

Le Istituzioni di Gaio:  
avventure di un bestseller.  
Trasmissione, uso e trasformazione del testo

a cura di  
Ulrike Babusiaux  
Dario Mantovani

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# On Homer and the Invention of Money: The Jurist Gaius in Servius' Georgics Commentary (3.306-307)\*

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## 1. Introduction

The extensive commentary on Vergil's poems that has been transmitted under the name of Servius cites the jurist Gaius by name once. Active in Rome from the late fourth into the fifth century CE, the grammarian Servius educated the sons of the Roman elite not only about Rome's most acclaimed poet, but he also drilled them in what he considered to be good Latin.<sup>1</sup> The instructional style of his commentary evokes the classroom and should thus probably be seen as a reflection of his teaching practices.<sup>2</sup> Since the commentary is based on and incorporates older commentaries on Vergil, most prominently the monumental work of Aelius Donatus (active 350s CE), Servius' corpus is an invaluable source for the history of teaching and Vergilian scholarship in Rome.<sup>3</sup> Delving into the background of antiquarian matters is a keen interest of the commentary, and the explanations

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<sup>1</sup> I am following the commonly accepted view of Servius' life, career, and work. See R.A. KASTER, *Guardians of Language. The Grammarian and Society in Late Antiquity*, Berkeley 1988, 356-359, with evidence and further references. Also e.g. D. FOWLER, *The Virgil Commentary of Servius*, in C. MARTINDALE (ed.), *The Cambridge Companion to Virgil*, Cambridge 1997, 73-78; J. FARRELL, *Servius and the Homeric Scholia*, in S. CASALI - F. STOK (a.c. di), *Servio. Stratificazioni esegetiche e modelli culturali*, Bruxelles 2008, 112-131. On good Latinity as a primary purpose of Servius' commentary, see e.g. KASTER, *Guardians* cit., 169-197.

<sup>2</sup> Though it has been suggested that Servius' primary audience were school teachers rather than school children (P.K. MARSHALL, *Servius and Commentary on Virgil*, Asheville [N.C.] 1997, 20-21).

<sup>3</sup> Donatus is known as the teacher of Jerome (*chron.* 354; see KASTER, *Guardians* cit. [nt. 1], 275-278). An expanded version of Servius' commentary, generally known as Servius Danielis (DServ.) and apparently produced in the seventh century in Ireland, is probably largely based on Donatus' commentary (see G. THILO, *Praefatio*, in G. THILO - H. HAGEN, *Servii grammatici qui feruntur in Vergilii carmina commentarii* I/2, Lipsiae 1881, V-LXIX; G.P. GOOLD, *Servius and the Helen Episode*, in *HSPh* 74 [1970] 101-168, esp. 103-105). Against Donatus, favouring an anthological source, e.g. L. HOLTZ, *Les manuscrits latin à gloses et à commentaires: de l'antiquité à l'époque carolingienne*, in C. QUESTA - R. RAFFAELLI (a.c. di), *Il libro e il testo. Atti del convegno internazionale. Urbino, 20-23 settembre 1982*, Urbino 1984, 159-163 and C. BASCHERA, *Servius Danielinus and Scholia Veronensia: Clues to Their Relationship*, in CASALI-STOK (a.c. di), *Servio* cit. (nt. 1), 207-215. Finally, whereas it is often hard to pinpoint the line between tralaticious material and Servius' own contributions, DServ. regularly allows comparison between Servius and Donatus. Such analyses suggest that Servius primarily selected from, boiled down, and criticised Donatus rather than collected scores of new material (e.g.

given in the notes are regularly invested with the authority of writers such as Varro, Pliny, and Suetonius. It is in the context of giving a piece of legal-antiquarian information that Servius invokes Gaius as a source. The Vergilian passage under discussion is *Georgics* 3.306-307, where Vergil advises his addressee on keeping goats. The good goatherd, so we are told, is to provide his flock with sufficient food, water, and safety, which will produce abundant offspring and milk. By explicitly contrasting this form of wealth with the famed goat fleeces from Miletus, which are characterised by fetching a high price on the market, Vergil's idealised rural setting emerges as a world free from the banes brought by trade. On Vergil's reference to the Milesian fleeces, we find the following comment of Servius:

MAGNO *autem* MUTENTUR *ingenti pretio comparentur: nam apud maiores omne mercimonium in permutatione constabat, quod et Gaius Homericō confirmat exemplo.*

And THEY CHANGE HANDS FOR MUCH should be taken as 'for an enormous price': for among the forefathers every trade transaction consisted in an exchange [of goods], something which also Gaius confirms with a Homeric example.

