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Gustus: What's in a name? A note on C. 4.41.1 (373 AD), its milieu, content and Wirkungsgeschichte.

Paolo Costa (Università di Genova)

paolo.costa@unige.it

ABSTRACT

C 4.41.1, issued by Valentinian I (373 AD), forbade the sale of wine, oil, and fish sauce to the barbarians. This regulation stands out as the most comprehensive trade restriction with barbarians during Late Antiquity. The aim of this paper is to conduct a thorough analysis of the constitution, delving into aspects such as its dating, its connection to CTh. 3.14.1, and the meaning of the phrase *neustus quidem causa*. Additionally, it seeks to contextualize the law within its historical milieu and explore its *Wirkungsgeschichte*.

C. 4.41.1, costituzione emanata da Valentiniano I nel 373, prevede il divieto di vendita di vino, olio e *liquamen* al barbaricum. Si tratta della più estesa restrizione commerciale prevista dalle norme tardoantiche pervenute. Questo contributo propone un'esegesi di C. 4.41.1, considerando i profili della sua datazione, dei rapporti palinogenetici con CTh. 3.14.1 e dell'interpretazione della locuzione *neustus quidem causa*. Inoltre, mira a contestualizzare la *lex* nel suo milieu storico e a esplorare la sua *Wirkungsgeschichte*.

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PAROLE CHIAVE

C. 4.41.1, CTh. 3.14.1, Divieti di commercio, Gustus, Uso ideologico dell'antico

KEY WORDS

C 4.41.1, CTh. 3.14.1, Trade restrictions, Gustus, Ideological use of antiquity

PAOLO COSTA*

*GUSTUS: WHAT'S IN A NAME? A NOTE ON C. 4.41.1 (373 AD), ITS
MILIEU, CONTENT AND WIRKUNGSGESCHICHTE*

SOMMARIO: 1. Premise. 2. Issues of Palingenesis, Dating, and Milieu. 3. The Goods in Question and the *Occasio Legis*. 4. The Semantics of *Barbaricum* in C. 4.41.1. 5. *Gustus*: What's in a Name? 6. The *Ratio Legis* of C. 4.41.1. 7. An ideological *Wirkungsgeschichte*.

1. Premise

The panel on Late Antiquity at the International Medieval Congress in Leeds – one of the most widely attended conferences in the field of Late Antique and Medieval Studies – was devoted, in July 2023, to the theme *Taste and Disgust in Late Antiquity*¹. The choice of this topic reflects a growing interest in aspects of social history that, at least since the historiographical shift commonly associated with the *École des Annales* of Marc Bloch and Lucien Febvre², have increasingly attracted scholarly attention. Numerous studies in ancient history have explored areas once largely overlooked, such as the history of food and food supply, particularly in relation to the construction, preservation, and expression of social and political

* Università degli Studi di Genova

¹ This contribution revises and updates a paper delivered at the International Medieval Congress held at the University of Leeds from 3 to 6 July 2023. A shortened Italian version of this article is intended for inclusion in the forthcoming volume of Studies in memory of Mario Amelotti.

² See R. CHARTIER, J. LE GOFF, J. REVEL (eds.), *La Nouvelle Histoire*, Paris 1978; A. BURGUIÈRE, *L'École des Annales. Une histoire intellectuelle*, Paris 2006; P. BURKE, *The French Historical Revolution. The Annales School, 1929-2014*, Cambridge 2015; see especially on our topic: S. WATTS, *Food and the Annales School*, in J.M. PILCHER (ed.), *The Oxford Handbook of Food History*, Oxford 2012, 3-22.

identities³. This field of inquiry has also been significantly enriched by contributions from scholars of Roman law⁴.

This evocative theme prompted me to investigate the legal, political, and possibly ideological significance of a constitution issued by Valentinian I (C. 4.41.1), which contains the only attested occurrence of the term *gustus* in the *Codex Iustinianus*. This *lex* sets forth the most comprehensive prohibition of trade with the barbarians found in the extant legal norms of Late Antiquity. The constitution is of particular interest on several accounts, notably: the challenges surrounding its dating, the reconstruction of the broader normative text to which it likely belonged, its interpretation, and its *Wirkungsgeschichte*.

The following is the version of C. 4.41.1 included in Krüger's *editio maior*:

Imppp. Valentinianus Valens et Gratianus AAA. ad Theodotum magistrum militum. Ad barbaricum transferendi vini et olei et liquaminis nullam quisquam habeat facultatem ne gustus quidem causa aut usus commerciorum.

2. Issues of Palingenesis, Dating, and Milieu

The *inscriptio* of the constitution, which lacks a *scriptio*, is philologically problematic. As early as Denis Godefroy, it was emended by replacing *Theodorum* or *Theodotum* with *Theodosium*⁵ – a correction later adop-

³ See, e.g., P. GARNSEY, *Famine and Food Supply in the Graeco-Roman World. Responses to Risk and Crisis*, Cambridge 1988; ID., *Food and Society in Classical Antiquity*, Cambridge 1999; C. HOLLERAN, P. ERDKAMP (eds.), *The Routledge Handbook of Diet and Nutrition in the Roman World*, London 2018.

⁴ See, e.g., B. SIRKS, *Food for Rome. The Legal Structure of the Transportation and Processing of Supplies for the Imperial Distributions in Rome and Constantinople*, Amsterdam, 1991; I. FARGNOLI, *Cibo e diritto in età romana. Antologia di fonti*², Torino 2015; R. LAURENDI, *Aspetti giuridici dell'approvvigionamento cerealicolo di alcune poleis in Grecia, Sicilia e Magna Grecia*, in Studi Urbinati, A - Scienze Giuridiche, Politiche ed Economiche 71 (2021) 43-62; I. FARGNOLI, *I piaceri della tavola a Roma antica. Tra alimentazione e diritto*², Torino 2022; U. AGNATI, *Cibo e identità politica-religiosa tra paganesimo e cristianesimo*, in Teoria 42 (2022) 85-99; M.L. BICCARI, *Produzione e consumo di carne nella legislazione imperiale e ruolo del 'corpus suariorum'*, in Rivista di Diritto Romano 24 (2024) 51-79.

ted by Paul Krüger and, more recently, by Federico Pergami⁶. According to a hypothesis advanced by Otto K. Seeck⁷ and accepted by the majority of scholars⁸, this *lex* would represent a *caput* of a broader normative text, to which CTh. 3.14.1⁹ – a law bearing the same *inscriptio* – would also belong. The latter constitution prohibits, under penalty of death, matrimonial unions between *Romani provinciales* and *gentiles* or *barbari*¹⁰.

CTh. 3.14.1 is addressed to Theodosius, *magister equitum*, and features an incomplete *subscriptio*. The presence of two excerpts from the same normative text in the modern editions of the *Codex Theodosianus* and the

⁵ See D. GOTHOFREDI *Prosopographia seu, ordine alphabetico, Index personarum omnium, quarum fit mentio in Codice Theodosiano*, s.v. 'Theodosius'. The reading *Theodorum* is found in the majority of the manuscripts; *Theodotum* appears in the *Codex Bibliothecae Universitatis Lipsiensis Paulinae* 883, the *Codex Bibliothecae Vaticanae*, and the *Codex Bibliothecae Montis Casini*.

⁶ See F. PERGAMI, *La legislazione di Valentiniano e Valente (364-375)*, Milano 1993, 507.

⁷ O. SEECK, *Regesten der Kaiser und Päpste für die Jahre 311 bis 476 n. Chr.*, Stuttgart 1919, 124: "Iust. IV 41, 1 *ad Theodotum magistrum militum*. Im Theodosianus steht III 14 ein fragment mit der Überschrift: *ad Theodosium* (Variante: *Theodorum*) *mag. equitum*, das Zwischenheiraten mit den Barbaren verbietet. Das unsere beschränkt den Handel mit ihnen, ist also dem Inhalt nach mit jenem so verwandt, daß beide zu verbinden sein werden".

⁸ See J. GAUDEMET, *L'étranger au Bas-Empire*, in *Recueil de la société Jean Bodin IX, L'Etranger*, 1, Bruxelles 1958, 215 nt. 7; É. DEMOUGEOT, *Le 'conubium' et la citoyenneté conférée aux soldats barbares du Bas-Empire*, in V. GIUFFRÈ (ed.), *Sodalitas. Scritti in onore di Antonio Guarino*, IV, Napoli 1984, 1639-1640; M. BIANCHINI, *Ancora in tema di unioni fra barbari e Romani*, in *Atti dell'Accademia Romanistica Costantiniana* 7 (1988) 230-231 (= in EAD., *Temi e tecniche della legislazione tardoimperiale*, Torino 2008, 394-395); F. PERGAMI, *La legislazione cit.*, 506-507; A. CUSMÀ PICCIONE, *'Non licet tibi accipere alienigenam'. Studio sulla 'disparitas cultus' tra i coniugi nella riflessione cristiana e nella legislazione tardoantica*, Milano 2017, 460. S. SCHMIDT-HOFNER, *Die Regesten der Kaiser Valentinian und Valens in den Jahren 364 bis 375 n. Chr.*, in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Romanistische Abteilung* 125 (2008) 512 nt. 47, 573, does not subscribe to the majority view, emphasizing the difference in subject matter between the two constitutions. Also A. MARCONE, *Il matrimonio tra Romani e barbari nella legislazione tardoantica*, in S. CROGIEZ-PETREQUIN, P. JAILLETTE (eds.), *Société, économie, administration dans le Code Théodosien*, Villeneuve d'Ascq 2012, 507-508, opposes Seeck's hypothesis.

