

THEMATIC FOCUS:  
*Interdisziplinäre Studien zu Recht und Religion*

INFLUENCING THE MASSES

*Regulations of social morality by Constantinian Constitutions  
in the Codex Theodosianus<sup>1</sup>*

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There are many ways to get in contact with the people. The focus of my research will be the social legislation of the Roman emperor Constantine the Great. How can an emperor get in contact with the people by legislation, how could he influence the masses by announcements which sounds brittle, normative, reactive and unreal?

All the questions are based on opinions of scientists, old and new, which should be discussed here once more from a different point of view. By the way in the last 70 years this was already done by a few scientists, but relating especially nearly only to aspects of religion and administration.<sup>2</sup>

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<sup>2</sup> Jill HARRIES: Constantine the Lawgiver. In: Scott MCGILL – Cristina SOGNO – Edward WATTS (eds.): *From the Tetrarchs to the Theodosians. Later Roman History and Culture 284–450 CE*. [Yale Classical Studies 34.]. Cambridge, Cambridge University Press, 2010. 73–92.; Tiziana CHIUSI: Der Einfluss des Christentums auf die Gesetzgebung Konstantins. In: Klaus Martin GIRARDET (hrsg.): *Kaiser Konstantin der Große. Historische Leistung und Rezeption in Europa*. Bonn, Habelt, 2007. 55–64.; Christopher KELLY: Bureaucracy and Government. In: Noel LENSKI (ed.): *The Cambridge Companion to the Age of Constantine*. Cambridge, Cambridge University Press, 2006. 183–204.; Arnold EHRHARDT: Konstantin der Große. Religionspolitik und Gesetzgebung. In: Heinz KRAFT (hrsg.): *Konstantin der Große*. Darmstadt, Wissenschaftliche Buchgesellschaft, 1974. 388–456.; Josef VOGT: Zur Frage des christlichen Einflusses auf die Gesetzgebung Konstantins. In: Leopold WENGER – Mariano SAN NICOLO (hrsg.): *Festschrift für Leopold Wenger II*. München, C. H. Beck, 1945. 118–148.

But the focus of my research is on the life of people, as well of the upper, the middle and the poorer classes, their families, their wives, their children, their slaves and the threats they have to suffer from corrupted civil servants. The question here is how the emperor by regulating the legislation can influence the behavior of the masses in the Roman Empire?

## 1. Introduction

The legislation of the emperor Constantine, which is still preserved in our time, is huge and beside that of the emperor Justinian, the biggest in Late Antiquity. It contains, including the literary sources and the codices of Justinian and Theodosius, about 410 legislative texts, which refer to economic, administrative, religious, judiciary and social issues.<sup>3</sup> I will concentrate my lecture on social issues where the emperor refers directly to the people „*ad populum*” of the cities of Rome and Constantinople, to the provincials in general of a special region in Italy and Africa or to the praetorial or municipal prefects which had to publish these decisions to the people. Often there are as well bishops addressed by him, which had to fulfill his will for the benefit of the municipalities instead of civil servants.

In contrast of the rescripts which were made for single individuals who had demanded for it, which were from Diocletian and his tetrarchs, Constantine bequeathed us solely with *leges generales*, constitutions, which were by their common character used for the propaganda of the monarch.<sup>4</sup>

Besides, Constantine was a master of rhetoric, which appealed his counterpart directly by prologues and epilogues or by a clever word choice in his legislative texts. Therefore he used moral arguments, which he prepared rhetorically intelligent in this way, that he can avoid dull and complicated argumentations in favor of moral justifications, which were easy to understand. Whether Constantine was himself responsible for this more literary style of his juridical texts or whether it was his own chancellery – see the remarks of Detlev Liebs<sup>5</sup> – we do not know, since we haven't any knowledge about the members of his chancellery. Not long ago John Noel Dillon<sup>6</sup> proved that even before Constantine and Diocletian rhetoric was used modestly in juridical texts. However we must conclude with Detlev Liebs that it was Constantine, who used rhetoric in juridical texts in a revolutionary manner.<sup>7</sup> The use

<sup>3</sup> See also Detlev LIEBS: Konstantin als Gesetzgeber. In: Alexander DEMANDT– Josef ENGEMANN (hrsg): *Konstantin der Große, Geschichte – Archäologie – Rezeption*. Internationales Kolloquium 10–15. 10. 2005 an der Universität Trier, Trier, Rheinisches Landesmuseum, 2006. 97–107., speziell 98–99.

