

Book VIII.  
Title LI.

Concerning free-children and slave-children that are exposed, and concerning those who have bought newly born infants or have received them to be nourished.  
(De infantibus expositis liberis et servis et de his qui sanguinolentos emptos vel nutriendos acceperunt.)

Bas. 33.2.

Headnote.<sup>1</sup>

That many infants were exposed (cast out) by their parents or masters - if the infant was a slave - is well attested by a number of writers of these times, and was due, doubtless, just as the pledge or sale of children - a subject treated at length at C. 4.3.2 - to poverty, particularly when the country was overrun by enemies. Formerly the child could be reclaimed after being brought up and reared by someone else. See C. 5.4.16, and Gothofredus on C. Th. 5.7.(9).1. Constantine changed that rule, and provided in 321, C. Th. 5.7.(9).1, that the person who took up the infant might raise it as his slave or child at discretion. This rule is confirmed by the laws of the present title to the extent that the father or master permanently lost the exposed infant, but Justinian, by law 3 of this title, provided that such exposed infant should be the same as a free-born person, without regard to its status at birth, and that the child could not be reduced to slavery. That, too, is confirmed by Nov. 153, which provides punishment by death for a person exposing a child and reclaiming it after it is brought up by another. The infants here spoken of were those that were young, and who were exposed soon after their birth.

The principle here announced is similar to a rule in force from the time of the Emperor Claudian, that if a master cast out his sick slave and abandoned him, he should lose him, and that the slave should become free. C. 7.6.3.1; Nov. 22, c. 12; D. 40.8.2.

8.51.1. Emperor Alexander to Claudius.

If the new-born child of your female slave or female serf has been exposed without your consent or knowledge, you are not forbidden to reclaim it, but if it is not reclaimed from a thief<sup>2</sup>, restitution will be directed only upon condition that you will repay any just expenditures made for its support, or while it was learning a trade.

Promulgated May 30 (224).

8.51.2. Emperors Valentinian, Valens and Gratian to Proleus, Praetorian Prefect.

Everyone must support his offspring. But if a man has exposed his children, he will be subjected to the legal punishment. 1. And we give no right to reclaim them either to owners or patrons of children, if exposed by them, in a measure almost to a certain

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<sup>1</sup> Blume penciled in next to this: "11 P.W. 463f." presumably referring to Pauly-Wissowa.

<sup>2</sup> [Blume] A thief was not, like a possessor in bad faith, entitled to be reimbursed even for necessary expenditures. See D. 13.1.13.

death, and picked up by someone through merciful compassion; for it cannot be said that a child belongs to a man who abandons it while it is perishing.

Given March 5 (374).

C. Th. 5.7.(9).2.

8.51.3. Emperor Justinian to Demosthenes, Praetorian Prefect.

We ordain that no one be permitted to claim, as slave or unfree or free serf, and small children who have been exposed, whether the children of free-born parents, freedmen or slaves;<sup>3</sup> nor do we permit those who took them up to raise and train them, whether male or female, with any mark of difference, with the view of having them as freedmen, slaves or serfs. 1. But children reared by such people shall, without any mark of difference, be free and free-born without a stain of slavery or serfdom and with power to acquire property and transmit it to their posterity, or to outside heirs. Nor shall persons who have picked or shall pick them up, claim any rights of patronage in their property, but in every country subject to Roman sway, these provisions shall apply. 2. Persons who expose such children, perhaps hoping for their death, shall not attempt, when uncertain whether anyone has picked them up, to get them back (when picked up) and reduce them to servile condition; nor is it to be borne that persons who, out of compassion, picked them up, be permitted to change their mind and reduce them to slavery, even though they had that object in mind in the beginning, lest they appear to have performed an office of mercy for money. 3. The honorable presidents of the provinces and their apparitors and the fathers and defenders of cities and their assistants must uphold these provisions.

Given at Chalcedon September 17 (529).

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<sup>3</sup> [Blume] The text here speaks of a child in the singular; then passes over into the plural.