⁹ About CTh. 3.14.1 see E. LÉOTARD, *Essai sur la condition des barbares établis dans l'Empire Romain au quatrième siècle*, Paris 1873, 89-93; GAUDEMET, *L'étranger cit.*, 222-223; R. SORACI, *Ricerche sui 'conubia' tra Romani e Germani nei secoli IV-VI*, Catania 1974, 43-110; R.C. BLOCKLEY, *Roman-barbarian Marriages in the Late Empire*, in *Florilegium* 4 (1982) 63-79; É. DEMOUGEOT, *Le 'conubium' dans les lois barbares du VI^e siècle*, in *Recueil*

Codex Iustinianus may be explained by the fact that the constitutions found in the first six books of the *Theodosianus* derive predominantly from the manuscripts of the *Lex Romana Visigothorum*, which incorporated legal materials according to the needs and editorial choices of Alaric's commission¹¹. The presence of one fragment of a constitution exclusively in the *Codex Iustinianus* and another from the same normative text in modern editions of the *Codex Theodosianus* – where its editorial inclusion is dependent upon the *Breviarium* – does not, in itself, preclude the hypothesis that both excerpts originate from a single *lex*, subsequently divided

de Mémoires et Travaux publié par la Société d'Histoire du droit et des institutions des anciens pays de droit écrit 12 (1983) 69-70 (= in EAD., *L'Empire romain et les barbares d'Occident [IV^e-VII^e siècles]*. *Scripta Varia*, Paris 1988, 301-302); EAD., *Le 'conubium' et la citoyenneté* cit., 1638-1642; M. BIANCHINI, *Ancora cit.*, 225-249 (= in EAD., *Temi cit.*, 389-413); A. DEMANDT, *Die Feldzüge des älteren Theodosius*, in *Hermes* 100 (1972) 92; Id., *The Osmosis of Late Roman and Germanic Aristocracies*, in E.K. CHRYSOS, A. SCHWARZ (eds.), *Das Reich und die Barbaren*, Wien-Köln 1989, 75-85; S. REGULLIS, *Die Barbaren in den spätromischen Gesetzen*, Frankfurt am Main-Bern-New York-Paris 1992, 68-73; F. PERGAMI, *La legislazione cit.*, 216; H.S. SIVAN, *Why not Marry a Barbarian? Marital Frontiers in Late Antiquity (The Example of CTh. 3.14.1)*, in R.W. MATHISEN, H.S. SIVAN (eds.), *Shifting Frontiers in Late Antiquity*, Aldershot 1996, 136-145; W. LIEBESCHUETZ, *Citizen Status and Law in the Roman Empire and the Visigothic Kingdom*, in W. POHL, H. REIMITZ (eds.), *Strategies of Distinction. The Construction of Ethnic Communities, 300-800*, Leiden-Boston, MA-Köln 1998, 139-140; A. CHAUVOT, *Opinions romaines face aux barbares au IV^e siècle ap. J.C.*, Paris 1998, 131-144; S. KERNEIS, *Francus ciuis, miles Romanus: les barbares de l'Empire dans le Code Théodosien*, in J.-J. AUBERT, PH. BLANCHARD (eds.), *Droit, religion et société dans le Code Théodosien, Troisième Journées d'Étude sur le Code Théodosien, Neuchâtel, 15-17 février 2007*, Genève 2009, 388-390; M.V. ESCRIBANO PAÑO, *Matrimonios entre 'provinciales' y 'gentiles': 'quod in ius suspectum vel noxium detegitur, capitaliter expiatur' (CTh. 3,14,1, 370? 373?)*, in *Atti dell'Accademia Romanistica Costantiniana* 20 (2014) 373-395; G. MANCINI, *Integrazione ed esclusione nell'esperienza giuridica romana. Dalle politiche di integrazione dello straniero alla generalizzazione della condizione di 'straniero in patria': le norme su capacità matrimoniale e filiazione come strumenti della frammentazione degli status in età tardo antica*, in F. RIMOLI (ed.), *Immigrazione e integrazione dalla prospettiva globale alle realtà locali*, I, Napoli 2014, 362-370; V. MAROTTA, *Il problema dei 'laeti'. Fonti e storiografia*, in F. BOTTA, L. LOSCHIAVO (eds.), *'Civitas', 'iura', 'arma'. Organizzazioni militari, istituzioni giuridiche e strutture sociali alle origini dell'Europa (secc. III-VIII)*, Lecce 2015, 136-138; A. CUSMÀ PICCIONE, *'Non licet' cit.*, 424-481.

¹⁰ For the meaning of *gentiles* and *barbari*, see M. BIANCHINI, *Ancora cit.*, 228 (= in EAD., *Temi cit.*, 392); H.S. SIVAN, *Why not Marry a Barbarian? cit.*, 139-141; A. CHAUVOT, *Opinions cit.*, 139-141; M.V. ESCRIBANO PAÑO, *Matrimonios cit.*, 376-378; A. CUSMÀ PICCIONE, *'Non licet' cit.*, 431-441.

¹¹ See S. REGULLIS, *Die Barbaren cit.*, 68-69.

by the Theodosian commissioners and assigned, *ratione materiae*, to distinct *rubricae*.

Indeed, one portion (CTh. 3.14.1) may have been omitted by Justinian's commissioners as obsolete, while still deemed suitable to the needs of the Kingdom of Toulouse¹² and thus included in the *Breviarium*, where, conversely, the other portion (C. 4.41.1) – or one of other portions – may have been deliberately excluded. The latter has come down to us by virtue of its extraction from the *Codex Theodosianus* and subsequent incorporation into the *Codex Iustinianus*. This philological conjecture likely underpins Krüger's placement, in the *Index rubricarum* of the *Codex Theodosianus*, of a hypothetical title IB *Quae res exportari non debeant*, under which he ascribes the text transmitted in C. 4.41.1. This title follows another hypothetical title IA *Quae res venire non possunt et qui vendere vel emere vetantur*, which itself appears after title I *De contrahenda emptione*, the only one actually attested in the *Codex*¹³.

The conjunction of various elements permits the formulation of a reasoned hypothesis concerning the date of the *lex*: «Mit der Datierung des einen Teils ist aber zugleich der andere bestimmt»¹⁴. Essential to the dating is the concurrence between the consulship held by Valentinian and Valens and the *magisterium militum/equitum* exercised by the recipient of the constitution, Flavius Theodosius. The latter – the best general of Valentini-

¹² On the reception of CTh. 3.14.1 in the Visigothic kingdom, see H.S. SIVAN, *The Appropriation of Roman Law in Barbarian Hands*, in W. POHL, H. REIMITZER (eds.), *Strategies of Distinction. The Construction of Ethnic Communities 300-800*, Leiden-Boston, MA 1998, 189-203.

¹³ See P. KRÜGER (ed.), *'Codex Theodosianus'. Liber I-VI*, Berlin 1923, 6, 96; see also M. CALCAGNO, *Un sistema nuovo di controllo sulle navi in partenza: la costituzione di Teodosio II del 18 settembre 420 (accolta in CTh. VII 16,3)*, in *Civiltà Classica e Cristiana* 3 (1982) 377; S. PIETRINI, *Cass., Var. 5.14.6, testimone di una riprovata prassi di elusione fiscale?*, in *Atti dell'Accademia Romanistica Costantiniana* 22 (2017) 444.

¹⁴ S. RUGULLIS, *Die Barbaren* cit., 69. This scholar observes that the *Codex Theodosianus* employs the earlier designation *magister equitum*, a title functionally equivalent to that of *magister militum*, a title common during the time of Justinian. On the career of Theodosius, see M. COLOMBO, *La carriera militare di Teodosio il Vecchio*, in *Historia* 66 (2017) 228-256.

an¹⁵ and father of the future emperor Theodosius I – succeeded Iovinus in this office at the end of 369 or the beginning of 370 (cf. Amm. 28.3.9)¹⁶.

Krüger prudently dates C. 4.41.1 to the period between 370 and 375; subsequent scholarship remains divided, advancing hypotheses that range from 365 to 375¹⁷. Indeed, the *difficultates insolitae ... et saepe insuperabiles* encountered in dating the constitutions of Valentinian I and Valens were already noted by Theodor Mommsen¹⁸. For CTh. 3.14.1, the year 370 has long been the preferred date, largely due to the correlation established by Godefroy – on the basis of Amm. 28.5.15 – between the provision of the *lex* and the settlement of *gentiles Alemanni* along the frontier of the Gauls and Italy. This settlement was carried out, *iussu principis*, by Theodosius, who in 370 was conducting military campaigns against the Alamanni¹⁹. These circumstances may have inspired provisions aimed at preventing any mingling between *Romanitas* and *barbaries*, and may also account for C. 4.41.1, whose clear objective is to hinder even commercial interactions in regions of the Empire marked by a significant presence of *gentiles*. Nonetheless, the matter appears more knotty.

Mariagrazia Bianchini underscores that Alamannic pressure extended well beyond 370, with the principal clash occurring in 372 and the shift of military operations to the Danubian front taking place only in 374, as confirmed by recent studies on Ammianus' not always accurate account of

¹⁵ Amm. 27.8.3: *officiis Martiis felicissime cognitus*; 27.8.6: *dux efficacissimus*; 28.3.1: *dux nomini incluti*; 28.6.26: *ductor exercituum ille magnificus*; 28.3.6: *militari scientia ... superabat praesentes*; 29.5.4 *cuius virtutes (ut impetrabilis) ea tempestate prae ceteris enitebant*; see R. SEAGER, *Ammianus, Theodosius and Sallust's 'Jugurtha'*, in *Histos* 1 (1997) 1-12; K. ROSEN, *Ammiano Marcellino, Teodosio padre e l'insurrezione di Firmo (372-74 d. C.): un esempio politico nell'Africa settentrionale*, in *Annali della Facoltà di Lettere e Filosofia dell'Università di Siena* 29 (2008) 36-37.

¹⁶ See W. ENNSLIN, *Flavius Theodosius* 9, in *RE* II, V.2 (Stuttgart 1934) cc. 1937-1945; *PLRE* I, *Theodosius* 3, 902-904; M. BIANCHINI, *Ancora cit.*, 226 (= in *EAD.*, *Temi cit.*, 390); I. HUGHES, *Imperial Brothers. Valentinian, Valens and the Disaster at Adrianople*, *Barnsley* 2013, 56-61.

¹⁷ For an overview of earlier opinions, see R. SORACI, *Ricerche cit.*, 73-81.

¹⁸ TH. MOMMSEN, *'Prolegomena in Theodosianum'*, *Berolini* 1905, CCXLI. See also M. AMELOTI, *Review of F. PERGAMI, La legislazione di Valentiniano e Valente (364-375)*, in *Iura* 44 (1993) 308 (= in *Id.*, *Altri scritti giuridici* [ed. M.P. PAVESE], *Torino* 2014, 298).