<sup>4</sup> HARRIES (2010) op. cit. 74–79.

<sup>5</sup> Detlev LIEBS: *Römisches Recht*. Ein Studienbuch. Göttingen, UTB Vandenhoeck & Ruprecht, 1999. 9–73., 82–91.

<sup>6</sup> John Noel DILLON: *The Justice of Constantine. Law, Communication, and Control*. Ann Arbor, The University of Michigan Press, 2012. 60–89.

<sup>7</sup> LIEBS (2006) op. cit. 99–100.; Detlev LIEBS: Recht und Gesetzgebung. In: Alexander DEMANDT – Josef ENGEMANN (hrsg.): *Imperator Caesar Flavius Constantinus Konstantin der Große*,

of rhetoric depends from the form of the texts as well, from the constitution or the *lex generalis*, the emperor's law, which could argue in another way than a rescript, which concentrates solely on a single case, where it is necessary to formulate brief and juridically correct sentences.<sup>8</sup>

Even for Constantine clarity and commitments are important but in another sense. His goal is to abolish the quarrel of the jurists, which is so characteristic for the Roman law during the Republic and the Principate. But the guidelines he liked to give are in many ways not so clear because his statements are not seldom contradictory. When the emperor condemns very strictly the denunciations by a harsh punishment he supports anyway these traitors when normal people could announce corrupted civil servants or women who have probably committed adultery or promiscuity.<sup>9</sup> When we compare these texts with earlier laws there may be the impression, that Constantine has weakened the juridical content and his intentions by ethical judgements, outbursts of fury and several threats in order to awe and frighten someone off.

Concerning this matter one could ask a double question: is the intention of the emperor a reform of the manners of the people maybe in connection with Christian beliefs or demands?

This thesis is heavily disputed even till today.<sup>10</sup> The second question is: are the emperors of Late Antiquity more passive or active legislators, could they even influence the politics or even the society they live in?<sup>11</sup> These important questions I would like to explain with the following texts and at the end I would like to give probably an answer.

## 2. Case studies

Source 1:

Codex Iustinianus IV, 43, 2 (a. 329) = Codex Theodosianus V,10,1: The Emperor Constantine to the Provincials

*„If any person due to grinding poverty must sell a newborn, son or daughter to secure his maintenance the purchase is only in this case active and the purchaser has the right to own him as his slave §1 The person who sold the slave and the purchased himself and anybody else*

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Ausstellungskatalog. Mainz, Philipp von Zabern, 2007. 190–196.

<sup>8</sup> Hans WIELING: Die Gesetze der Herculier. In: Robert FEENSTRA (hrsg): *Collatio Iuris Romani*, Festschrift Hans Ankum. Amsterdam, J. C. Gieben, 1995. 619–632.; DILLON (2012) op. cit. 60–89.

<sup>9</sup> Codex Theodosianus I,16,6.7 (J. 331); LIEBS (2007) op. cit. 193–194.

<sup>10</sup> VOGT (1945) op. cit. 118–148.; EHRHARDT (1974) op. cit. 388–456., CHIUSI (2007) op. cit. 55–64.

<sup>11</sup> Sebastian SCHMIDT-HOFNER: *Reagieren und Gestalten. Der Regierungsstil des spätrömischen Kaisers am Beispiel der Gesetzgebung Valentinians I.* München, Verlag C. H. Beck, 2008., speziell 15–18., 344–350.

*could release him when he could pay an appropriate price (or he could substitute him by another slave).'<sup>12</sup>*

In this constitution Constantine uses, rhetorical very smart, a hopeless situation for the beginning of his assignation; the case of hopeless poor parents of a newborn baby. Due to their severe situation – the parents do not know how to feed the baby – it is allowed for them to sell the newborn child. The condition is that the baby due to Roman habits must be blood shedded and not recognized yet as their own child by the father. When this condition is fulfilled, it is allowed for the parents to sell the child.<sup>13</sup> A few years before, it was Diocletian who prescribed that it is not allowed for parents at all to sell their children.<sup>14</sup> This revolutionary invention of Constantine to abolish the right of the *pater familias* to sell his own breed, is in reality a part of Constantine's policy to support the poorer classes. As we can see here the more literally argumentation is only a trick to cover a profound change of the law.

