of the monarch and to legally protect the subjects' liberties and status (or some of such subjects), but there were mostly cases of unequal, privilege-based, and primarily collective regulations, thus qualitatively different from modern fundamental rights [33].

There are written texts of a more or less constitutional character that predate the great revolutions of the 18th century by centuries and are of particular interest, such as the Magna Carta Libertatum (1215) in Great Britain [34] and other similar texts, such as the Petition of Right (1628), the Habeas Corpus Act (1679), and the Bill of Rights (1689) [35]. In addition, there are many charters in European countries that are worthy of attention as parts of the formation of the European 'constitutional' history [36]. Such medieval instruments arose from feudal relations and operated as quid pro quo documents: they granted different classes different privileges and rights in exchange for assistance, tax, and loyalty to the ruler [37].

3.3. When reference is made to the constitutional organization of a state, namely to the polity, the form of government, or the constitution, it is not methodologically unwarranted to employ the terminology of modern legal science, that is, the language of contemporary jurists, in approaching historical legal sources. As H. Mohnhaupt has observed, the study of 'pre-constitutional' states, i.e. those that existed prior to the emergence of modern constitutions, and any discussion of their form of government can only be conducted through modern terminology, given that the terms πολιτεία in Greek, 'constitutio' in Latin, and 'Verfassung' [38] in

[32] Cf. DAGTOGLOU, Συνταγματικό Δίκαιο-Ατομικά Δικαιώματα, cit., p. 16-17.

[33] CHRYSOGONOS, *The Rise of Constitutionalism*, cit., p. 12. On the medieval limitation of power by law and the legal protection of the subject's liberties and status, see CH.H. MCILWAIN, *Constitutionalism: Ancient and Modern*, p. 67-92. Cf. W. VOERMANS, *Medieval Constitutions*, in *The Story of Constitutions: Discovering the We in Us*, Cambridge, 2023, p. 104-117.

[34] CHRYSOGONOS, *The Rise of Constitutionalism*, cit., p. 12 and J.C. HOLT, *Magna Carta*[3], Cambridge, 2015, p. 182-188.

[35] H. HALLAM, *The Constitutional History of England from the Accession of Henry VII to the Death of George II*, 3 vols, London, 1850, esp. vol. 1, p. 360-364 and vol. 3, p. 10-14 and 92-94; F.W. MAITLAND, *The Constitutional History of England*, Cambridge, 1908 (repr. 1961), p. 306-318. Cf. CHRYSOGONOS, *The Rise of Constitutionalism*, cit., p. 35-36 and 44-45.

[36] See the relevant significant studies in the volume E. BALOGH (*ed.*), *Golden Bulls and Chartas: European Medieval Documents of Liberties*, Budapest-Miskolc, 2023, on many such texts, but not on the Byzantine *Eisagoge* (see *infra*, § 5).

[37] VOERMANS, *Medieval Constitutions*, cit., who characterises this as the beginning of conditional power and the rule of law.

[38] Cf. F. KERN, *Recht und Verfassung im Mittelalter*, in *Historische Zeitschrift*, 20.1, 1919, p. 1-79, here 45-46. For an early and influential historiographical use of the term 'constitution' in

German are not identical in meaning [39].

With regard to Antiquity, one may identify, as Mohnhaupt observes, only certain partial equivalents to the highly differentiated modern catalogue of constitutional concepts: the idea of order, the form of the polity as a state, participation in decision-making, and, more conditionally, the concept of liberty associated with democratic forms of government. These elements are significant insofar as they contributed to the formation of the modern constitution and its conceptual vocabulary; yet precisely for that reason, only partial identities and functional equivalents may serve as a legitimate starting point when modern constitutional terminology is applied to the ancient world [40].

In any event, if it is possible to speak even of a constitutional organization of the state in the Western Middle Ages [41], it is certainly possible to speak of an ordered polity in Byzantium as well. Even if modern categories such as 'legal order' are not traceable in the sources, and even if, in other cases, the Byzantine semantic field differed from the modern one, as with terms such as 'state' (κράτος), this does not preclude a cautious analytical use of modern legal terminology [42]. The terms used today for these concepts carried different meanings in Byzantium. Furthermore, the term πολιτεία, unless identified with Aristotle's work of the same name (or with a Byzantine scholar commenting upon it), would have been understood as part of the expression βίος καὶ πολιτεία of a person – saint or otherwise – that is, the manner in which a person chose to live. However, the term is also used in other senses. A relevant example appears in Michael Psellos' *Synopsis legum* (Σύνοψις τῶν νόμων), a didactic presentation of law composed for Michael Doukas, son of Constantine X Doukas and future emperor Michael VII. In passage 8.63-77, Psellos begins with a synopsis of the first title of the *Eisagoge* [43] and describes law as the 'common compact of the whole polity'. The meaning of *politeia* in this formulation should be determined from the syntax of the passage itself: law is called a

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relation to the governmental structure of the later Roman Empire, see J.B. BURY, *The Constitution of the Later Roman Empire* [*Creighton Memorial Lecture, delivered at University College London, 12 November 1909*], Cambridge, 1910.