The note is remarkable in several ways. Perhaps the most puzzling aspect is that Servius brings up a Homeric reference not by itself but through another author. Moreover, this other author is not another poet or prominent name from a literary canon as defined by ancient educators such as Quintilian and those working in his tradition. To the contrary, the source for the Homeric reference is marked by a mere Gaius. This in turn highlights a further facet of the note: from the mentioning of a rather common name without any further specification (such as *iurisconsultus*), we may infer that Servius' audience is supposed to understand about whom he is talking. To be sure, Servius must indeed be referring to the famous jurist Gaius, since Gaius, when discussing sale and barter in his *Institutes*, quotes the passage from *Iliad* 7 about the son of Jason supplying the Greeks (Gai. 3.141; see below).<sup>4</sup> The lemma in Servius, therefore, presupposes an author and projects an audience who are quite familiar with Gaius the jurist. All this indicates that Gaius and his work had acquired considerable status in Servius' days.<sup>5</sup>

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KASTER, *Guardians* cit. [nt. 1], 170; F. RACINE, *Servius' Greek Lessons*, in E.P. ARCHIBALD - W. BROCKLISS - J. GNOZA (eds.), *Learning Latin and Greek from Antiquity to the Present*, Cambridge 2015, 52-64, esp. 54). On the transmission of Servius, see P.K. MARSHALL, *Servius*, in L.D. REYNOLDS (ed.), *Texts and Transmission. A Survey of the Latin Classics*, Oxford 1983, 385-388.

<sup>4</sup> Several other authors simply known as Gaius are attested, such as the physician (first century BCE or CE), the philosopher (second century), and the theologian (second century). See for example *BNP* s.v. *Gaius*. On the onomastics, see S. ROCCHI, *C. Gaius Gaius (Noster): il nome dell'autore delle Institutiones e altri ragionamenti letterari ed epigrafici (con un'Appendice sulla tecnica di citazione dei nomi degli auctores nel Digesto)*, this volume, 29-50.

<sup>5</sup> To reiterate, it cannot be known with certainty at present whether Servius introduced the Gaius reference himself or whether he found it in his source (though it is absent from the DServ. add-on). The latter scenario would backdate (probably to Donatus) but not invalidate my argument.

In this paper, I unpack Servius' Gaius reference in greater detail in order to throw more light on the early reception of Gaius' *Institutes*.<sup>6</sup> The scholarship so far has all but completely ignored this reference. The main reason for this is probably that Servius features a citation rather than a quotation, which makes the passage largely irrelevant for the textual constitution and/or *palingenesia* of the *Institutes*.<sup>7</sup> Yet as I hope will become clear below, a careful contextualisation of this reference makes it one of the most informative pieces of evidence we have for the emerging status of Gaius' work as a 'bestseller' – more revealing than most direct quotations that have been traced. In order to present as complete an understanding as possible of Servius' Gaius reference, my discussion will take the following steps. First, an analysis of the passage in Gaius, with special attention for its background in the legal tradition and for the wider intellectual context in which Gaius found himself, bears out that evoking the Homeric lines from *Iliad* 7 in the context of discussing barter was a widespread practice in Early Imperial literature. Next, given that the Homeric association could be so widely found, and considering that it is implausible that Servius did not encounter it elsewhere, I will argue that Servius credits specifically Gaius in order to provide his audience with an authority on the matter of bartering. Finally, taking this to point to a certain pre-eminence of Gaius' *Institutes* by Servius' time, especially also for a non-juristic audience, I suggest that the rising popularity of Gaius' work is well at place in the late fourth/early fifth century. This is, after all, an age that has widely been characterised in terms of increased bureaucratisation following the administrative reforms of Diocletian and Constantine, which came with more demand for government officials with some legal education.