But nevertheless let us now focus on the next constitution.

Source 2:

Codex Theodosianus V, 9, 1: 8 (a. 331) The Emperor Constantine to the Praetorian Prefect Ablabius

„If any person should take up a boy or a girl child that has been cast out of its home with the knowledge and consent of its father or owner, and if he should rear this child to strength with his own sustenance, he shall have the right to keep the said child under the same status as he wished it to have when he took charge of it, that is, as his child or as a slave,

<sup>12</sup> Imperator Constantinus Augustus provincialibus suis: Si quis propter nimiam paupertatem egestatemque victus causa filium filiamve sanguinolentos vendiderit, venditione in hoc tantummodo casu valente emptor obtinendi eius servitii habeat facultatem. §1 Liceat autem ipsi qui vendidit vel qui alienatus est aut cuilibet alii ad ingenuitatem propriam eum repetere, modo si aut pretium offerat quod potest valere, aut mancipium pro huiusmodi praestet. Hans WIELING: *Die Begründung des Sklavenstatus nach ius gentium und ius civile*. Stuttgart, Franz Steiner, 1999. 127. no. 221. See also Codex Theodosianus: Imperator Constantinus Augustus *Italīs suis*...WIELING (1999) op. cit. 110. no. 198.

<sup>13</sup> Carlo LORENZI: *Si quis a sanguine infantem...conparaverit. Sul commercio di figli nel trado impero*. Perugia, Università degli Studi di Perugia, 2006. 27–38.; Ville VUOLANTO: Selling a Freeborn Child. Rhetoric and Social Realities in the Late Roman World. *AncSoc*, 33/2003. 169–207.; Elisabeth HERRMANN-OTTO: Sklaven und Frauen unter Konstantin. In: Alexander DEMANDT – Josef ENGEMANN (hrsg): *Konstantin der Große, Geschichte – Archäologie – Rezeption*. Internationales Kolloquium 10.–15. 10. 2005 an der Universität Trier. Trier: Rheinisches Landesmuseum, 2006. 83–95., speziell 86–88.

<sup>14</sup> Codex Iustinianus IV,43,1 (a. 294): Impp. Diocletianus et Maximianus Augusti et Caesares Aureliae Papinianae: liberos a parentibus neque venditionis neque donationis titulo neque pignoris iure aut quolibet alio modo, nec sub praetextu ignorantiae accipientis in alium transferri posse manifesti iuris est. WIELING (1999) op. cit. 127. no. 220.

whichever he should prefer. Every disturbance of suits for recovery by those persons who knowingly and voluntarily cast out from home newly born children, whether slaves or free, shall be abolished.”<sup>15</sup>

In spite of the right to sell a newborn child the emperor realizes that free and unfree born children are still abandoned by their parents or by their owners. He is horrified about by emphasizing the deliberateness and the act of the abandonment (*voluntas* and *scientia*), as well as the fact that children were dumped (*abicere*).

Behind the moral uprising one can discover a totally new legal position. In contrast of the selling the submitting of children was allowed in ancient times. Due to Roman law freeborn persons were unalienable. Therefore parents could demand without any costs their abandoned children back from someone who has raised this child.

Constantine stopped this practice and created a new legal order. He discriminates the people who abandoned children whether parents or owners and denied all their rights to own the child (*patria* or *dominica potestas*).<sup>16</sup>

The finder and bread-earner is allowed to own the child if he had raised it in a specific manner even if the child was freeborn. Even here Constantine hides the revolutionary character of his new legal order with moral arguments: the loss of the former freeborn status to damn and punish the person who is responsible for the child's abandonment.

We have to look further.

Source 3:

Codex Theodosianus IX, 9, 1: (a. 319) = Codex Iustinianus IX,11,1: The Emperor Constantine to the People

„If any woman is discovered to have a clandestine love affair with her slave, she shall be subject to the capital sentence, and the rascally slave shall be delivered to the flames. All persons shall have the right to bring an accusation of this public crime; office staffs shall have the right to report it; even a slave shall have permission to lodge information, and freedom shall be granted to him if the crime is proved, although punishment threatens him if he makes a false accusation. §2 The

<sup>15</sup> Imperator Constantinus Augustus ad Ablabium praefectum praetorio: *Quicumque puerum vel puellam proiectam de domo, patris vel domini voluntate scientiaque, collegerit ac suis alimentis ad robur provexerit, eundem retineat sub eodem statu, quem apud se collectum voluerit agitare, hoc est sive filium sive servum eum esse maluerit: omni repetitionis inquietudine penitus summovenda eorum, qui servos aut liberos scientes propria voluntate domo recens natos abiecerint.* WIELING (1999) op. cit. 109. no. 196.