[39] MOHNHAUPT, s.*v. Constitution*, in *Brill's New Pauly,* cit., here: http://dx.doi.org/10.1163/1574-9347_bnp_e15308890. MOHNHAUPT employs the term 'constitutio' rather than the word 'republic' / 'res publica'. TH. MAISSEN, s.*v. Republic*, *Brill's New Pauly,* cit., while identifying the origin and connection of the term with πολιτεία, nevertheless examines the concept primarily with reference to the historical contexts to which it chiefly pertains, namely Italy, Northern Europe, England and Scotland, the United States of America, Germany, and France.

[40] MOHNHAUPT, *Constitution*, cit.

[41] See KERN, *Recht und Verfassung*, cit., p. 67.

[42] Cf. the established scholarly use of the compound term 'city-state', even though the concept of the 'state' was unknown (and indeed rejected) in Greek Antiquity. On city-state see *supra*, nt. 25.

[43] See below, § 5.

'koinē synthēkē' (κοινὴ συνθήκη) of 'the whole politeia' (πάσης τῆς πολιτείας). The term 'politeia' should therefore not be understood either as 'constitution' in a narrow Aristotelian or technical sense, or as 'state' in the modern juridical sense. Rather, it denotes the organized political community as a whole, conceived as a legally ordered public community. Since the *Synopsis legum* is addressed to Michael Doukas and offers a didactic account of law for imperial instruction, 'politeia' here carries a public and polity-oriented meaning, without necessarily amounting to an explicitly modern 'state-level' usage. A cautious rendering would therefore be: law is the 'common compact of the whole polity', or, more freely, the common normative bond of the organized political community [44].

The term πολίτευμα, moreover, can denote the entity itself that is today called the Byzantine Empire. Indicatively, Romanos the Melodist writes in one of his hymns for the Feast of the Presentation, addressing Christ: 'Grant peace to the polity amid wars and strengthen the emperors whom You have loved, O only lover of mankind' [45]. The passage constitutes a prayer that God preserve the Empire in peace, despite the many wars that continually arose. What is more, from a theological perspective, the πολίτευμα, as the ultimate destiny of humankind, may well have been understood by many Byzantines to exist only in Heaven: 'for our citizenship is in heaven', as the Apostle Paul writes in Philippians 3:20 [46].

4. Reconstructing Byzantine polity-law: source hierarchy and test questions

4.1. What must now be emphasized is that Byzantium constituted a legally ordered polity [47].

A central constitutional principle of the Byzantine order was expressed through legality, the common good, public interest, and the distinction between lawful kingship and tyranny [48].

Byzantium formed a legal order whose polity [49] was determined by funda-

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[44] Μιχαήλ Ψελλοῦ, Σύνοψις τῶν νόμων διὰ στίχων ἰάμβων καὶ πολιτικῶν πρὸς τὸν βασιλέα κῦριν Μιχαὴλ τὸν Δούκαν ἐκ προστάξεως τοῦ πατρὸς αὐτοῦ καὶ βασιλέως [8.]63-77, *ed*. L.G. WESTERINK, *Michaelis Pselli poemata*, Stuttgart, 1992.

[45] Εἰρήνευσον ἐν πολέμοις τὸ πολίτευμα καὶ κραταίωσον βασιλέας οὓς ἠγάπησας, ὁ μόνος φιλάνθρωπος, Romanos the Melodist, *Kontakion on the Presentation of the Lord*, prooimion 3, lines 3-4, *ed*. J. GROSDIDIER DE MATONS, *Romanos le Mélode. Hymnes*, vol. 4, Paris, 1967.

[46] Philippians 3:20, *ed*. K. ALAND et al., *The Greek New Testament*[2], Stuttgart, 1968.

[47] Cf. KALDELLIS, *The Byzantine Republic*, cit., *Preface* and p. 1-2 and 96-106.

[48] E. STAVROPOULOS, Ἔννομος ἐπιστασία. Πρόσληψη καὶ ἐξέλιξη μιᾶς θεμελιώδους ἀρχῆς τοῦ βυζαντινο-ρωμαϊκοῦ συνταγματικοῦ πολιτισμοῦ, in Ιόνιος Λόγος, 8, 2025, p. 7-38, with references.

[49] A. KALDELLIS, *The Case for East Roman Studies*, Cambridge, 2024 (esp. Chapter 2),

mental principles and rules identifiable in the sources of Byzantine law, whether direct sources for legal history or indirect ones [50].

These rules governed the constitutional organization [51] of the Byzantine polity and were, as noted above, predominantly unwritten. They constituted a body of principles and norms on the basis of which imperial authority was formed, organized, and exercised, that is, the legal framework structuring the 'politeia', the constitutional order of the Empire [52].