¹⁹ See R. SORACI, *Ricerche cit.*, 78-81.

Valentinian's military campaigns²⁰. Bianchini dates CTh. 3.14.1 to May 28, 373, when the emperor, after the failure of previous attempts at containment, is thought to have sought to utilize fresh barbarian forces for the cultivation of land in the Po Valley and for the inclusion of gentiles in the army, while maintaining a social and legal separation between them and the Romans²¹. In that year, Theodosius moved to Africa to lead the expedition aimed at suppressing the rebellion of the local Moorish chieftain Firmus, son of Nubel (Amm. 28.6; 29.5)²². The choice of a recipient who would not have been able to implement Valentinian's provisions can be explained by the imperial intention to acknowledge the successes of Theodosius' *magisterium* and perhaps by the fact that he had inspired the measure²³.

Valerio Marotta²⁴ places the constitution in 373, suggesting, however, an *occasio legis* within an African *milieu*, drawing on the meticulous

²⁰ See M. COLOMBO, *Due note storiche e letterarie sui libri XXVIII-XXX di Ammiano Marcellino*, in *Philologus* 150 (2006) 149-174.

²¹ See M. BIANCHINI, *Ancora cit.*, 231, 233 (= in EAD., *Temi cit.*, 395, 397). Along similar lines, see also: M. NAVARRA, *Riferimenti normativi e prospettive giuspubblicistiche nelle 'Res gestae' di Ammiano Marcellino*, Milano 1994, 243; A. CHAUVOT, *Opinions cit.*, 142-143; D. LHUIILLER-MARTINETTI, *L'individu dans la famille d'après l'oeuvre d'Ambroise de Milan*, Rennes 2008, 114-122; S. PIETRINI, *Cass., Var. 5.14.6 cit.*, 442; A. MARCONE, *Il matrimonio cit.*, 503-504.

²² See A. WINKLER, *Précis d'histoire des campagnes d'Afrique de Théodose contre Firmus (372-375)*, in *Revue Tunisienne* 15 (1908) 137-145; E.A. THOMPSON, *The Historical Work of Ammianus Marcellinus*, Cambridge 1947, 129; P. ROMANELLI, *Storia delle province romane dell'Africa*, Roma 1959, 578-594; H.-J. DIESNER, *Der Untergang der römischen Herrschaft in Nordafrika*, Weimar 1964, 95-97; N.S. YANGUAS, *La resistencia de las poblaciones indígenas norteafricanas a la romanización en la segunda mitad del siglo IV d.C.*, in *Hispania* 39 (1979) 257-300; C. GEBBIA, *Sulle rivolte di Firmo e Gildone*, in *L'Africa Romana* 5 (1987) 117-129; A. BLACKURST, *The House of Nubel: Rebels or Players?*, in A.H. MERRILLS (ed.), *Vandals, Romans and Berbers. New Perspectives on Late Antiquity North Africa*, Aldershot 2004, 59-75; J.W. DRIJVERS, *Ammianus on the Revolt of Firmus*, in J. DEN BOEFT, J.W. DRIJVERS, D. DEN HENGST (eds.), *Ammianus after Julian. The Reign of Valentinian and Valens in Books 26-31 of the 'Res Gestae'*, Leiden-Boston, MA 2007, 129-157; J. MATTHEWS, *The Roman Empire of Ammianus*², Baltimore, MD 2007, 365-376; J.-P. LAPORTE, *Nubel, Sammac, Firmus et les autres. Une famille Berbère dans l'Empire romain*, in *L'Africa Romana* 19 (2012) 979-1002. For the various tribes that supported Firmus, see C. HAMDOUNE, *Le paysage du pouvoir dans les tribus de Césarienne d'après Ammien Marcellin*, in *L'Africa Romana* 19 (2012) 957-962.

²³ See M. BIANCHINI, *Ancora cit.*, 233 (= in EAD., *Temi cit.*, 397).

²⁴ See V. MAROTTA, *Il problema dei 'laeti' cit.*, 136 nt. 63.

research of Alexander Demandt²⁵, who dated Theodosius *Senior*'s deployment to Africa to April 373²⁶. Demandt emphasized that in no other region of the Empire, due to the total permeability and fluidity of the North African borders²⁷, had such a mixture between citizens and foreigners occurred. These would be the circumstances of that “politische Gefahr” which Carl Patsch had already identified as characterizing these laws of Valentinian²⁸. CTh. 3.14.1 could also be motivated by a form of prejudice against unions between the *Romani* and the *Mauricae gentes*, as evidenced by a passage from Claudian, from a milieu and period close to that of the *lex: exterret cunabula discolor infans* (*Gild.* 193)²⁹. Demandt focused particularly on an element not without cogency: CTh. 3.14.1 and C. 4.41.1 regulate matters of private law (marriages and trade) and are addressed to a *magister equitum*. Only in Africa, under tense circumstances and within the framework of delicate relations between the provincial administration and the local *barbaricum*, would Theodosius, in his role as *magister*, have had

²⁵ See A. DEMANDT, *Die afrikanischen Unruhen unter Valentinian I*, in H.J. DIESNER, H. BARTH, H.D. ZIMMERMAN (eds.), *Afrika und Rom in der Antike*, Halle 1968, 277-292 (spec. 288); ID., *Die Feldzüge* cit., 81-113 (spec. 108, 111); ID., *Der spätrömische Militäradel*, in *Chiron* 10 (1980) 615-617; ID., *The Osmosis* cit., 75-85. See already M.J. MAURICE, *Étude sur l'organisation de l'Afrique indigène sous la domination romaine*, in *Mémoires de la Société nationale des Antiquaires de France* 55 (1894) 37 nt. 2: “Cette constitution a dû s'appliquer à l'Afrique, où Théodose avait vaincu Firmus”.

²⁶ See also M.V. ESCRIBANO PAÑO, *Matrimonios entre 'provinciales' y 'gentiles': 'quod in ius suspectum vel noxium detegitur, capitaliter expietur'* (CTh. 3,14,1, 370? 373?), in *Atti dell'Accademia Romanistica Costantiniana* 20 (2014) 389-392.

²⁷ See *amplius* Y. MODÉLAN, *Les Maures et l'Afrique Romaine (IV^e-VII^e siècle)*, Rome 2003, 123-310.

²⁸ See C. PATSCH, *Die quadisch-jazygische Kriegsgemeinschaft im Jahre 374/375*, Wien-Leipzig 1929, 18.

²⁹ See A. DEMANDT, *Die Feldzüge* cit., 108 nt. 1. On this topic see F. ZUCCOTTI, *Il razzismo nella tarda antichità e le sue ragioni scientifiche*, in *Atti dell'Accademia Romanistica Costantiniana* 20 (2015) 59-98; C. CORBO, *Migranti di oggi e migranti di ieri. Per una prima lettura di alcune costituzioni imperiali*, in *Koinonia* 39 (2015) 63 nt. 51; A. LOVATO, *Prima e dopo Adrianopoli. Forme e modalità d'insediamento dei barbari nei territori imperiali*, in *Atti dell'Accademia Romanistica Costantiniana* 21 (2017) 267. For an updated bibliography on the topic of racism in Late Antiquity, with particular reference to the relationship between Romans and barbarians, see, see G. SANZ CASASNOVAS, *'Rabies indomita'. Representación del bárbaro y violencia contra los no romanos en las 'Res gestae' de Amiano Marcelino*, Zaragoza 2022, 13-28.

the authority to intervene in non-military, but civil matters, which elsewhere fell under the jurisdiction of the *praefectus praetorio* or the *vicarius*³⁰.

In this regard, Giovanni A. Cecconi had also placed himself, dating the law to 373 and situating it within an African context. Regarding the exercise of civil functions by the magister, which was irregular until the end of the 4th century, he wrote that «he had to act similarly, but with superior powers, to those provincial governors who, in frontier zones exposed to the risk of invasions and usurpations, or in regions plagued by brigandage, enjoyed, in late antiquity, temporary accumulations of authority»³¹. In recent years, this hypothesis has gained considerable support³². To further substantiate this, recent research has highlighted how, during the years in question, the *provincia Tripolitana* was deeply militarized, with military commanders accumulating both military and civil powers³³, in an osmosis of competences that can also be conjectured with regard to Theodosius.

Indeed, the barbarian incursions into North African territories, facilitated by the permeability of a poorly defended *limes*³⁴, intensified in the

³⁰ See also S. RUGULLIS, *Die Barbaren* cit., 69.

³¹ G.A. CECCONI, *I grandi 'magisteria' tardoantichi. Ruolo istituzionale, attività e rapporti con le strutture amministrative territoriali (Italia, IV-VI secolo)*, in G. FIRPO, G. ZECCHINI (eds.), *'Magister'. Aspetti culturali e istituzionali*, Alessandria 1999, 81 (*my translation*). See also H. CASTRITIUS, *'Barbari' – 'antiqui barbari'. Zur Besiedlungsgeschichte Südostnorikums und Südpannoniens in der Spätantike (Ende des 4. bis Mitte des 6. Jahrhunderts n. Chr.)*, in *Frühmittelalterliche Studien* 29 (1995) 84.

³² See A. PABST (ed.), *Quintus Aurelius Symmachus, Reden*, Darmstadt 1989, 347-348; S. RUGULLIS, *Die Barbaren* cit., 69 (who dates the constitutions at 371); H.S. SIVAN, *Why not Marry a Barbarian?* cit., 141-145; J. EVANS GRUBBS, *Women and the Law in the Roman Empire. A Sourcebook on Marriage, Divorce and Widowhood*, London 2002, 184; N. LENSKI, *Failure of Empire. Valens and the Roman State in the Fourth Century A.D.*, Berkeley, CA 2002, 136; S. SCHMIDT-HOFNER, *Die Regesten* cit., 512, 573-574; M.V. ESCRIBANO PAÑO, *Matrimonios* cit., 388-393; A. LOVATO, *Prima e dopo Adrianopoli* cit., 266-267; *contra*: L. DE SALVO, *A proposito di commerci alle frontiere nel tardo impero romano*, in *Atti dell'Accademia Romanistica Costantiniana* 21 (2016) 297-298; A. CUSMÀ PICCIONE, *'Non licet'* cit., 429 nt. 1050.