<sup>16</sup> Joshua C. TATE: Christianity and the Legal Status of Abandoned Children in the Later Roman Empire. In: *The Journal of Law and Religion*, 24/2009. 123–141.; Judith EVANS GRUBBS: Church, State and Children: Christian and Imperial Attitudes Towards Infant Exposure in Late Antiquity. In: Andrew CAIN – Noel LENSKI (eds.): *The Power of Religion in Late Antiquity*. Farnham, Ashgate, 2009. 119–131.

children also whom she bears from this union shall be stripped off all the insignia of rank. They shall remain in bare freedom, and neither through themselves nor through the interposition of another person shall they receive anything under any title of a will from the property of the woman.”<sup>17</sup>

Even here one can find behind moral argumentation a new law order: Relationships between free women with their slaves were not usually a public crime (*crimen publicum*), they were at all never been a public element of crime. They belong to the house court, the *iudicium domesticum*.

The emperor here also interferes in the private rights of the *paterfamilias*. Due to the lack of the *ius conubii* of the unfree there is no legal marriage and of course no adultery because of the status of the wife as a widow. But why had Constantine ordered to punish the wife with exile and the death penalty, the slave with the death penalty by burning and the freeborn children with degradation and disinheritance?

And why a slave who denounces his mistress is rewarded with freedom despite the emperor will punish the same crime with cutting off the tongue or even death penalty for civil servants who accept such notifications?<sup>18</sup>

If we could speak of a moral reform, with Christian or pagan provenience or if there must be other reasons behind these regulations let us have a look on two other examples further:

Source 4:

Codex Theodosianus IX, 24, 1 (a. 320 or a. 326): The Emperor Constantine to the People

„If any man who had not previously made a pact with the parents of a girl should ravish this girl against her will or if he should abduct a girl who was willing, hoping to obtain protection from the consent of the girl, although it was because of the fault of frivolity and the inconstancy of her sex and judgment that a girl was altogether excluded by the

<sup>17</sup> Imperator Constantinus Augustus ad populum: Si qua *cum servo suo occulte* rem habere detegitur, *capitali sententiae* subiugetur, tradendo ignibus verberone. sitque omnibus facultas *crimen publicum* arguendi sit officio copia nuntiandi, sit etiam *servo licentia deferendi*, cui probato crimine *libertas dabitur*, quum falsae accusationi poena immineat. [...] §2 *Filii* etiam, quos ex hac coniunctione habuerit, *exuti omnibus dignitatis insignibus in nuda maneat libertate*, neque per se neque per interpositam personam quolibet titulo voluntatis accepturi aliquid ex facultatibus mulieris. Reinhard WILLVONSEDER: *Stellung des Sklaven im Privatrecht. 1: Eheähnliche Verbindungen und verwandtschaftliche Beziehungen*. Stuttgart, Franz Steiner, 2010. 108–110., no 166.; 159–160., no. 251.

<sup>18</sup> Codex Theodosianus 10,10,1. 2; a. 312/313. On these contradictory constitutions see: Maria Luisa NAVARRA: A proposito delle unioni tra libere e schiavi nella legislazione Costantiniana. *Atti dell'Accademia Romanistica Costantiniana*, 8/1990. 427–437.

ancients from conducting suits in court and from giving testimony and from all matters pertaining to courts, the consent of the girl shall be of no advantage to him, as it would have been under the ancient law; but rather the girl herself shall be held liable as a participant in the crime. §1 Since the watchfulness of parents is often frustrated by the stories and wicked persuasions of nurses, punishment shall threaten first such nurses whose care is proved to have been detestable and their discourses bribed, and the penalty shall be that the mouth and throat of those who offered incitement to evil shall be closed by pouring in molten lead. §2 If willing agreement is discovered in the girl, she shall be punished with the same severity as her ravisher, ...girls who are ravished against her will, ...we impose a lighter penalty on these girls and we command that only the right of succession to their parents shall be denied them. §3 Moreover, if a ravisher who has been convicted beyond doubt should wish to appeal, he shall not be heard. §4 If any slave should report to the public courts a crime of rape passed over by connivance or disregards by a pact, he shall be granted Latinity, or if he is Latin, he shall be made a Roman citizen. If the parents, whom the punishment of the crime concerns especially, should show forbearance and suppress their grief, they shall be punished by deportation. We command the participants and assistants in the crime of rape shall be subjected to the same punishment without any distinction of sex;<sup>19</sup>