## 2. *Institutes* 3.141 and the Homeric passage as a legal-antiquarian commonplace

In order to set the stage for a careful analysis of Servius' reference, let us first pay closer attention to the relevant section in Gaius' own work. We have already seen that Servius ascribes the observation that the Homeric heroes engaged in barter to specifically Gaius, yet the ascription raises questions as soon as we read the *Institutes* more closely:<sup>8</sup>

<sup>6</sup> I am assuming that Servius is referencing the *Institutes*, since no other extant text of Gaius preserves the Homeric reference, not even the almost identical passage in the *Res cottidianae* (D. 41.1.7). On the *Res cottidianae*, see J. PLATSCHEK, *Das Verhältnis der Institutiones zu den Res cottidianae sive aurea*, this volume, 279-302.

<sup>7</sup> It does, however, support printing the Homeric verses in Gaius' text, which lack in the single textual witness. Servius is not discussed in detail in the various surveys published by U. MANTHE, *Gaiuszitate in der Collatio und in anderen Werken der Spätantike*, also this volume, 489-511. H.L.W. NELSON - M. DAVID, *Überlieferung, Aufbau und Stil von Gai Institutiones*, Leiden 1981, 165 nt. 51 only devotes a footnote to it.

<sup>8</sup> Here and throughout, I quote from the edition of H.L.W. NELSON - U. MANTHE, *Gai Institutiones III 88-181. Die Kontraktobligationen*, Berlin 1999. In the present passage, I omit their unnecessary supplement *pretium esse possit alterius rei* (taken from the parallel section in Justinian's I. 3.23.2), since the transmitted phrase can straightforwardly be understood as an ellipsis of (merely) *pretium*. See NELSON-MANTHE *ad l.* for the various choices made by editors.

*nam in ceteris rebus an pretium esse possit, veluti homo aut toga aut fundus alterius rei, valde quaeritur. nostri praeceptores putant etiam in alia re posse consistere pretium; unde illud est, quod vulgo putant per permutationem rerum emptionem et venditionem contrahi, eamque speciem emptionis venditionisque vetustissimam esse; argumentoque utuntur Graeco poeta Homero, qui aliqua parte sic ait:*

<ἐνθεν ἄρ' οἰνίζοντο κερηκομόωντες Ἀχαιοί,  
 ἄλλοι μὲν χαλκῷ, ἄλλοι δ' αἶθωνι σιδήρῳ,  
 ἄλλοι δὲ ῥινοῖς, ἄλλοι δ' αὐτῆσι βόεσσιν,  
 ἄλλοι δ' ἀνδραπόδεσσι.><sup>9</sup>

(Hom. *Il.* 7.472-475)

*et reliqua. diversae scholae auctores dissentiunt aliudque esse existimant permutationem rerum, aliud emptionem et venditionem; alioquin non posse rem expediri permutatis rebus quae videatur res venisse et quae pretii nomine data esse.*

For it has been debated very much whether the price can consist of other things, for instance a man or a toga or a farm for another thing. Our teachers think that the price can indeed consist in another thing; and for that reason, because people commonly think that through an exchange of goods a sale is contracted, and that that is the oldest type of sale; and as evidence they use the Greek poet Homer, who at some point says as follows:

Then the long-haired Achaeans bought wine,  
 some with bronze, others with glittering iron,  
 others with hides, and others with real oxen,  
 still others with slaves

and so on. The authors of the other school disagree and hold that the exchange of goods is one thing while sale is another; that it is otherwise not possible to settle, when goods are exchanged, which thing appears to be sold and which is given as a price.

As part of his discussion of the legal obligations resulting from economic exchanges between private individuals, Gaius pays considerable attention to the question whether sale and barter are conceptually distinct or not. While the technical legal aspects are not our primary concern here, we should note in passing that the issue was highly relevant since it at core came down to establishing whether bartering was governed by the law of sale, or rather by some other set of rules.<sup>10</sup> Given the longstanding importance of trade in the

<sup>9</sup> The single ms. transmitting this passage (Verona, Biblioteca Capitolare, XV [13]) does not preserve the Greek lines but simply skips to *et reliqua*. Nonetheless, the restoration of the lines is compelling given the occurrence of *sic ait* and of *et reliqua*, which in legal texts commonly marks the truncation of a longer quote (e.g. at *Coll.* 1.3,12; *Consult.* 1.10, 4,9; cf. *Lab. 2 post. a Iav. epit.* D. 33.4.6.1). On the ms., see S. AMMIRATI, *Il codice veronese delle Institutiones di Gaio. Paleografia e codicologia*, this volume, 321-358, and F. BRIGUGLIO, *Il codice veronese delle Istituzioni di Gaio e gli interventi editoriali. Analisi multispettrale e formazione del testo*, this volume, 391-408. Restoring precisely these – four – lines is justified considering the parallels at I. 3.23.2 and Paul. 33 *ad ed.* D. 18.1.1.1-2 (who credits Gaius' intellectual ancestor Sabinus). The passage of Paul is discussed shortly below.