It is quite characteristic that H.G. Beck, in discussing Byzantine matters, employs terms such as 'Verfassung' (denoting the polity), 'Verfassungsleben', 'Verfassungsnorm', 'Verfassungsorgane', and even 'Verfassungsrecht' (the latter, significantly, in quotation marks) [53]. His terminology is itself indicative of the cautious analogical vocabulary required by the subject.

Thus, although no rights against the emperor or the Empire itself can be identified, and although it is impossible to speak of a rule-of-law state or a liberal democracy in any modern sense, Byzantine public law nevertheless recognized the Empire as the juridically ordered bearer of public power, gave legal shape to an imperial organization of the polity, and operated through principles that limited the image of the emperor as an unchecked sacral ruler or, in other words, set limits

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approaches the Byzantine (East Roman) polity from a historical and political-conceptual perspective rather than a strictly legal one, with a focus on the Empire as a political community and form of statehood. Cf. ID., *The Byzantine Republic,* cit., *preface* and p. 32-33.

[50] AIK. CHRISTOFILOPOULOU, Το πολίτευμα και οι θεσμοί της Βυζαντινής αυτοκρατορίας*, 324-1204*: Κράτος-Διοίκηση-Οικονομία-Κοινωνία, Athens, 2004. Contemporary bibliography continues to expand through new approaches that may serve as a basis for scholarly dialogue. See KALDELLIS, *The Byzantine Republic*, cit. However, several classic monographs and studies fundamental for understanding the organization of the Byzantine polity, and thus Byzantine public law, remain authoritative, in addition to the aforementioned works of SP. TROIANOS (cited above in the relevant footnotes on Byzantine law): J.H.A. LOKIN, *The Significance of Law and Legislation in the Law Books of the Ninth to Eleventh Centuries*, in *Law and Society in Byzantium*, cit., p. 71-91; D. SIMON, *Princeps legibus solutus. Die Stellung des byzantinischen Kaisers zum Gesetz*, in *Gedächtnisschrift für Wolfgang Kunkel* (*eds*. D. NÖRR, D. SIMON), Frankfurt am Main, 1984, p. 449-492; H.G. BECK, *Res Publica romana. Vom Staatsdenken der Byzantiner*, München, 1970 and ID., *Das byzantinische Jahrtausend,* cit., esp. p. 33-86.

[51] See BECK, *Res Publica romana*, cit.

[52] The question of constitutional public law is different from the historical-political notion of the 'ennomos politeia' and the question of how a supreme monarch (like the Byzantine emperor) could govern a lawful polity without lapsing into tyranny. The latter issue is central to KALDELLIS, *The Byzantine Republic*, cit., p. 68-71 and passim.

[53] BECK, *Das byzantinische Jahrtausend*, cit., p. 33-86. Of course, the word 'Verfassung' and its compounds denote both the 'polity' and, at the same time, the ('substantive') 'constitution'. For this reason, the Greek translation of BECK'S work accurately renders the term 'Verfassung' as Σύνταγμα ('Constitution'): H.G. BECK, Η Βυζαντινή χιλιετία[2] (trans. D. KOURTOVIK), Athens, 1992, p. 45-46, where reference is made to the 'informal Byzantine constitution'.

upon the emperor's absolute power [54]. After all, the Byzantine polity as prescribed by the formula 'basileus estin ennomos epistasia' goes against both the language of 'lex animata' and the image of an unchecked sacral monarchy [55].

4.2. The relevant question here is how the Byzantines themselves understood the normativity of the arrangements governing public power. The present study does not attempt a full answer; it seeks instead to clarify the terms in which the problem should be posed.

It is notable that, despite the millennium-long duration of Byzantine law, this period has attracted relatively little attention within constitutional-law scholarship, whose historical horizon usually extends, if only in an introductory way, to the ancient Greek period [56] or to later Western thinkers such as Augustine and Aquinas, as well as to medieval constitutional texts and developments.

The conclusion to be drawn from the foregoing discussion is that the rules governing the organization of the Byzantine polity were articulated less in the self-consciously normative language characteristic of modern constitutional law than in forms more closely tied to polity, office, order, lawful and just rule, and the broader claims of law and justice. This does not deprive those rules of legal relevance; it indicates only that their normativity must be reconstructed through categories other than those of modern constitutional self-description.

Accordingly, the broader question of the functional role of law in Byzantium [57] remains open and merits further investigation.

4.3. This section offers an overview of the Byzantine constitutional order, not as a fresh source-based demonstration of questions already extensively treated in the scholarship, but as a preliminary juristic ordering of conclusions that may, to varying degrees, be drawn from the existing literature and the source indications on which it rests.

Firstly, in response to the question raised above – namely, what constitutes the core content of the rules and principles governing the formation and organization of the Byzantine polity – primary importance must be attributed, first and

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[54] On the byzantine imperial ideology, see BECK, *Das byzantinische Jahrtausend*, cit., p. 78-86; H. AHRWEILER, *L'idéologie politique de l'Empire byzantin,* Paris, 1975 and A. PERTUSI, *Il pensiero politico bizantino* (*cur*. A. CARILE), Bologna, 1990. See also SP. TROIANOS, Δίκαιο και ιδεολογία στα χρόνια των Μακεδόνων, in *Vizantina*, 22, 2001, p. 239-261.