Reasonably Detlev Liebs writes that in this context one can speak from a brutalization of the criminal law by Constantine.<sup>20</sup> You can add here some other examples. But let us now just concentrate on this very severe law concerning the

<sup>19</sup> Imperator Constantinus Augustus ad populum: Si quis nihil cum parentibus puellae ante depectus invitam eam rapuerit vel volentem abduxerit patrociniū ex eius responsione sperans, quam *propter vitium levitatis et sexus mobilitatem* atque consili a postulationibus et testimoniis omnibusque rebus iudicariis antiqui penitus arcuerunt, nihil ei secundum ius vetus prosit puellae responsio, sed ipsa puella potius societate criminis obligetur. §1 Et quoniam parentum saepe custodiae nutricum fabulis et pravis suasionibus deluduntur, his primum, quarum *detestabile ministerium* fuisse arguitur redempti discursus, poena imminet, ut eis meatus oris et faucium, qui *nefaria hortamenta protulerit, liquentis plumbi ingestione claudatur* [...] §2 [...] et si voluntatis adsensio detegitur in virgine, eadem (virgo) qua raptor severitate plectatur [...] *quae rapiuntur invitae* [...] *his poenam leviolem* imponimus, solamque eis parentum negari successionem praecipimus. §3 raptor autem indubitate convictus si appellare voluerit, *minime audiatur*[...] §4 si quis vero servus raptus facinus *dissimulatione praeteritum* aut pactione transmissum *detulerit in publicum, Latinitate* donetur aut, si Latinus sit, civis fiat Romanus: parentibus, quorum maxime vindicta intererat, si *patientiam praebuerint* ac dolorem conpresserint, *deportatione* plectendis. §5 [...] si quis inter haec ministeria servilis condicionis fuerit deprehensus, citra sexus discretionem eum *concremari* iubemus.

<sup>20</sup> Detlev LIEBS: Unverhohlene Brutalität in den Gesetzen der ersten christlichen Kaiser. In: Okko BEHRENS – Malte DIESELHORST – Wulf Eckart VOSS (hrsg): *Römisches Recht in der europäischen Tradition. Symposium aus Anlass des 75. Geburtstages von Franz Wieacker*. Ebelsbach, Verlag Rolf Gremer, 1985. 89–116.

rape of the virgin. Why is it the case that not alone the thief but also the girl who was characterized as certifiably insane and also their companions like the stereotype-like plotting wet nurse were punished in the same manner? Why were all participating persons including the parents were punished with deportation, deprivation, death penalties and torture and in the same law you can see that a denouncing slave was rewarded with freedom and Roman civil rights?

The weakening of the *patria potestas* which one can discover by the example of the mentioned young people is therefore really a fact and also lawfully recognized. This slowly downfall of the *patria potestas* one can discover here had just begun under Augustus since the time of the earlier Principate.

Is Constantine willing to reinstall or to rebuild this ancient right?<sup>21</sup> Is it because of the fear that even dishonorable men could be a part of the upper classes? Or is it just another moral reform to condemn the rape of brides, so to speak with Judith Evans-Grubbs?<sup>22</sup>

Let us finally have a look on the last constitution before answering these last questions.

Source 5:

Codex Theodosianus XII, 1, 6 (a. 319) = Codex Iustinianus V, 5, 3: The same Augustus to Patroclus

„Although it appears unworthy for men, even though not endowed with any high rank, to descend to sordid marriages with slave women, nevertheless this practice is not prohibited by law. But a legal marriage cannot exist with servile persons, and from a slave union of this kind, slaves are born. We command, therefore that decurions shall not be led by their lust to take refuge in the bosom of the most powerful houses. For if a decurion should be secretly united with any slave woman belonging to another man and if the overseers and procurators should not be aware of this, we order that the woman shall be cast into the mines through sentence of the judge, and the decurion himself shall be deported to an island. His movable property and his urban slaves shall be confiscated; his landed estates and rustic slaves shall be delivered to the municipality of which he had been a decurion.”<sup>23</sup>

<sup>21</sup> Caroline HUMFRESS: Civil Law and Social Life. In: Noel LENSKI (ed.): *The Cambridge Companion to the Age of Constantine*. Cambridge, Cambridge University Press, 2006. 205–225., esp. 216–217.