³³ See I. TANTILLO, *'Comites et praesides'. Modalità del cumulo dei poteri nel IV secolo d.C.*, in A. BÉRENGER, F. LACHAUD (eds.), *Hiérarchie des pouvoirs, délégation de pouvoir et responsabilité des administrateurs dans l'Antiquité et au Moyen Âge. Actes du colloque de Metz, 16-18 juin 2011*, Metz 2012, 90-91; ID., *'Praesides', 'Comites', 'Duces'. La Tripolitania e l'amministrazione dell'Africa tardo romana*, in *Antiquité Tardive* 22 (2014) 190-191.

³⁴ See D. LENGREND, *Le 'limes' interne de Maurétanie Césarienne au IV^e siècle et la révolte de Firmus*, in A. ROUSSELLE (ed.), *Frontières terrestres, Frontières célestes dans l'Anti-*

early years of the reign of Valentinian I³⁵. As Hagith S. Sivan aptly summarizes: «Against the physical context of *Mauretania Caesariensis*, the events of the early 370s highlight a tissue of complex topography and demography ranging from a few urban centers [...], large and often fortified estates [...], fortifications, to coastal plains and inaccessible mountains. [...] Only as a last resort does Firmus turn to the impenetrable mountains that highlight the real frontiers of Roman Africa. These are not the *limes* that distinguished between the Empire and its neighbors but rather the internal boundaries that delineated Roman control over Roman territory. Across these 'frontiers' there existed a degree of human interaction at which the sources merely hint»³⁶. These incursions included severe violence from the *Mauricae gentes* (primarily the Austurians³⁷), who, in retaliation for the killing of the rebel Austurian Stachao (Amm. 28.6.3)³⁸, ravaged Leptis Magna, causing massacres of Romans, fires, and widespread destruction (Oros. 7.33.5). In this context, Firmus seized territories in *Mauretania Caesariensis* and *Sitifensis* (Amm. 29.5.3, 9-14; Zos. 4.16)³⁹. With a rather limited following, the rebel made many areas insecure through targeted guerrilla tactics⁴⁰ supported by local tribes, such as the Musones (Amm. 29.5.27), by groups (Numidians and Berbers) of Donatists, who on 20

quit , Perpignan-Paris 1995, 143-161; M. CASELLA, *Complessit  antropologica della nozione di confine*, in *L'Africa romana* 15 (2004) 211-238.

³⁵ See J. BARADEZ, '*Fossatum Africae*'. *Vue-a rienne de l'organisation romaine dans le Sud-Alg rien*, Paris 1949, 358; E.W.B. FENTRESS, *Numidia and the Roman Army. Social, Military and Economic Aspects of the Frontier Zone*, Oxford 1979, 121; C.R. WHITTAKER, *Frontiers of the Roman Empire*, Baltimore, MD 1994, 148-151.

³⁶ H.S. SIVAN, *Why not Marry a Barbarian?* cit., 141-142.

³⁷ See F. FELICI, M. MUNZI, I. TANTILLO, *Austuriani e Laguatan in Tripolitania*, in *L'Africa romana* 16 (2006) 591-688; Y. MOD RAN, *Des Maures aux Berb res: identit  et ethnit  en Afrique du nord dans l'Antiquit  tardive*, in V. GAZEAU, P. BAUDUIN, Y. MOD RAN (eds.), *Identit  et ethnit . Concepts, d bats historiographiques, exemples (II^e – XII^e si cle)*, Caen 2008, 91-134; R. REBUFFAT, *Les peuples du Nord du Maroc*, in C. BRIAND-PONSART, Y. MOD RAN (eds.), *Provinces et identit s provinciales dans l'Afrique romaine*, Caen 2011, 63-86.

³⁸ See Y. MOD RAN, *Les Maures* cit., 279-288.

³⁹ See S. RUGULLIS, *Die Barbaren* cit., 71.

⁴⁰ Amm. 29.5.7: [*Theodosius*] *sollicitudini diducebatur ancipiti, multa cum animo versans, qua via quibusve commentis per exustas caloribus terras pruinis assuetum duceret militem, vel hostem caperet discursatorem et repentinum, insidiisque potius clandestinis, quam proeliorum stabilitate confisum*; see K. ROSEN, *Ammiano* cit., 39.

February 373 were forbidden to rebaptize (CTh. 16.6.1)⁴¹, by peasants, urban proletarians, and even Roman soldiers. Ammianus recounts the cases of a tribune who placed a diadem on Firmus' head and another who refused to fight against the insurgents (25.9.20, 24), and he reports entire Roman units that joined the Moorish prince (29.5.19-20)⁴².

The gravity of the situation is evident in the measures⁴³ that Valentinian I addressed to the *proconsul Africae*, Julian (CTh. 8.7.12)⁴⁴, and to the *comes Africae*, Romanus (CTh. 8.7.13), prior to Theodosius' arrival, instructing them to apply these provisions in *Byzacena* and *Tripolitana*. The two *leges geminatae* – with almost identical content and likely sent on the same day in 372 – decree that no soldier is to be assigned to civilian duties and, at the same time, that any civilian official *deputatus* in military detachments must be enlisted in the army if physically fit, with the exception of the *pastus primipili*, in order to ensure regular supplies for the army⁴⁵.

The first act of Theodosius' mission was the deposition of the *comes Romanus*⁴⁶, whose ineptitude had exacerbated the provincials. The *magister* then reinforced the troops with recruits from the *Mauri Sitifenses*

⁴¹ See A. DEMANDT, *Die Feldzüge* cit., 104; F. DECRET, M. FANTAR, *L'Afrique du Nord dans l'Antiquité. Histoire et civilisation*, Paris 1981, 336-337; P.G. CARON, 'Ne sanctum baptismata iteretur' (C.Th.XVI.6; C.Iust.I.6), in *Atti dell'Accademia Romanistica Costantiniana* 6 (1986) 174; S. RUGULLIS, *Die Barbaren* cit., 71 nt. 16. See also W.H.C. FREND, *The Donatist Church. A Movement of Protest in North Africa*, Oxford 1952, 193-207; P. BROWN, *Religious Dissent in the Later Roman Empire. The Case of North Africa*, in *History* 46 (1961) 83-101 (= in ID., *Religion and Society in the Age of Saint Augustine*, London 1972, 237-259); E.L. GRASMÜCK, 'Coercitio'. *Staat und Kirche im Donatistenstreit*, Bonn 1964, 139-167; E. TENGSTRÖM, *Donatisten und Katholiken. Sozialen, wirtschaftliche und politische Aspekte einer nordafrikanischen Kirchenspaltung*, Gothenburg 1964, 95-99; J.-L. MAIER, *Le dossier du donatisme. II. De Julien l'Apostat à Saint Jean Damascène (361-750)*, Paris 1989, 44-46; V.M. MINALE, *I Valentiniani contro i Manichei: su CTh. 16.5.3 (352) e CTh. 16.7.3 (383)*, in *Studia et Documenta Historiae et Iuris* 82 (2016) 509-510.

⁴² See S. RUGULLIS, *Die Barbaren* cit., 72 nt. 25; J.-P. LAPORTE, *Les armées romaines et la révolte de Firmus en Maurétanie césarienne*, in Y. LE BOHEC, C. WOLFF (eds.), *L'armée romaine de Dioclétien à Valentinien*, Paris 2004, 279-298.

⁴³ See A. BERNIER, *Fenomeni di mobilità tra esercito, curie e burocrazia nella legislazione di Valentiniano*, in *Cultura Giuridica e Diritto Vivente* 7 (2020) 9.

⁴⁴ See A. DEMANDT, *Die Feldzüge* cit., 100 nt. 2.

⁴⁵ See A. GIARDINA, *Aspetti della burocrazia nel basso impero*, Roma 1977, 151-155.

⁴⁶ See PLRE I, *Romanus* 3, 768; See A. COSKUN, *Der 'comes Romanus', der Heermeister Theodosius und die drei letzten Akte der 'Lepcis-Magna Affairs'*, in *Antiquité Tardive* 12 (2004) 293-308.

(Amm. 29.5.9), to whom privileges and immunities were likely granted on this occasion (CTh. 7.1.6; 12.1.64).

To further support the hypothesis of identifying North Africa, particularly *Tripolitana*, as the *milieu* for the *lex* in its two fragments, another piece of evidence from Ammianus can be highlighted. Igmazen⁴⁷, king of the Isafenses, made an agreement with Theodosius, breaking his alliance with Firmus and capturing and imprisoning the latter (Amm. 29.5.53)⁴⁸, precisely because he feared for his survival once commercial activities with the barbarians were banned (29.5.51: *nihil commercii vetitis ad vitam spei sibi restare*)⁴⁹. Thus, in presenting a pivotal moment in the repression of Firmus' rebellion, Ammianus significantly alludes to a prohibition on trade with the barbarians. This is the primary subject of the provision directed to the *magister* in C. 4.41.1. Regarding the date, it can be situated in 373, during the fourth consulate of Valens and Valentinian I, when Firmus' revolt reached its peak⁵⁰.

Other elements regarding the content of C. 4.41.1 will further support this hypothesis.

⁴⁷ See PLRE I, Igmazen, 456.

⁴⁸ See K. ROSEN, *Ammiano* cit., 43.

⁴⁹ The hypothesis, albeit presented with some doubt, is put forward by J. DEN BOEFT, J.W. DRIJVERS, D. DEN HENGST, H.C. TEITLER, *Philological and Historical Commentary on Ammianus Marcellinus XXIX*, Leiden-Boston, MA 2013, 214-215; S. SCHMIDT-HOFNER, *Die Regesten* cit., 574, is more skeptical.

⁵⁰ See B.H. WARMINGTON, *The North African Provinces from Diocletian to the Vandal Conquest*, Cambridge 1954, 10-11; CH.-A. JULIEN, *Histoire de l'Afrique du Nord*², Paris 1956, 219-220; H.-J. DIESNER, *Der Untergang* cit., 95-97; A. DEMANDT, *Die afrikanischen Unruben* cit., 284; ID., *Die Feldzüge* cit., 103-111; S. RUGULLIS, *Die Barbaren* cit., 71; M.V. ESCRIBANO PAÑO, *Matrimonios* cit., 392; A. MERRILLS, *The Mauri in Late Antiquity*, in R.B. HITCHNER (ed.), *A Companion to North Africa in Antiquity*, Hoboken, NJ 2022, 320.