[55] STAVROPOULOS, Ἔννομος ἐπιστασία, cit. For a broader discussion of political theory at the age of Justinian, see O. LICANDRO, *Cicerone alla corte di Giustiniano. 'Dialogo sulla scienza politica' (Vat. gr. 1298). Concezioni e dibattito sulle formae rei publicae nell'età dell'assolutismo imperiale*, Roma, 2017.

[56] See indicatively, MANITAKIS, Συνταγματική οργάνωση του Κράτους, cit., p. 9-10.

[57] See also TROIANOS, Ο βυζαντινός άνθρωπος, cit., p. 17-53, with bibliography.

foremost, to the study of the position of the emperor, the supreme constitutional and political position in the Empire.

The emperor was conceived as responsible for establishing legal norms on earth, as the ruler chosen by God to govern his subjects through the just laws he enacted and as the one accountable before God for the people committed to his charge [58].

The emperor's office thus entailed the task and mission of governing the people, safeguarding the Orthodox faith, and ruling the Empire, which Byzantine sources often represented as the 'Oikoumene' (Οἰκουμένη) [59].

For that reason, Byzantine sources should not be interpreted simply as evidence of the ideological, political, or rhetorical means by which the emperor attempted to 'convince' the governed or to 'assert' his authority. Such means certainly existed, but they were inseparable from the very function of legitimate rulership. It is precisely at this point that the analytical framework of constitutional law becomes methodologically useful.

Moreover, the emperor was a monarch who, strictly speaking and in terms of legal precision, cannot be described as consistently hereditary [60]. What is more, although his authority appeared outwardly absolute, it was yet limited by the very existence and activity of institutional actors (characterized in modern scholarship as 'checks'), such as the Senate, the 'demes', the army, and the Church. The presence and operation of these institutional factors, varying across historical periods and subject to significant fluctuations, do not permit the Byzantine polity to be characterized, in strict legal terms, as absolutist [61]. The literature usually speaks of 'boundaries' upon the emperor's absolute power [62]; however, the term 'delimitation' may be preferable. Indeed, various factors, each operating differently

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[58] TROIANOS, *Die Quellen*, cit., p. 28-30 with references.

[59] On Byzantium's 'ecumenical' (universal) self-understanding, see AHRWEILER, *L'idéologie politique*, cit., and BECK, *Res Publica romana*, cit. Cf. A. KALDELLIS, *Did the Byzantine Empire Have 'Ecumenical' or 'Universal' Aspirations?*, in *Ancient States and Infrastructural Power: Europe, Asia, and America* (*eds*. C. ANDO, S. RICHARDSON), Philadelphia, 2017, p. 272-300 and J. SHEPARD, *Byzantium's Overlapping Circles*, in *Proceedings of the 21st International Congress of Byzantine Studies, London, 21-26 August 2006*, vol. I: Plenary Papers (*ed*. E. JEFFREYS), Aldershot, 2006, p. 15-55 and ID., *The Byzantine Commonwealth, 1000-1550*, in *The Cambridge History of Christianity, vol. 5: Eastern Christianity* (*ed*. M. ANGOLD), Cambridge, 2006, p. 3-52.

[60] For historical examples and their analysis, see R.J. LILIE, *Erbkaisertum oder Wahlmonarchie? Zur Sicherung der Herrschaftsnachfolge in Byzanz*, in *Die mittelalterliche Thronfolge im europäischen Vergleich* (*ed*. M. BECHER), Ostfildern, 2017, p. 21-39.

[61] BECK, *Das byzantinische Jahrtausend*, cit., p. 33-108 and especially, p. 38-40.

[62] See E. PAPAGIANNI, Πολιτειακή οργάνωση και κοινωνικές ομάδες. Πρόσωπα, οικογένεια και περιουσία στο Βυζάντιο, in Ιστορία δικαίου: Από την Αρχαιότητα στο σύγχρονο Ελληνικό Κράτος (*ed*. E. PAPAGIANNI), Athens, 2015, p. 142-152, with further bibliography, and especially S. TROIANOS, I. VELISSAROPOULOU-KARAKOSTA, Ιστορία Δικαίου[4], Athens, 2010, p. 171-174.

and with varying intensity over time, played an important role in constitutional affairs.

What likewise requires emphasis, and has not always received the attention it deserves, is the role of the imperial chancery [63] and, more broadly, of the offices and officeholders of the Byzantine state. These should not be treated merely as background administrative machinery, but as institutional settings through which public authority was formulated, recorded, transmitted, and applied. The Byzantine polity appears to have functioned through a highly structured administrative framework, even in periods of acute difficulty or under emperors who were plainly unequal to the demands of rule.