<sup>22</sup> Judith EVANS-GRUBBS: *Law and Family in Late Antiquity. The Emperor Constantine's Marriage Legislation*. Oxford, Clarendon Press, 1995. 183–193.

<sup>23</sup> Imperator Constantinus Augustus Patroclo: *Nulla praeditos dignitate ad sordida descendere conubia servularum etsi videtur indignum, minime tamen legibus prohibetur; sed neque conubium cum personis potest esse servilibus et ex huiusmodi contubernio servi nascuntur. Praecipimus itaque, ne decuriones in gremia potentissimarum domorum libidine (servarum) ducente confugiant. Si*



First of all I would like to explain here the case law instead of the well-known clever use of arguments. Since there is no lawful marriage between slaves, whether honourable persons as well persons from lower classes could have a conjunction with female slaves. The children of these partnerships were always unfree and illegitimate. The fear of Constantine in these cases was, that the decurions which were not married denied their duties in the communal administrations, get into the protection of a rich land-owner and lived a life of an unfree man. As well there is the danger of the alienation of the communal property.<sup>24</sup>

Speaking in modern terms one can conclude that Constantine punished here „tax-migrants”.

This is very important since these persons refuse to have legitimate children who could later on fulfill their duties as decurions. Therefore female slaves are the *seductrices* of these men how he told us in one of his constitutions. „*These women are the poison who are infectious for the senses of men. These women should be questioned under torture.*”<sup>25</sup> In this case the people who are involved were from the upper class of the empire: Senators, *Perfectissimi*, *Duumviri*, and priests, who have a relationship with these women and who had already asked Constantine to legitimize their breed. But the emperor denied.

### 3. Conclusion

As we can see by the example of the decurionic legislature, Constantine does not focus on a moral reform, nor on a systematic reform of the law system (how it was the accusation by his nephew Julian Apostata). He is instead driven by economic and fiscal constraints and needs.<sup>26</sup> If the upper classes (of the empire, the provincial and municipal level) are no more responsible for their duties, for legal marriages and the breeding and raising up of their children then the economy and the administration of the empire will be damaged severely. If women of rank are involved in misalliances

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enim decurio clam actoribus atque procuratoribus nescientibus alienae fuerit servae coniunctus, et mulierem in metallum trudi per sententiam iudicis iubemus et ipsum decurionem in insulam deportari, bonis eius mobilibus et urbanis mancipiis confiscandis, praediis vero et rusticis mancipiis civitati, cuius curialis fuerat, mancipandis. WILLVONSEDER (2010) op. cit. 111–112., no. 169; 124–125., no. 181.

<sup>24</sup> Noel LENSKI: Servi Publici in Late Antiquity. In: Jens-Uwe KRAUSE – Christian WITSCHERL (hrsg.): *Die Stadt in der Spätantike – Niedergang oder Wandel?* Stuttgart, Franz Steiner, 2006. 335–357., speziell 337., 354.

<sup>25</sup> Cod. Theod. IV,6,3,1 = Cod. Iust. V,27,1 (a.336): [...] ipsas etiam, quarum venenis inficiuntur animi perditorum si quid quaeritur vel commendatum dicitur, [...] tormentis subici iubemus; WILLVONSEDER (2010) op. cit. 99–101., no. 155.; 127–128., no. 185.