3. The Goods in Question and the *Occasio Legis*

The types of goods subject to the trade ban with the barbarians – oil⁵¹, wine⁵², and *liquamen*⁵³ – reflect the distinctive productive profile of North Africa, as confirmed by archaeological evidence, especially from Clazomeneae and Leptis Magna⁵⁴. The spread of trade in these products is also evidenced by the discovery – also in the Italic and Iberian peninsulas – of numerous *amphorae* used for transporting such goods from these regions⁵⁵. These were valuable goods⁵⁶ typical of sedentary agriculture, which at that time were not practiced by the nomadic Berber tribes⁵⁷.

⁵¹ See D.J. MATTINGLY, *Olive oil production in Roman Tripolitania*, in D.J. BUCK, D.J. MATTINGLY (eds.), *Town and Country in Roman Tripolitania*, Oxford 1985, 27-46; ID., *Oil for Export? A Comparison of Libyan, Spanish and Tunisian Olive Oil Production in the Roman Empire*, in *Journal of Roman Archaeology* 1 (1988) 33-56.

⁵² See R. LEQUEMENT, *Le vin africain à l'époque impériale*, in *Antiquités africaines* 16 (1980) 185-193; D.J. MATTINGLY, *Tripolitania*, London 1995, 223-232, 251-253; J.-P. BRUN, *Les pressoirs à vin d'Afrique et de Maurétanie à l'époque romaine*, in *Africa* 1 (2003) 7-30.

⁵³ On *liquamen* and its derivative, the γάρων/*garum*, see R.I. CURTIS, '*Garum*' and '*Salsamenta*'. *Production and Commerce in 'Materia Medica'*, Leiden 1991; S. GRAINGER, '*Garum*', '*Liquamen*' and '*Muria*': A New Approach to the Problem of Definition, in E. BOTTE, V. LEITCH (eds.), *Fish & Ships. Production et Commerce des 'salsamenta' durant l'Antiquité*, Arles 2014, 37-45; EAD., '*Garum*' and '*Liquamen*', *What's in a Name?*, in *Journal of Maritime Archaeology* 13 (2018) 247-261. It is noteworthy that Pliny the Elder (N.H. 31.94) refers to the production of *garum* at Leptis Magna.

⁵⁴ See K. SCHÖRLE, V. LEITCH, *Report on the Preliminary Season of the Lepcis Magna Coastal Survey*, in *Libyan Studies* 43 (2012) 149-154; M.A.M. AHMED, *Rural Settlement and Economic Activity. Olive Oil, Wine and 'Amphorae' Production on the Tarhuna Plateau during the Roman Period*, London 2018.

⁵⁵ See J.-P. BRUN, *Archéologie du vin et de l'huile dans l'Empire romain*, Paris 2004.

⁵⁶ Referring to Eusebius, *Vita Severini* 28.2, which describes the miraculous increase of oil reserves, a symbol of prosperity, following Severinus' intervention in Noricum, J. HAAS, *Die Umweltkrise des 3. Jahrhunderts n. Chr. im Nordwesten des Imperium Romanum*. *Interdisziplinäre Studien zu einem Aspekt der allgemeinen Reichskrise im Bereich der beiden Germaniae sowie der 'Belgica' und der 'Raetia'*, Stuttgart 2006, 126, connects C. 4.41.1 with the context of the Danubian *limes*. However, the evidence appears insufficient when considering the factors that suggest a North African *milieu*.

⁵⁷ See A. LEWIN, *La difesa dal deserto: osservazioni preliminari per uno studio comparato delle frontiere*, in *L'Africa Romana* 6 (1988) 203.

Ammianus (28.6.13) offers a detailed account of how, amid the unrest of Firmus' revolt, the Austuriani savagely devastated – *ut rapaces alites irritamento sanguinis atrocius efferratae*⁵⁸ – trees and vines during their pillaging of the Tripolitanian countryside, particularly around Leptis Magna. These barbarian incursions struck at the core of wine and oil production⁵⁹ – the very first two goods listed in C. 4.41.1. The events proved so grave and destructive that the historian, at the opening of his narrative (28.6.1), writes with stark poignancy: *Iustitia quoque ipsa deflevit*.

It appears plausible that Theodosius implemented measures aimed at protecting – and, above all, restoring – agricultural production that had suffered severe depletion⁶⁰. This context accounts for the need for authoritative regulation extending also to the trade of these goods. It could likewise signal a renewed effectiveness of imperial authority, particularly in the aftermath of Romanus' misconduct (Amm. 27.9.1-2; 28.6.5-6). Theodosius possessed both the capacity for intervention and the firmness (Amm. 29.5.43) required to enforce measures marked by considerable severity.

The revolt was suppressed, and in 375 Firmus, after being captured, died by suicide. Theodosius triumphed over the rebels and was consequently praised by Pacatus Drepanius in his Panegyric for Theodosius I (*Pan. Lat.* 2.5.2)⁶¹, while an epigraphic source celebrated him as Μαυριτανίης μέγα δι-|μα, Σαξονείης λυτῇ-|ρα καὶ γένους Κελτῶν (AE 1931, 53, ll. 11-13)⁶². Gibbon remarks with elegantly balanced antithesis: «Africa

⁵⁸ See G. SANZ CASASNOVAS, 'Rabies indomita' cit., 204-205.

⁵⁹ See A. DEMANDT, *Die afrikanischen Unruhen* cit., 277-282; ID., *Die tripolitanischen Wirren unter Valentinian I*, in *Byzantion* 38 (1968) 333-363.

⁶⁰ S. RUGULLIS, *Die Barbaren* cit., 70 and ntt. 10-12, observes that rows of vines and olive groves, once burned, require years before newly planted crops can bear fruit. O.D. CORDOVANA, *Diritti territoriali, migrazioni e conflitti sociali in Africa tardoantica*, in L. MONTECCHIO (ed.), *Tensioni sociali nella Tarda Antichità nelle province occidentali dell'Impero Romano*, Perugia 2015, 117-118, does not cite Rugullis, but points out that Ammianus does not, strictly speaking, report the uprooting or burning of the root systems and trees themselves.

⁶¹ See M. COLOMBO, *La carriera* cit., 234.

⁶² See R. EGGER, *Der erste Theodosius*, in *Byzantion* 5 (1929) 9-32 (= in ID., *Römische Antike und frühes Christentum. Gesammelte Schriften* I, Klagenfurt 1962, 126-143); G. DE SANCTIS, *Un'iscrizione onoraria del 'magister equitum' Teodosio*, in *Rivista di Filologia e di Istruzione Classica* 58 (1930) 487-489 (= in ID., *Scritti minori*, IV, 1920-1930 [eds. A. FERRARINO, S. ACCAME] Napoli 1976, 493-495); D. FEISSEL, *Recueil des inscriptions chrétiennes de Macédoine du III^e au VI^e siècle*, Athènes-Paris 1983, 228-230 (n. 273).

had been lost by the vices of Romanus; it was restored by the virtues of Theodosius»⁶³.

4. The Semantics of *Barbaricum* in C. 4.41.1.

How is the *barbaricum* to be identified in the *lex* of Valentinian I? The earliest occurrence of the term in imperial legislation appears in C 6.1.3, a constitution issued by Constantine⁶⁴, which sets forth provisions concerning *fugitivi servi... ad barbaricum transeuntes*. In this context, the substantivized adjective denotes peoples and territories situated outside and standing apart from the Roman world⁶⁵. This semantic value becomes consolidated over the course of the fourth century, gradually acquiring – also in the language of the imperial constitutions – an increasingly negative axiological connotation⁶⁶.

⁶³ E. GIBBON, *The History of the Decline and Fall of the Roman Empire*, London 1788, IV, ch. 25 § 3. On the obscure circumstances surrounding Theodosius' death in Carthage in 376, see A. DEMANDT, *Der Tod des älteren Theodosius*, in *Historia* 18 (1969) 598-626.

⁶⁴ About C. 6.1.3, see J. GAUDEMET, *Constantin, restaurateur de l'ordre*, in *Studi in onore di Siro Solazzi*, Napoli 1948, 671; B. BIONDI, *Il diritto romano cristiano*, II. *La giustizia – Le persone*, Milano 1952, 400-401; A. PUGLISI, *Servi, coloni, veterani e la terra in alcuni testi di Costantino*, in *Labeo* 23 (1977) 317; F. BONIN, *Costantino, i barbari e la riforma della prefettura del pretorio*, in *Cultura Giuridica e Diritto Vivente* 3 (2016) 30.

⁶⁵ See M.P. BACCARI, *Costantino imperatore rivoluzionario? A proposito di 'barbaricus' e 'barbarus' nelle costituzioni di Costantino*, in F. SINI, P.P. ONIDA (eds.), *Poteri religiosi e istituzioni. Il culto di San Costantino imperatore tra oriente e occidente*, Torino 2003, 245-249. An analogous meaning is attached to the term *barbarus* in other constitutions promulgated under Constantine (see C. 9.14.1 [319 AD]; 12.35.9 [323 AD]; 12.42.1 [323 AD]). For a discussion of the term's semantic scope, see M. KULIKOWSKI, *'Barbaria', 'Barbaricum' and the Location of the 'Barbarus'*, in J. LÓPEZ QUIROGA, M. KAZANSKI, V. IVANIŠEVIĆ (eds.), *Entangled Identities and Otherness in Late Antique and Early Medieval Europe*, Oxford 2017, 26-29. For the use of the term in the work of Ammianus Marcellinus, see G. SANZ CASASNOVAS, *'Rabies indomita'* cit., 57-145 (with an extensive bibliography). The conclusion of the survey is clear: "Ammiano costruì una categoria del bárbaro come ser irracional, violento y perjudicial para Roma, señalando hacia marcadores culturales y haciendo uso de todo el arsenal retórico a su alcance". For a list of late antique legal sources in which *barbarus* and its derivatives occur, see G. VISMARA, *Limitazioni al commercio internazionale nell'Impero romano e nella comunità cristiana medioevale*, in *Scritti in onore di Contardo Ferrini pubblicati in occasione della sua beatificazione*, I, Milano 1947, 445 nt. 4.