The conduct of state officials must therefore be examined closely, insofar as it often reveals an attachment to public interest, legality, and institutional continuity that was not always reducible to the personal will of the emperor. [64] An analogous qualification applies to judges and adjudication. Judges had a duty to preserve the exactness of the law, and judicial opinion was progressively safeguarded even against unlawful imperial rescripts issued on legal questions arising in pending litigation. Equally important was the middle Byzantine distinction between unjust and unlawful judgments, together with the special procedural treatment accorded to decisions that manifestly conflicted with the law [65].

Imperial authority in Byzantium was also 'delimited' by conceptions and models of conduct that bound the emperor, primarily in a moral sense, in the exercise of his power. In this sense, the study of the qualities and attributes of the emperor is important, as these were recognized and formed a fundamental component of imperial ideology [66].

Much has been written, and continues to be written, about the emperor, the

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[63] On the imperial chancery, see J. HALDON, *Structures and Administration*, in *The Oxford Handbook of Byzantine Studies*, cit., p. 539-553 and F. DÖLGER, J. KARAYANNOPULOS, *Byzantinische Urkundenlehre. 1. Abschnitt: Die Kaiserurkunden*, in *Handbuch der Altertumswissenschaft*, 12.3.1.1, München, 1968 (passim), See also, J. SHEA, *Politics and Government in Byzantium. The Rise and the Fall of the Bureaucrats*, London, 2020, esp. p. 71-74 and 138-139 and PAPARRIGA-ARTEMIADI, Αρχές και κατευθύνσεις στην απονομή της κοσμικής δικαιοσύνης κατά τη μέση βυζαντινή περίοδο, in *Vizantina*, 35, 2017, p. 360-361.

[64] See indicatively, KOLLIAS, Τα χρυσόβουλλα, cit., p. 411-425.

[65] See PAPARRIGA-ARTEMIADI, Αρχές και κατευθύνσεις, cit., p. 359-410 with references.

[66] For the 'image' and attributes of the emperor in Byzantine (legal and other) sources, see M. STUDER-KARLE, *The Emperor's Image in Byzantium: Perceptions and Functions*, in *Meanings and Functions of the Ruler's Image in the Mediterranean World (11th-15th Centuries)* (*eds*. M. BACCI, M. STUDER-KARLEN), Leiden-Boston, 2022, p. 134-164; V.A. KOLLIAS, A. NIKOLAOU, G. PAPAGIANNIS, M. TZIATZI-PAPAGIANNI, *Observations on the Portrayal of the Ruler in the Novels of Leo VI*, in *Studia Ceranea*, 11, 2021, p. 11-23 (DOI: https://doi.org/10.18778/2084-140X.11.17), and D. KARAMBULA, *Der byzantinische Kaiser als Politiker, Philosoph und Gesetzgeber (Politikos-Philosophos-Nomothetes)*, in *Jahrbuch der Österreichischen Byzantinistik*, 50, 2000, p. 5-50.

supreme constitutional and political office of the Empire. However, further study should also be devoted to the position of the one or more co-emperors [67] who occasionally appear in the sources as having been crowned and even exercising authority, participating in legislative power by issuing laws jointly with the 'senior' emperor [68]. The formulations found in the sources of legal history, both direct and indirect, can reveal much about the formal and the actual position of the co-emperors.

Furthermore, apart from the 'senior' emperor and any co-emperor, an important institution-office of the Byzantine polity was that of the 'regency', as it is conventionally termed in modern scholarship. This constituted a supreme office that appeared either in cases of the emperor's minority (under the guardianship of an 'epitropos') [69] or in situations in which the emperor himself, though an adult, for special reasons, particularly when compelled to remain absent from the capital for an extended period, appointed a 'regent', as contemporary research designates the person entrusted with the exercise of imperial authority, whether partially or in its entirety [70].

At this point, it is worth noting that although almost all legal rules determining the organization of the Byzantine polity were, in principle, unwritten, in the specific case of the appointment of a regent the text of a chrysobull issued by Emperor Alexios I Komnenos in August 1081 has survived. By this act, the emperor granted his mother, Anna Dalassene, a significant share in the exercise of imperial authority in internal affairs [71].

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[67] The most systematic study to date of the institution of the co-emperor is found in a broader study of regency in Byzantium by ΑΙΚ. CHRISTOFILOPOULOU, Ἡ ἀντιβασιλεία εἰς τὸ Βυζάντιον, in *Byzantina Symmeikta*, 2, 1970, p. 1-144 (repr. in the EAD., Βυζαντινή Αυτοκρατορία – Νεότερος Ελληνισμός. Συμβολή στην έρευνα, vol. 1, Athens, 2006, p. 117-278). Cf. KARAMBULA, *Der byzantinische Kaiser*, cit., p. 8 nt. 21.

[68] Indicatively, see SP. LAMBROS, «Leo und Alexander als Mitkaiser von Byzanz», in *Byzantinische Zeitschrift*, 4/1, 1895, p. 92-98.