<sup>10</sup> The bibliography on the legal doctrine is vast. Apart from tracing doctrinal change over time, key questions concern (1) the intellectual antecedents of both sides and (2) the issue's (remarkable) salience so long after the introduction of coined money. On (1), V. MAROTTA, *Origine e natura della moneta in un testo di Paolo D. 18.1.1 (33 ad edictum)*, in C. BALDUS - M. MIGLIETTA - G. SANTUCCI - E. STOLFI (a c. di), *Storia dei dogmi*

Roman world, it should come as no surprise that the question was extensively argued over. Gaius reports that already before his own days two groups of jurists, of which he designates one as his «teachers» (*praeceptores*) and the other as «the other school» (*diversa schola*),<sup>11</sup> were embroiled in a debate that paid special attention to the nature of prices (*pretium*), asking in particular whether they can take any form other than money (see also Gai. 3.139). We learn about Gaius' own intellectual forebears that they invoked the Homeric passage in support of their view that a price can consist in another thing, thus embracing the idea that barter is a form of sale. The choice of this passage has often been criticised by ancient and modern scholars for failing to establish the *conceptual* equivalence of barter and sale, showing only that the Greeks in the Heroic Age engaged in trade through the exchange of goods (including here the possibly proto-monetary use of bronze and iron).<sup>12</sup> Yet its selection can be understood if we consider that the Homeric narrator clearly represents the economic transaction as a purchase in line with the generally agreed juristic conception of purchase/sale, namely as an exchange in which one good is obtained by paying a price. In other words, the way in which the Homeric episode is framed makes it recognisable as a

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*e individualità storica dei giuristi romani. Atti del Seminario internazionale (Montepulciano 14-17 giugno 2011)*, Trento 2012, 161-205, argues for an Aristotelian connection on both sides; more sceptical is C. NICOLET, *Pline, le juriste Paul et la théorie de la monnaie*, in ID., *Censeurs et publicains. Économie et fiscalité dans la Rome antique*, Paris 2000. NELSON-MANTHE, *Gai Institutiones III 88-181* cit. (nt. 8), 525-531 see an Aristotelian vs. a Stoic theory, the latter on no relevant evidence. Without a shred of evidence, O. BEHREND, *Der ungleiche Tausch zwischen Glaukos und Diomedes und die Kauf-Tausch-Kontroverse der römischen Rechtsschulen*, in ID., *Institut und Prinzip II*, Göttingen 2004, 629-653 posits origins in two Mid-Republican opposing 'Hellenistic' schools of legal philosophy. T.G. LEESEN, *Gaius Meets Cicero. Law and Rhetoric in the School Controversies*, Leiden 2010, esp. 215-236 suggests the debate ultimately reflects rhetorical, topos-based arguments used in an actual case. On (2), A. BÜRGE, *Geld- und Naturalwirtschaft im vorklassischen und klassischen römischen Recht*, in *ZRG* 99 (1982) 128-157, esp. 135-146, and L. WINKEL, *Das Geld im römischen Recht*, in J. RESZCZYŃSKI - P. ŚCIŚLIŃKI - J. SONDEL (eds.), *Roman Law as Formative of Modern Legal Systems. Studies in Honour of Wiesław Litewski*, Kraków 2003, 281-288, at 286, suggest the monetary crises of the Civil Wars made paying in kind a relevant question again (with *Caes. civ.* 3.1.2). E. LO CASCIO, *Teoria e politica monetaria tra III e IV d.C.*, in A. GIARDINA (a c. di), *Società romana e Impero tardoantico I. Istituzioni, ceti, economie*, Roma-Bari 1986, 537-542 and G. MELILLO, *Categorie economiche nei giuristi romani*, Napoli 2000, 59 suggest monetary crises in the Empire kept the issue relevant. All these pieces provide ample further references.