⁶⁶ See A. LOVATO, *Osservazioni minime sulla composizione del titolo 'De infirmendis his, quae sub tyrannis aut barbaris gesta sunt' del Teodosiano (15,14)*, in *Atti dell'Accademia*

The lexeme also appears in another constitution that is closely related to C. 4.41.1, both diachronically and in terms of content: C. 4.63.2⁶⁷, likewise issued by Valentinian I, probably in 374, and addressed to Tatianus, *comes sacrarum largitionum*. This *lex* prohibits the trade of gold *ad barbaricum* by private individuals – most likely those responsible for mining operations – while simultaneously urging that as much gold as possible be withheld from the barbarians. The use of the term in C. 4.41.1 thus appears consistent with the linguistic conventions of Valentinian's chancery.

With remarkable consistency, the revolt of Firmus is characterized as a *rebellio barbarica* by Symmachus (*Ep.* 1.64), who served as *proconsul Africae* precisely in 373⁶⁸. Ammianus, in reporting the Austorian incursions at the beginning of Valentinian's reign (between 363 and 367), refers to them as *barbarica rabies* (27.9.1)⁶⁹. The devastation of trees and vineyards in the outskirts of Leptis Magna is attributed by Ammianus (28.6.5) to the *barbaricus tumor*⁷⁰ of the Austorians, who are described – the only ethnonym in Ammianus' *Res Gestae* to receive such a direct qualification⁷¹ – as *barbari* (28.6.2,14; see also 28.6.2,10). Similarly, the *Mauricae gentes*

Romanistica Costantiniana 20 (2014) 353.

⁶⁷ See A. PIGANIOL, *Le problème de l'or au 4^e siècle*, in *Annales d'Histoire sociale* 1 (1945) 47-53; P. VEYNE, *Rome devant le prétendue fuite de l'or: mercantilisme ou politique disciplinaire?*, in *Annales (ESC)* 34 (1979) 211-244; F. PERGAMI, *La legislazione* cit., 630; L. DE SALVO, *Una frontiera invalicabile: 'Merces illicitae' nel tardo impero romano*, in *L'Africa romana* 15 (2004) 298-299. C. SPINOSI, *Dispositions juridiques relatives à la monnaie dans la législation et la pratique (principalement égyptiennes) des III^e et IV^e siècles après J.C.*, in *Revue d'histoire économique et sociale* 39 (1961) 52; A. MARCONE, *Il matrimonio*, 507-508, and L. DE SALVO, *A proposito di commerci* cit., 297 nt. 48, note the connection with C. 4.41.1.

⁶⁸ See PLRE I, *Symmachus* 4, 866. See also J.F. MATTHEWS, *Symmachus and the 'Magister Militum' Theodosius*, in *Historia* 20 (1971) 122-128; S. RODA, *Commento storico al libro IX dell'Epistolario di Q. Aurelio Simmaco*, Pisa 1981, 256-259; D. VERA, *Commento storico alle 'Relationes' di Q. Aurelius Symmachus*, Pisa 1981, 442-448; T.D. BARNES, *Proconsuls of Africa, 337-392*, in *Phoenix* 39 (1985) 144, 153; G.A. CECCONI, *Commento storico al libro II dell'Epistolario di Q. Aurelio Simmaco*, Pisa 2002, 35; J.W. DRIJVERS, *Ammianus* cit., 141; A. CAMERON, *The Last Pagans of Rome*, Oxford 2011, 262.

⁶⁹ G. SANZ CASASNOVAS, '*Rabies indomita*' cit., 73, notes: "Comparecen en el pasaje términos propios del campo semántico de la barbarie (*audacia, rabies*) y la violencia destructiva típicamente asociada al bárbaro (*caedes, rapina*)".

⁷⁰ For the use of this lexeme in the work of Ammianus, R. SEAGER, *The Rhetoric of Excess*, in ID., *Ammianus Marcellinus. Seven Studies in his Language and Thought*, Columbia, MO 1986, 52-53.

vel nationes allied with Firmus are designated as *barbari*⁷², while Firmus himself is referred to as a *rex barbarus*⁷³ by Augustine (*Contra epistulam Parm.* 1.10), who denounces his acts of violence and cruelty⁷⁴.

5. *Gustus*: What's in a Name?

The meaning of the purpose phrase *neustus quidem causa* in C. 4.41.1 warrants clarification, particularly in light of a potential misunderstanding that, in my view, may arise from the reading of the lemma '*Gustus*' in the *Thesaurus linguae Latinae* (VI.2, 2369-2370). The *Thesaurus*, in presenting the various senses of the term, classifies the phrase found in C. 4.41.1 under the heading *actio iudicandi edulia per assumptionem (degustatio)*, juxtaposing it – in order to illuminate its semantic meaning – with the use of the noun *gustus* and the purpose phrase *causa degustandi* in D. 18.1.34.5 (Paul. 33 *ad ed.*).

Nevertheless, Paul's jurisprudential fragment refers to an aspect of the *emptio ad gustum*, a contract of *emptio-venditio* accompanied by a *pactum degustationis*, which provides that the buyer is entitled to taste a certain quantity of goods – typically wine – satisfactorily; otherwise, the contract would not have been concluded. This constitutes *degustatio* in the technical sense, falling within the legal framework governing sales *cum reservatione voluntatis* (D. 18.6.16 [Gai. 2 *cott. rer.*]; D. 18.6.1 *pr.*-1 [Ulp. 28 *ad*

⁷¹ The other direct qualification of a group as *barbari* is found with reference to the *Laeti* (cf. Amm. 16.11.4); cf. G. SANZ CASASNOVAS, '*Rabies indomita*' cit., 138-139; on this group see V. MAROTTA, *Il problema dei 'laeti'* cit., 117-157.

⁷² Cf. J. DEN BOEFT, J.W. DRIJVERS, D. DEN HENGST, H.C. TEITLER, *Philological and Historical Commentary on Ammianus Marcellinus* XXIX cit. 169.

⁷³ Ammianus calls Firmus *perduellis* (29.5.46) and *latro* (29.5.52); see T. KOTULA, *Firmus, fils de Nubel, était-il usurpateur ou roi des Maures?*, in *Acta Antiqua Academiae Scientiarum Hungaricae* 18 (1970) 131-146; A. CHASTAGNOL, *Firmus 'latro' ou 'princeps'?*, in A. LADOMIRSKI (ed.), *Études sur l'histoire gréco-romaine* (FS. T. Kotula), Wrocław 1993, 45-50; A. CHAUVOT, *Firmus, fils de Nubel, 'imperator' et 'rex'?*, in F. Colin, O. Huck, S. Vanséveren, *Interpretatio. Traduire l'altérité culturelle dans les civilisations de l'Antiquité*, Paris 2015, 191-212.

⁷⁴ Cf. E. TENGSTRÖM, *Donatisten und katholiken. Soziale, wirtschaftliche und politische Aspekte einer nordafrikanischen Kirchenspaltung*, Göteborg 1964, 80.

Sab.]; D. 18.6.4 *pr.*-1 [Ulp. 28 *ad Sab.*]; D. 33.6.2.1 [Pomp. 6 *ad Sab.*]; D. 33.6.3.1 [Ulp. 23 *ad Sab.*]; D. 33.6.5 [Iul. 15 *dig.*])⁷⁵.

Perhaps inspired by this juxtaposition, Demougeot translates «ni pour la dégustation»⁷⁶, but such a rendering erroneously leads one to think of *degustatio* in its proper sense. In our case, however, the phrase seems to indicate «not even for a modest quantity», a meaning that appears in other instances cataloged by the *Thesaurus*, but under a different heading: *modica alicuius escae aut potionis quantitas*.

The linguistic usages relevant for the exegesis of C. 4.41.1 are therefore likely to be different. For example, Petronius (*Sat.* 77.7⁷⁷) uses *gustus* to refer to «a sip [of wine]», but the usage of a similar phrase by Rufinus of Aquileia (*Hist.* 2.17.22)⁷⁸ is even clearer. Regarding the *Dominica Passionis*, he notes: *vinum quidem nemo omnino ... ne gustu quidem contingat, sed nec quamlibet carnem*. The focus is on the radical nature of the dietary discipline of the *dies ieiunii*, which does not allow the consumption of even a minimal quantity of wine or meat. The *Thesaurus* appropriately considers the phrase used by Rufinus – in his translation of Eusebius' text⁷⁹ – as similar to the one in C. 4.41.1, but it classifies it under the heading of *degustatio*, which may lead to potentially misleading hermeneutical implications.

⁷⁵ See R. YARON, *Sale of Wine*, D. DAUBE (ed.), *Studies in the Roman Law of Sale. Dedicated to the Memory of Francis de Zulueta*, Oxford 1959, 71-77; N. OLSZAK, 'Emptio ad gustum': la vente à la dégustation, de l'antiquité à l'article 1587 du Code Civil, in *Tijdschrift voor rechtsgeschiedenis* 58 (1990) 361-371; M. PENNITZ, *Die Gefahrtragung beim Weinverkauf im klassischen römischen Recht*, in *Tijdschrift voor rechtsgeschiedenis* 62 (1994) 251-296; P. BĚLOVSKÝ, 'Perficio emptionis' in Case of a Sale of Wine in Roman Law, in *Fundamina*, 25 (2019) 1-11; I. FARGNOLI, *I piaceri cit.*, 129-133; L. DE MADDALENA, *Riserva di gradimento nella compravendita. Diritto romano e tradizione romanistica*, Milano 2024, 87-112.

⁷⁶ É. DEMOUGEOT, *Le 'conubium' cit.*, 1639-1640.

⁷⁷ Petronius, *Satyricon* 77.6-7: *Interim, Stiche, profer vitalia, in quibus volo me efferri. Profer et unguentum et ex illa amphora gustum, ex qua iubeo lavari ossa mea*; on this passage see V. RIMELL, *Petronius and the Anatomy of Fiction*, Cambridge 2009, 186.

⁷⁸ This source is also listed, in my opinion improperly, under the heading *actio iudicandi edulia per assumptionem (degustatio)* in the *ThLL*.

⁷⁹ Eus. *Hist.* 2.17.22 (ed. SCHWARTZ): οίνου μὲν τὸ παράπαν ... οὐδ' ἀπογεύονται, ἀλλ' οὐδὲ τῶν ἐνάμιων τινός.