[69] On regency, particularly in cases of the emperor's minority, see CHRISTOFILOPOULOU, Ἡ ἀντιβασιλεία, cit. See also the same study for further examples.

[70] CHRISTOFILOPOULOU, Ἡ ἀντιβασιλεία, cit., p. 1 nt. 2-3, referring (nt. 2) to the appointment of a *regent* by emperor Heraclius who, departing for the campaign against the Persians, left his then ten-year-old son Heraclius Constantine 'to administer affairs in Constantinople' (ἐν Κωνσταντινουπόλει διοικεῖν τὰ πράγματα) along with Patriarch Sergius and the patrician Bonus. See Theophanis, Χρονογραφία, *ed*. C. DEBOOR, *Theophanis Chronographia*[2], BSGRT, Leipzig, 1963, p. 303.4; and Ioannes Cedrenus, Σύνοψις Ἱστοριῶν, *ed*. I. BEKKER, *Georgius Cedrenus-Ioannis Skylitzae opera*, CSHB 8-9, vols. 1-2, Bonn, 1838-1839, vol. 1, p. 718.

[71] FR. DÖLGER, P. WIRTH, *Regesten der Kaiserurkunden des oströmischen Reiches von 565-1453*, München-Berlin, 1924, vol. II: *Regesten von 1025-1204*[2], München, 1995, no. 1073. The information concerning this imperial act, and the text of the chrysobull itself, is preserved by Anna Komnene in Ἀλεξιάς 3.6.4-3.6.8, *ed*. D. REINSCH, ATH. KAMBYLIS, *Annae Comnenae Alexias*, CFHB 40 Ser. Berolinensis, vol. 1, Prolegomena et Textus, Berlin-New York, 2001, 101.44-103.95. Cf. I.

Following the scrutiny of the role of the emperor – or indeed within its very framework, since everything on earth and in matters concerning the worldly governance of the Empire derived from the emperor, referred back to him, and depended upon him – and apart from those factors which, at various periods and to differing degrees, functioned as 'constraints' ('checks') upon the theoretically unlimited imperial authority [72], a further field of inquiry opens up regarding the organization of the Byzantine polity. This concerns the study of various organs and institutional actors that played an important role in the exercise of power [73]. These either assisted the emperor directly in the performance of his duties, sometimes in a role comparable to that of a 'prime minister' (for example, the 'logothetes', the 'paradynastevon', or the 'mystikos') [74], or staffed the administrative apparatus in high-ranking positions, such as, among others, the successive heads of the 'secreta' (to some extent comparable to modern ministries or other public institutions), other senior officials, judges, and similar functionaries. Such officials assumed competences that were at times crucial for the polity itself and, naturally, for the administration of the Empire. Nonetheless, on the basis of current scholarly understanding and given the emperor's overriding authority, these 'administrative' offices are more appropriately situated within the sphere of administrative law, as noted above. There exists considerable information concerning them, including written sources of Byzantine law, particularly imperial documents appointing public officials or entrusting them with duties and competences, whether for specific cases or in more general terms [75].

4.4. Four criteria are especially relevant in identifying and understanding the rules of Byzantine polity-law: first, the normative density of the source itself, that is, the extent to which it purports to prescribe rather than merely describe; second, the institutional proximity of the source to the exercise of public power; third, the degree to which a given rule or principle is corroborated across heterogeneous categories of evidence; and fourth, its demonstrable relation to the formation,

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ZEPOS, P. ZEPOS (*eds*.), *Jus Graecoromanum*, Athens, 1931 (repr. Aalen, 1962), vol. 1, *Prolegomena*, p. xxix-xxx. On this chrysobull see KOLLIAS, Τα χρυσόβουλλα, cit., p. 259 nt. 901 and p. 557, and ID., Ανάθεση αυτοκρατορικών εξουσιών από τον Αλέξιο Α΄ στη μητέρα του Άννα Δαλασσηνή με χρυσόβουλλο (Αύγουστος 1081), in *EKEIED*, 52, 2024-2025, p. 35-65.

[72] See *supra*, nt. 62.

[73] Generally, see CHRISTOFILOPOULOU, Το πολίτευμα και οι θεσμοί, cit., p. 8-58.

[74] On the 'paradynastevon', see EIR. CHRISTOU, Αυτοκρατορική εξουσία και πολιτική πρακτική. Ο ρόλος του παραδυναστεύοντος στη βυζαντινή διοίκηση (τέλη 8ου-αρχές 11ου αιώνα), Athens, 2008 and on the 'mystikos', A.E. GKOUTZIOUKOSTAS, Το αξίωμα του μυστικού: θεσμικά και προσωπογραφικά προβλήματα, Thessaloniki, 2011. For the *logothetes*, see R. GUILLAND, *Les Logothètes: Études sur l'histoire administrative de l'Empire byzantin*, in *RÉB*, 29, 1971, p. 5-115.

[75] See *supra*, § 2.

organization, limitation, or exercise of imperial authority.