<sup>11</sup> While Gaius' contemporary Pomponius substantiates the existence of law 'schools' (*l. s. enchirid.* D. 1.2.2.47), the nature of the 'school division' remains very unclear. Since systematic theoretical oppositions cannot seem to explain it, scholars have proposed widely differing interpretations. See T. LEESEN, *Sabiniani and Proculiani*, in *Oxford Classical Dictionary* online, for a brief guide to the scholarship.

<sup>12</sup> For example, Paul. 33 *ad ed.* (D. 18.1.1.1; see below); D. DAUBE, *The Three Quotations from Homer in Digest 18.1.1.1*, in *Cambridge Law Journal* 10/2 (1949) 213-215, esp. 213; BEHREND, *Der ungleiche Tausch* cit. (nt. 10), 636. Daube explores the idea that Latin readers might gloss χαλκός as *aes*, and that the scene depicts a market in which some paid for their wine in goods, others in money. The major objection to this reading is that the Homeric scholia (and hence widely circulating interpretations of the poems, presumably also in Roman times) designate this scene as paradigmatic of the absence of money in the Heroic Age (*sch. Il.* 7.473 [Ariston.]; see below).

sale, because the narrator casts the Greeks as going out to get wine and as compensating the purveyor with various valuable goods, which can be understood as the price paid. This is also the point of the argument of the jurist Caelius Sabinus that Gaius reports towards the end of section 3.141.<sup>13</sup> Needless to say, the episode conveys nothing about any legal framework for economic exchanges. Thus, for readers who approach the text with a different (pre-)conception of the relation between barter and sale, the scene may just as well be used to illustrate that the Greeks of the Heroic Age conducted barter *instead of* some kind of purchase. Finally, it is at least interesting to note, also in relation to Servius' reference, that Gaius does not indicate whether he agrees with his teachers or not; no preference for either conceptual position is made explicit.<sup>14</sup>

Now, the prior history of the debate about barter and sale is cleared up considerably by a passage in the Digest and by a remark of the sixth-century law teacher Theophilus. The first of these is a sizeable excerpt from the 33rd book of the jurist Paul's work *Ad edictum* (D. 18.1.1.1). The text presents an aetiology about money in the form of a brief *Kulturentstehungslehre*, which may have been adapted from a passage in Aristotle's *Politics*.<sup>15</sup> For the present purposes, however, it is worth focusing on the extensive use of Homeric quotes in the passage:

*Sabinus et Cassius esse emptionem et venditionem putant: Nerva et Proculus permutationem, non emptionem hoc esse. Sabinus Homero teste utitur, qui exercitum Graecorum aere ferro hominibusque vinum emere refert illis versibus:*

ἔνθεν ἄρ' οἰνίζοντο κερηκομόωντες Ἄχαιοί  
 ἄλλοι μὲν χαλκῶ, ἄλλοι δ' αἴθωνι σιδήρῳ,  
 ἄλλοι δὲ ῥίνοϊς, ἄλλοι δ' αὐτῆσι βόεσσι,  
 ἄλλοι δ' ἀνδραπόδεσσιν.

*sed hi versus permutationem significare videntur, non emptionem, sicut illi:*

ἔνθ' αὐτε Γλαύκῳ Κρονίδης φρένας ἐξέλετο Ζεὺς,  
 ὅς πρὸς Τυδείδην Διομήδεα τεύχε' ἄμειβεν

(Hom. *Il.* 6.234-235)

<sup>13</sup> Gai. 3.141: «If perchance I gave you a man by way of price when you were selling something, for example a farm, the farm appears to be the thing sold while the man was given as a price in order to acquire the farm» (*si rem tibi venalem habenti, veluti fundum, pretii nomine hominem forte dederim, fundum quidem videri venisse, hominem autem pretii nomine datum esse, ut fundus acciperetur*).

<sup>14</sup> Gaius regularly presents legal questions with several answers without expressing a preference, at least partly for didactic reasons. See M.H. WIBIER, *Transmitting Legal Knowledge: From Question-and-Answer Format to Handbook in Gaius' Institutes*, in R. SCODEL (ed.), *Between Orality and Literacy: Communication and Adaptation in Antiquity*, Leiden 2014, 356-373.