Therefore, the meaning of the phrase is probably “not even for a taste”, “not even for a modest quantity”. This is a rather hyperbolic⁸⁰ clarification intended to indicate the very broad applicability of the prohibition, which extends even to the *parvitas materiae*, in order to exclude any possible circumvention of the precept⁸¹. This value is confirmed by a syntactic observation: the lexeme *gustus*, both in C. 4.41.1 and in Rufinus’ passage, is framed between the particles *ne* and *quidem*, which fulfill their typical function as focus markers of negation⁸². In C. 4.41.1, this focus takes on a scalar emphasis⁸³, accentuating the totality of the prohibition: the transfer of the listed goods cannot take place, not even for a taste.

Blume’s English rendering in his *Annotated Justinian Code* – «for his own refreshment»⁸⁴ – emphasizes the contrast between personal use and commercial exchange (*usus commerciorum*)⁸⁵, with which the text of C. 4.41.1 concludes. One might, in theory, suppose that the provision was also intended to prohibit even domestic consumption; however, this is a somewhat expansive interpretation. The translation “not even for a small quantity” nonetheless encompasses such uses and remains more faithful to the Latin wording. The interpretation offered by Baldus de Ubaldis is exemplary: *illi qui non possunt portare vinum extra districtum, etiam unam metretam portare non possunt gustus causam, quin incidant in poenam*⁸⁶. This reading accords with the semantic tenor of the normative text.

⁸⁰ Cfr. H. LAUSBERG, *Handbook of Literary Rhetoric. A Foundation for Literary Study* (eds. D.E. ORTON, R.D. ANDERSON), Leiden 1998, § 909.

⁸¹ See M. CALCAGNO, *Un sistema cit.*, 397 nt. 50.

⁸² See H. ROSEN, *Coherence, Sentence Modification and Sentence-part Modification: The contribution of particles*, in P. BALDI, P. CUZZOLIN (eds.), *New Perspectives on Historical Latin Syntax*, 1. *Syntax of the Sentence*, Berlin 2009, 338; L. DANCKAERT, ‘*Quidem*’ as a Marker of Emphatic Polarity, in *Transactions of the Philological Society* 112 (2014) 125-126.

⁸³ For this syntactic feature, see C. GIANOLLO, *Focus-sensitive Negation in Latin*, in *Catalan Journal of Linguistics* 16 (2017) 51-77.

⁸⁴ B.W. FRIER (ed.), *The ‘Codex’ of Justinian. A New Annotated Translation with Parallel Latin and Greek Text. Based on a Translation of J.F.H. Blume*, Cambridge 2016, 993.

⁸⁵ About the word *commercium*, R. DELMAIRE, *Largesses sacrees et ‘res privata’*. *L’‘aerarium’ imperial et son administration du IV^e au IV^e siecle*, Rome 1989, notes: «Le mot *commercium* désigne à fois l’activité de commerce et les places où se font les transactions, spécialement avec les peuples voisins de l’empire: “κομμέρκιον·ἐφ’ ᾧ τις πραγματεύεται, ἢ τοῦ δύνασθαι ἀγοράζειν ἐξουσία” (*Glossae nomicae*, ed. Otto, III, 1753). [...] Ce sens de “place de commerce” est indiqué dans des lois (CJ IV, 41, 1; 42, 2) ».

⁸⁶ B. UBALDI *In IV et V Codicis Libros Commentaria*, Venetiis 1577, f. 115.

By combining *causa gustus* with *usus commerciorum*, the legislator implies – through this sort of merism – any purpose involving the transfer of goods to the *barbaricum*: from marginal contacts to regular commercial relations⁸⁷.

In particular, the prohibition on trading *liquamen* reveals yet another aspect of the comprehensive scope of the constitution. From D. 39.4.11 (Paul. 5 *sent.*) (= PS 5.1a.10), it emerges that the sale of salt (or iron or grain) to *hostes* was forbidden – under threat of capital punishment – already in the early imperial age, and probably as early as the Republican period (Liv. 2.9.6)⁸⁸. One may imagine attempts to circumvent the ban by exporting *liquamen*, which, when dried, could serve as a substitute for salt: such strategies too are forestalled by C. 4.41.1.

6. The *Ratio Legis* of C. 4.41.1.

The identification of Firmus' revolt as the implicit *occasio legis* also helps clarify the *ratio* behind the *lex*. Given the widespread local support for the *rex barbarus*, it may be assumed that the emperor intended to discourage provincials from establishing potentially conspiratorial and seditious ties with barbarian groups. Significantly, the *lex* does not refer to *hostes*, as in republican or early imperial bans on trade, but rather to *barbari* in general: what is at stake is not strictly an offense of wartime smuggling, but a broader restriction on foreign commerce⁸⁹. As Rugullis aptly observes: «Das Gesetz sollte versuchen die “Allianz” zwischen Firmus, Berberstämmen und Teilen der Provinzialen zu sprengen»⁹⁰.

The *ratio legis* appears to be threefold: 1. A specific socio-economic motive: to undermine Firmus decisively by weakening or severing his human and commercial ties with the provincials⁹¹; 2. A military motive: to prevent harm to the army's supply chain, particularly concerning wine and

⁸⁷ See M. KASER, *Vom Begriff des 'commercium'*, in *Studi in onore di Vincenzo Arangio-Ruiz nel XLV del suo insegnamento*, II, Napoli 1953, 132 nt. 6.

⁸⁸ See L. DE SALVO, *Una frontiera invalicabile* cit., 296-297.

⁸⁹ See G. VISMARA, *Limitazioni* cit., 445-450.

⁹⁰ S. RUGULLIS, *Die Barbaren* cit., 72.

⁹¹ See J. ROUGÉ, *Recherches sur l'organisation du commerce maritime en Méditerranée sous l'empire romain*, Paris 1966, 438; É. DEMOUGEOT, *Le 'conubium'* cit., 1640.

oil, of which it was a major consumer⁹²; 3. A general socio-economic motive: to safeguard the sustenance of the Roman population with regard to these essential goods, by maintaining a proper balance in domestic demand⁹³.

Oil and wine may also have served as means of exchange in barter with the *barbari*⁹⁴; the measure would thus have aimed to prevent even this form of circumvention of the commercial prohibitions.

In regard to the *ratio legis*, Rosario Soraci⁹⁵ denies that the constitution should be interpreted within the context of imperial measures to ensure an adequate public sustenance, as he excludes the possibility of a general crisis in the production of goods. This interpretation appears debatable, given that the constitution was likely enforced locally rather than generally⁹⁶, as suggested by the identification of its intended recipients.

One should also note the absence of any requirement for *dolus malus* on the part of the agent in order for the offence to be constituted: this reflects a trend toward stricter disciplinary measures, which becomes more pronounced in subsequent legislation⁹⁷. Indeed, in C. 9.47.25 (419 AD), Theodosius prescribes the death penalty for anyone who transmits to the *barbari* technical skills in shipbuilding previously unknown to them; and in

⁹² See G.P. BOGNETTI, *Note per la storia del passaporto e del salvacondotto*, Pavia 1933, 64; S. DE LAET, 'Portorium'. *Étude sur l'organisation douanière chez les Romains, surtout à l'époque du Haut-Empire*, Brugge 1949, 477. Ammianus (29.5.10, 15) reports supply difficulties during the campaign against Firmus.

⁹³ See A. PIGANIOL, *L'économie dirigée dans l'Empire romain au IV^e siècle apr. J.-C.*, in *Scientia* 81 (1947) 96; G. VISMARA, *Limitazioni* cit., 446 and nt. 4; B. BIONDI, *Diritto romano cristiano*, II cit., 191; S. PIETRINI, *Cass.*, Var. 5.14.6 cit., 444 nt. 22; M. CALCAGNO, *Un sistema* cit., 397 nt. 50; S. RUGULLIS, *Die Barbaren* cit., 73.

⁹⁴ See M. CALCAGNO, *Un sistema* cit., 398 nt. 50; S. PIETRINI, *Cass.*, Var. 5.14.6 cit., 445.

⁹⁵ See R. SORACI, *Ricerche* cit., 38-41.

⁹⁶ See A. CUSMÀ PICCIONE, 'Non licet' cit., 461-462. Ammianus (27.5.7, 31.4.11, 31.5.1) attests to further instances of trade restrictions with barbarian groups.

⁹⁷ See C.R. HUVELIN, *Étude d'histoire de droit commercial romain*, Paris 1929, 72-73; G. VISMARA, *Limitazioni* cit., 448; J. ROUGÉ, *Recherches* cit., 417-419; R. SORACI, *Ricerche* cit., 41; M. CALCAGNO, *Un sistema* cit., 395-399; L. DE SALVO, *Una frontiera invalicabile: 'Merces illicitae' nel tardo impero romano*, in *L'Africa romana* 15 (2004) 293-304. Themistius (Or. 10.135 CD) refers to an agreement between Valens and Atanaric, king of the Goths, according to which trade between Romans and barbarians was restricted to just two market-cities, so that commercial exchanges would be contained and acts of smuggling more effectively suppressed.

the aforementioned C. 4.41.2 (455-457 AD), Marcian – reiterating a measure already in force under Constantius II (*Exp. tot. mundi*, 22) – prohibits the sale of weapons and iron to barbarian groups⁹⁸. The underlying *ratio* in both cases is the prevention of exchanges that could jeopardize the security of the Empire in a geopolitical context marked by mounting barbarian pressure⁹⁹, absent or violated treaties, frequent famines, a stagnating economy, and an army increasingly lacking in skills and resources¹⁰⁰.

Stefania Pietrini highlights a further connection between C. 4.41.1 and CTh. 3.14.1: the commercial ban could have been circumvented by selling goods not directly to a barbarian, but to his/her Roman spouse. By prohibiting marriages between barbarians and Romans, the legislator also closed off this potential avenue of circumvention¹⁰¹. The normative tone is one of strictness and comprehensive scope.