These criteria do not eliminate all uncertainty, but they provide a preliminary framework for distinguishing polity-law from political narrative, ideological representation, or isolated factual practice. They are not to be applied as a mechanical checklist, nor are they intended to function as a rigid test of scholarly validity. Rather, they serve as methodological guides for the disciplined evaluation of sources, while leaving ample room for contextual judgment, legal interpretation, and sensitivity to the particularities of the material in each case.

The criteria proposed above acquire practical meaning only when brought to bear on concrete source-clusters and on the differentiated evidentiary status of the materials in question. That reconstruction should proceed through a combined analysis of direct and indirect evidence. Among the former belong the legislative and more broadly normative legal texts of the Byzantine period, including enactments and compilations that preserve rules concerning imperial authority, co-rule, regency, ecclesiastical position, and the organization of public power. Among the latter belong historiographical and literary works, inscriptions, seals, and other materials which, although not normative in themselves, preserve indispensable evidence concerning the formulation, application, interpretation, and practical limits of such rules. The task is not to treat all these categories as equivalent, but to evaluate them according to their distinct evidentiary weight, genre, context, and relation to legal and political practice.

5. The methodological framework proposed here can be tested against a particularly significant source-cluster: Title 1 of the Eisagoge, 'On Law and Justice' (Περὶ νόμου καὶ δικαιοσύνης)[76]. The 'Eisagoge' (Εἰσαγωγή) of the Macedonian emperors, a legislative text of the late 9th century [77], has usually entered discussions of Byzantine constitutional order through Titles 2 and 3, 'On the Emperor' (Περὶ

[76] Εἰσαγωγή 1.1-1.6, *ed*. C.E. ZACHARIAE [v. LINGENTHAL], *Collectio librorum iuris Graeco-Romani ineditorum (Ecloga et Epanagoge)*, p. 53-217, Lipsiae, 1852. The following section is not intended as a full commentary on the Eisagoge. It uses Title 1 as a test case for the methodological framework proposed above, in order to show how a legal source-cluster may acquire constitutional significance within a carefully qualified reconstruction of Byzantine polity-law.

[77] For the *Eisagoge* of the Macedonian emperors, see TH.E. VAN BOCHOVE, *The Procheiros Nomos and the Eisagoge*, in *Companion*, cit., p. 277-296; PENNA, MEIJERING, *A Sourcebook*, cit., p. 117-123; and TROIANOS, *Die Quellen*, cit., p. 191-196. For a pioneering discussion of the constitutional lineaments of the Eisagoge as a whole, see F. GORIA, *Lineamenti 'costituzionali' dell'impero assoluto in una compilazione giuridica costantinopolitana del tardo secolo IX, in Tradizione romanistica e Costituzione* (*cur.* M.P. BACCARI, C. CASCIONE), 2, Napoli, 2006, p. 1433-1451. The juridical status of the *Eisagoge* remains disputed. The present discussion nevertheless proceeds on the view that it was promulgated as law, while taking that dispute into account in assessing the precise weight of Title 1 for the present argument.

βασιλέως) and 'On the Patriarch' (Περὶ πατριάρχου) [78]. These titles established the so-called – probably short-lived – 'theory of the two powers' [79], but it remains doubtful whether the model they articulated continued in force for long.

Even if Titles 2 and 3 are constitutional in a narrower sense, because they formulate high-level competences, their effective constitutional weight remains uncertain. For that reason, Title 1 deserves separate attention: not only because of its content, but above all because of its placement at the threshold of the legal book. It brings together, in written and programmatic form, foundational propositions concerning law, legislation, and justice. It should therefore be read not merely as a prefatory juristic commonplace, but as a deliberate normative framing of the polity under law. Building on this line of inquiry, the present discussion focuses more narrowly on Title 1 itself, read in its position before the titles on the emperor and the patriarch, and asks what evidentiary weight it may have as a distinct source-cluster for the juristic reconstruction of Byzantine polity-law.

The importance of Title 1 lies in its function as a concentrated legislative articulation of first-order principles bearing on public power and on the normative ordering of the polity as a political community. In that sense, Title 1 should be read not merely as a prefatory statement of general legal ideas, but as a source of special importance for the reconstruction of Byzantine polity-law. It points to the need for a substantial re-reading of the Eisagoge beyond the familiar focus on Titles 2 and 3.

That claim becomes clearer once one briefly considers the internal sequence of Title 1 itself. Its provisions are short, but not merely technical. They define law in an expressly public and foundational register; indicate that legislation is to be directed to what occurs generally rather than exceptionally; describe the office of law through its basic functions of commanding, forbidding, permitting, and punishing; and define justice, state the precepts of law, and characterize legal science in classical juristic terms. None of these propositions, taken individually, amounts to a constitutional provision in the modern sense. Taken together, however, and especially in their placement at the threshold of the legal book, they present a concise normative statement about the conditions under which public authority is to be understood and exercised.