<sup>26</sup> See different evaluations of research: reforms of moral behaviour: Thomas A. J. MCGINN: The Social Policy of the Emperor Constantine in Codex Theodosianus 4,6,3. *RHD*, 67/1999. 57–73. Spiteful humiliation of special groups of people: Hans WIELING: Die Gesetzgebung Constantins zur Erwerbsfähigkeit der Konkubinenkinder. *Atti dell'Accademia Romanistica Costantiniana*, 8/1990. 455–471. Regulative aspects of a further hierarchization of society: Kyle HARPER: *Slavery in the Late Roman World AD 275–425*. Cambridge, Cambridge University Press, 2011. 449–455.

then their property and their money fell to their free but not high ranked children and not to the state. The same reason for Constantine to create a new legislation was the rape of the brides I have mentioned before. But with these economic argumentations the emperor could not convince or reach the masses. Moral discrimination, the threat of severe and hard punishments and rhetoric exaggerations are the strategy to appeal the masses and influence them by supporting fears and enhancing expectations.<sup>27</sup>

It's even the same with abandoning and selling of children. There you can find not the case of supporting moral feelings especially for the lower classes. Nor is it the case of supporting Christian beliefs.<sup>28</sup> Instead Constantine wants to install a formally regulated child-trade from which everybody prostate: the poor parents, which get some money for their breed and have as well the option to rebuy their children if they are in a better economic state. Even it is profitable for the slave traders who could raise up the children they bought in a legal way. Even the children themselves have a great opportunity: they loose their freedom for a lifetime, but they don't have to die as so called dumped children.

But nevertheless the reforms of Constantine could not avoid poverty and the need for manpower.<sup>29</sup> The principle of the inalienability of the free birth was too much an inherent part of the Roman law system. Therefore it was not possible to get rid of this by private contracts. Later on the law of Constantine was abolished and replaced by the forfeiting of the children's labour and the abandoning of children.<sup>30</sup>

The deterrent effect of the moral defamation and the threat of severe punishment had no effects. The successors of Constantine cancelled these penalties for relatively minor crimes.<sup>31</sup>

But a clever word choice and moral argumentation were since these times an inherent part of the strategy to influence the masses. How deep and sustainable the influence was we do not know. But we can conclude that Constantine was a ruler

<sup>27</sup> On the subject of rhetoric exaggerations and affirmations of class boundaries in the Constantinian constitutions see also Judith EVANS GRUBBS: 'Marriage more shameful than Adultery': Slave-Mistress Relationships, 'Mixed Marriages' and Late Roman Law. *Phoenix*, 47/1993. 125–154.

<sup>28</sup> For non-christian aspects of the Constantinian legislation see HARPER (2010) op. cit. 610–638. In contrast: ethical motivation of his lawgiving: NAVARRA (1990) op. cit. 432–437.; WILLVONSEDER (2010) op. cit. 160.

<sup>29</sup> Elisabeth HERRMANN-OTTO: s.v. Armut. In: Winfried SCHMITZ u. a. (hrsg.): *Handwörterbuch zur Antiken Sklaverei*. Stuttgart, Franz Steiner, 2017.

<sup>30</sup> Paul. Sent. 5,1,1: Qui contemplatione extremae necessitatis aut alimentorum gratia filios suos vendiderint, statui ingenuitatis eorum non praeiudicant: *homo enim liber nullo pretio aestimatur [...] Operae tamen eorum locari possunt*. WIELING (1999) op. cit. 85–86., no. 146. On the subject of child labour for 20 or 25 years or for lifetime combined with an everlasting loss of freedom, see: Sententiae Syriacae 98, WIELING (1999) op. cit. 159., no. 293. Elisabeth HERRMANN-OTTO: Kindsein im Römischen Reich. in: Heinz HEINEN (hrsg.): *Kindersklaven – Sklavenkinder. Schicksale zwischen Zuneigung und Ausbeutung in der Antike und im interkulturellen Vergleich*. Stuttgart, Franz Steiner, 2012. 171–201., speziell 192–195., with further literature.

<sup>31</sup> Rape of brides: C. Th. 9,24,2 (a. 349): However Constantinus II. replaced horrible eviscerations of free people only by a normal death penalty. Involved slaves however have been punished with burning to death.

who influenced the legislature of the late Roman society in a creative way. This was commented in antiquity in several ways: for Julian Apostata, his uncle was an inventor and in the same time a destroyer of the old laws,<sup>32</sup> for the lawyer Sozomenos Constantine tried to honour God with his legislation.<sup>33</sup> Who of them is right, each of them or nobody, is now to judge by the reader.

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<sup>32</sup> Ammianus Marcellinus. 21,10,8: *memoriam Constantini ut novatoris turbatorisque priscarum legum et moris antiquitus recepti.*

<sup>33</sup> Sozomenos, *historia ecclesiastica* I,8,13–14.