7. An ideological *Wirkungsgeschichte*

In my view, a further interpretation of C. 4.41.1, which has emerged in the reflections of prominent modern-era jurists and has also been adopted in more recent studies¹⁰², is weakly supported. The main motivation of the legislator would have been of a socio-cultural nature: to prevent the

⁹⁸ See L. DE SALVO, *A proposito di commerci* cit., 299. On C. 4.63.2 (373 AD), see *supra* § 4. Also relevant is CTh. 7.16.3 (420 AD) (cf. C. 12.44[45].1), which prohibits the transfer of *merces illicitae ad nationes barbaras*; see M. CALCAGNO, *Un sistema* cit., 373-420; L. DE SALVO, *Economia privata e pubblici servizi dell'impero romano. I 'corpora naviculariorum'*, Messina 1992, 583; B. GARCÍA FUEYO, *Notas relativas a las limitaciones introducidas al comercio exterior por vía marítima, conforme a C.Th. 7,16,3. Año 420 D.C.*, in *Revista Internacional de Derecho Romano* 26 (2021) 64-148. See also the *decretum* of Anastasius, preserved in a Cyrenaican inscription (*SEG* 9 [1938] 356; V-VI cent. AD), which forbids trade between Romans and Egyptians on the one hand, and barbarians on the other; cf. V. MAROTTA, *La cittadinanza romana in età imperiale. Secoli I-III d.C.*, Torino 2009, 116; ID., *Egizi e cittadinanza romana*, in *Cultura giuridica e diritto vivente* 1 (2014) 1-2.

⁹⁹ For the importance of this element in the legislation of Valentinian I, see M. AMELOTI, *Review of F. PERGAMI, La legislazione* cit., 310 (= in *Altri scritti* cit., 300).

¹⁰⁰ See M. CALCAGNO, *Un sistema* cit., 397 nt. 50.

¹⁰¹ See. S. PIETRINI, *Cass., Var. 5.14.6* cit., 445.

¹⁰² See M. CALCAGNO, *Un sistema* cit., 397 nt. 50; P. PAOLUCCI, *Profilo di una dietetica tardoantica. Saggio sull' 'Epistula Anthimi de observatione ciborum ad Theodoricum regem Francorum'*, Napoli 2002, 84-85; C. CORBO, *Migranti* cit., 65-66.

barbarians, by coming into contact with an unfamiliar level of civilization, from being seduced and thus induced to undertake actions of conquest. In some measure, these interpretations echo the theme of *Romana felicitas* present in late antique panegyric compositions – as Eus. *Vita Constant.* 4.6 (121-122) – and in imperial constitutions, such as CTh. 13.11.10 (Honorius; 399 AD)¹⁰³.

According to Andrea Alciato¹⁰⁴ the *ratio* of C. 4.41.1 would be as follows: *arbitror rationem legis spectandam ... quam ne eius liquoris gustu admoniti barbari arma in nos vertant: idcircoque eas regiones armis quaerere studeant, unde sibi id liquaminis comparare possint*. Alciato supports this interpretation by recalling the Gauls, who, according to Livy (5.33.2-3)¹⁰⁵, were prompted to cross the Alps and embark on the conquest of the Italic peninsula *hoc gustu allectos*, attracted by the *fama dulcedinis frugum, maximeque vini*. The reference to Roman antiquity strengthens Alciato's interpretation of certain contemporary statutory laws, and this likely motivates his hermeneutics, which was notably adopted by Jacques Cujas¹⁰⁶, Benvenuto Stracca¹⁰⁷, and Denis Godefroy. The latter adds the reference to the Lombard invasion¹⁰⁸, noting (*ad h.l.*): *Ne alioquin degustationis causa illecti promptius invadant fines Romanorum. Hoc enim modo Longobardos legimus a Narsete in Italiam pellectos*.

Samuel Stryk, in his *De iure Sensuum* (1665)¹⁰⁹, after recalling such exemplary invasions and referring to Godefroy's commentary, puts

¹⁰³ See R. MATHISEN, *Annotatio and Petitio: The Emperor's Favor and special Exceptions in the early Byzantine Empire*, in D. FEISSEL, J. GASCOU (eds.), *La pétition à Byzance*, Paris 2004, 23-32; V. MAROTTA, *Il problema cit.*, 145-146.

¹⁰⁴ A. ALCIATI *Parergon Iuris Libri III*, Basileae 1538, I, cap. 45, f. 30.

¹⁰⁵ See also Dion. Hal., *A.R.* 13,10-11; Plin. *N.H.* 12.5; Plut., *Cam.* 15.3-4.

¹⁰⁶ See J. CUJACI *Paratitla in Lib. IV, V & VI Codicis Justiniani repetitae praelectionis*, Parisiis 1579, tit. XLI.

¹⁰⁷ B. STRACCHAE *De mercatura seu mercatore*, in *Tractatus universi iuris*, Venetiis 1584, VI.1, f. 288ra, f. 297; See A. BARBAGLI, *Giuristi moderni tra fedeltà al 'mos italicus' e suggestioni culte. Le citazioni umanistiche nel trattato 'De mercatura' di Benvenuto Stracca (1553)*, in *Historia et Ius* 15 (2019) 4-5. See also M. DE JORIO, *La giurisprudenza del commercio*, Napoli 1799, I, 409-410.

¹⁰⁸ See Paul Diac. *Hist. Lang.* 2.23.

¹⁰⁹ See S. STRYKII *De iure sensuum tractatus*, Francofurti 1665, diss. VI, cap. V. For an overview of the author and of his work, see M.S. TESTUZZA, *Lo 'Ius sensuum' nelle architetture teoriche di alcune 'dissertationes' giuridiche di fine Seicento*, in *Quaderni Fiorentini* 51 (2022) 89-129.

forward the following interpretation: *Patet ex hac lege, esculenta et potulenta barbaris vendi non debere. [...] Quod eousque extenditur, ut ne gustus quidem causa id ipsum permissum. Cuius rei hanc reddunt rationem, ne videlicet vini aliarumque rerum liquidarum dulcedine allecti Barbari fines Romani imperii invadant, cum exempla adsint Barbarorum, qui ea permoti, hostile quid adversus Romanum Imperium tentarunt. [...] Nec ergo phialam sive metretam vini causa gustus licebit exportare.*

He assigns to *ne gustus quidem causa* the meaning of “not even a single cup”, which corresponds to the interpretation I have proposed. Stryk then dwells on a significant hermeneutical issue: whereas the violation of prohibitions set out in CTh. 3.14.1 or D. 39.4.11 is punished with death, C. 4.41.1 does not explicitly prescribe a penalty. Stryk observes that the *Synopsis Basilicorum*, following the Greek text of the constitution, adds: ὁ δὲ παρὰ ταῦτα ποιήσας τι δήμευέσθω καὶ κεφαλικῇ ὑποκείσθω τιμωρίᾳ¹¹⁰. From this, Stryk infers that the capital penalty was likewise applicable to violations of the prohibitions set forth in C. 4.41.1. The greek passage he cites constitutes the abbreviated greek translation of C. 4.41.2, the only other constitution included under the same title of the *Codex Iustinianus*. If one may conjecture that the various *capita* of the more extensive Valentinian constitution originally made explicit the applicable sanction – as attested, for instance, in CTh. 3.14.1 – then it is plausible that, once C. 4.41.1 was incorporated into the *Codex*, the penalty established by C. 4.41.2 was understood to extend to it as well. Such appears to be the interpretation reflected in the *Synopsis*, which is significantly taken up by a Latin humanist such as Stryk, and which, in my view, is not without a certain interpretive appeal.

Returning to the *Wirkungsgeschichte*, it is noteworthy that Samuel von Pufendorf likewise interprets the *lex* as aiming to prevent in prospective buyers the emergence of a desire to conquer the land producing such prized goods¹¹¹. Similarly, Johann Gottlieb Heineccius posits a comparable *ratio* for C. 4.41.1 and, in a contemporary application, laments the absence of equally strict trade prohibitions limiting relations with the Turks and Saracens. For him, the constitution serves as an example of *civilis prudentia*

¹¹⁰ See *Synopsis Basilicorum*, V (ed. C.E. ZACHARIAE VON LINGENTHAL) (repr.) Aalen 1962, 36.

¹¹¹ See S. PUFENDORF, *De Jure naturae et gentium Libri Octo*, Francofurti 1672, III, § 11.

to be exercised with the new barbarians, *etiamsi bellum cum illis aperto Marte non geramus*¹¹².

In this context, the voice of Ferdinando Galliani stands out as isolated: «Che non si volesse far gustar ai Barbari il vino per non invogliargli a venire a conquistar i vigneti era una puerile pusillanimità dannosa al commercio: ma che si vietasse anche il commercio dell'olio, e della salsa d'acciughe [...] è più che fanciullaggine: è vera stupidità»¹¹³. In truth, it is the interpretations that appear misguided rather than the actual reasons underpinning C. 4.41.1, yet Galliani's remark undeniably conveys a certain wit.

It is not possible here to recount, not even in a cursory manner, the medieval and early modern norms – both pontifical and secular – that imposed export bans towards communities and countries deemed hostile or dangerous, particularly on account of their Islamic identity¹¹⁴. Nonetheless, it is worth noting that in the context of a proliferation of such prohibitions, C. 4.41.1 came to assume an exemplary and inspirational role, though undergoing an ideological reinterpretation. This reinterpretation burdened the constitution with meanings that, by way of the protection of *Esskultur*, were meant to support a broader civil and military defence, thereby emphasising the cultural otherness of those who, in a broad sense, were not Roman. It is not difficult to discern in this *Wirkungsgeschichte* the ever-present dynamics of use and abuse of antiquity – dynamics that traverse history and remain especially pertinent in contemporary academic and public discourse¹¹⁵.

¹¹² See I.G. HEINECCII *Operum ad universam iuris prudentiam philosophiam, et litteras humaniore pertinentium*, Tom. II. Ex. XXX, Genevae 1746, 100-101.

¹¹³ F. GALLIANI, *De' doveri de' principi neutrali verso i principi guerreggianti e di questi verso i neutrali*, Napoli 1782, 306.

¹¹⁴ For a broader contextualization that includes historical and cultural dimensions, see S.K. STANTCHEV, *Spiritual Rationality. Papal Embargo as Cultural Practice*, Oxford 2014.

¹¹⁵ On this topic I would like to highlight the observations of F. LAMBERTI, *Editoriale*, in *Quaderni Lupiensis di Storia e Diritto* 10 (2020) 5-9.