For that reason, the significance of Title 1 lies less in the originality of its doctrinal content than in its legislative selection, concentration, and placement. The

[78] *Eisagoge*, *ed*. ZACHARIAE [v. LINGENTHAL], cit., p. 65-68. On the attribution to Photios and the broader ideological setting of the Eisagoge, see J. SIGNES CODOÑER, F.J. ANDRÉS SANTOS, *La introducción al derecho (Eisagoge) del patriarca Focio*, Madrid, 2007. The present argument does not depend on the question of authorship, but on the placement and legal function of Title 1 within the legislative structure of the text.

[79] See also TROIANOS, *Die Quellen*, cit., p. 194-195.

material is, in substance, inherited from Roman jurisprudence and Justinianic codification, while also preserving, at certain points, older Greek philosophical and legal influences; it was then reorganized within the Macedonian legislative context to which both the Basilica and the Eisagoge belong. What is significant here is that these juristic propositions are placed before the titles 'On the Emperor' and 'On the Patriarch', so that law and justice appear not as an appendix to power, but as the prefatory framework within which the principal offices of the polity are subsequently located. In that restricted historical-analytic sense, Title 1 may be read as constitutional in character: not because it establishes a liberal constitution, but because it formulates fundamental principles bearing on the ordering and legitimation of public power.

The key point, therefore, is not genealogy alone, but function. The editorial and legislative choice to place law and justice before the titles regulating the emperor and the patriarch creates, at the very least, a programmatic signal: public authority is framed first by law and justice, and only then by the offices through which power is exercised.

Several formulations help explain why such an analogy is methodologically permissible. The definition of law as a common command, a common compact of the political community, and even a divine discovery points beyond a merely technical understanding of law toward a public and foundational conception of normativity. The proposition that laws are to be framed for what occurs as a rule, rather than exceptionally, may be read as expressing a principle of generality in legislation. Likewise, the classic definitions of justice, the precepts of law, and legal science, placed at the opening of the legislative text, indicate that the exercise of rule is to be understood within a prior normative horizon. The issue is therefore not whether Title 1 reproduces later constitutional doctrines, but whether it places at the forefront of the legal book principles that claim to orient the structure and legitimacy of governance at the highest level.

Seen from the standpoint of the criteria proposed above, Title 1 forms a particularly instructive source-cluster. Its normative density is high, since it speaks in prescriptive and definitional terms rather than merely descriptive ones. Its institutional proximity is likewise considerable, because it stands at the head of a legislative work concerned precisely with the ordering of imperial public authority. Its constitutional relevance is strengthened by the fact that its provisions are not isolated moral reflections, but are presented in immediate conjunction with the titles regulating the emperor and the patriarch.

The legal nature of the Eisagoge itself is relevant here. The view that it was promulgated as law appears, in my judgment, the more persuasive. Even a more cautious assessment, however, would not deprive Title 1 of significance for the present argument, since it remains a juristically ordered and programmatic formulation of foundational principles within the Macedonian legislative context.

What may be described, from one perspective, as a juristic and systematic opening may thus also be understood, from another, as a programmatic ordering of the polity under law.

Finally, its relation to the formation, organization, and justification of public power is direct: although it does not distribute competences in the manner of a modern constitution, it sets out the normative horizon within which such competences are to be understood. In this sense, Title 1 does not displace the unwritten and dispersed character of Byzantine polity-law; rather, it offers a rare written concentration of foundational principles whose juristic and constitutional importance deserves closer attention.

At the very least, Title 1 appears to function as a fundamental introductory grammar of public order, and not merely as a detachable juristic preface.

The claim advanced here is deliberately limited but methodologically significant: Title 1 should be assessed as a programmatic source-cluster within the broader legal-historical reconstruction of Byzantine polity-law itself.

6. The present study has not sought to renew the discussion of Byzantium as a political society, but rather to pursue a different and more narrowly juristic aim: to outline a legal-historical framework for understanding Byzantine polity-order through public law, constitutional law in a material sense, source differentiation, and the disciplined evaluation of evidence.

Three conclusions follow. First, the foregoing analysis confirms that Byzantium cannot be described in the formal categories of the modern constitutional state without anachronism. The Empire possessed neither a formal constitution nor a rights-centred constitutional structure in the modern sense. Second, a narrower analogical vocabulary remains both legitimate and useful, provided that it is employed analytically, with methodological caution and with constant awareness of historical difference. Terms such as polity, constitutional order, public law, administrative law, and even constitution in a material sense may therefore be retained as heuristic instruments, provided that they are not treated as semantically identical with Byzantine categories. Third, Byzantine polity-law can only be reconstructed through a differentiated evaluation of direct and indirect sources, with due regard to their normative value, historical context, relation to political practice, and legal character.

Finally, the interdisciplinary character of Byzantine studies should remain a priority. Yet such interdisciplinarity can be fruitful only if it is accompanied by methodological discipline: not by the dissolution of disciplinary boundaries, but by sustained dialogue among fields that remain conscious of their own evidentiary standards, conceptual tools, and limits.