<sup>15</sup> Arist. *Pol.* 1.9, 1257a-b; also *EN* 5.5, 1133b-1134a. See first and foremost NICOLET, *Pline* cit. (nt. 10), esp. 141-142. Nicolet rightly stresses that any direct or indirect use of Aristotle for the aetiology does not imply that the juristic conceptions of barter and sale can be considered Aristotelian. MAROTTA, *Origine* cit. (nt. 10) suggests that several details of both juristic views are at least prefigured in Aristotle's discussions in *Politics* 1.9 and *Nicomachean Ethics* 5.5.



*magis autem pro hac sententia illud diceretur, quod alias idem poeta dicit:*

πρίατο κτεάτεσσιν ἑοῖσιν.

(Hom. *Od.* 1.430, 14.115,452, 15.483)

*sed verior est Nervae et Proculi sententia.*

Sabinus and Cassius think that it [the example of giving a toga for a tunica in the preceding line] is a sale; Nerva and Proculus that it is an exchange, not a purchase. Sabinus uses Homer as a witness, who relates that the army of the Greeks bought wine with bronze, iron, and men in the following verses:

Then the long-haired Achaeans bought wine,  
some with bronze, others with glittering iron,  
others with hides, and others with real oxen,  
still others with slaves

But these verses appear to designate an exchange, not a sale, just like these:

And then Zeus the son of Cronus took away the wits of Glaucus  
who exchanged his gear with Diomedes the son of Tydeus

But what the same poet says elsewhere would better support this point of view:

He bought [the person concerned]<sup>16</sup> with his [non-monetary] wealth

But the view of Nerva and Proculus is the better one.

These lines of Paul provide several pieces of information that are relevant for understanding Gaius against his juristic background, while also signalling that quoting Homer in the context of economic exchanges was widely practised. We should note in particular the following points. First of all, we learn who was the early jurist known for bringing up Homer in the debate about barter and sale. In contrast to Gaius' fairly general *nostri praeceptores*, Paul tells us that it was Masurius Sabinus, a jurist who was active in the age of Tiberius and who by the second century was considered a foundational figure for Roman law.<sup>17</sup> The ascription squares with Gaius' *praeceptores*, since we find repeated references throughout the *Institutes* to Sabinus as a predecessor.<sup>18</sup> Furthermore, after dismissing the value of the Homeric quote for Sabinus' argument, Paul adds two further Homeric verses that are taken from the famous scene describing the exchange of armour between Glaucus and Diomedes in *Iliad* 6. This quote is supposed to put under further pressure Sabinus' view that barter is a form of sale. While this may at first glance strike us as a thinly veiled attempt of Paul to flaunt his intimate knowledge of the Homeric text, we should not be fooled into thinking that the choice of these specific lines is simply Paul's accomplishment.

<sup>16</sup> All Odyssean passages describe the acquisition of a slave. Scholars have usually taken Paul to refer to *Od.* 1.430, which alone mentions how much was paid (twenty oxen). Note, however, that πρίατο must have been considered the formula's most relevant element.

<sup>17</sup> E.g. Pomp. *l. s. enchirid.* D. 1.2.2.48-50; Gell. 4.2.15, 11.18.20-24. See LEESEN, *Sabiniani* cit. (nt. 11). Needless to say, Masurius Sabinus (often simply referred to as Sabinus) and Caelius Sabinus (mentioned above) should not be conflated.

<sup>18</sup> E.g. Gai. 1.196, 2.195.

Rather, a passage in Theophilus' *Paraphrasis* reports that it was the jurist Proculus, pinpointed by Paul as one of Sabinus' main opponents,<sup>19</sup> who cited precisely these Homeric lines to support his own position:<sup>20</sup>

ὁπότε καὶ αὐτὸς ὁ Πρόκουλος ἑτέρους Ὀμηρικούς στίχους ἔχει συνηγοροῦντας αὐτῷ καὶ ἰσχυροτέροις κέρηται πρὸς τοῦτο λογισμοῖς. οἱ δὲ στίχοι εἰσὶν οὗτοι·  
 ἔνθ' αὐτε Γλαύκῳ Κρονίδης φρένας ἐξείλετο Ζεὺς,  
 ὃς πρὸς Τυδείδην Διομήδεα τεύχε' ἄμειβεν  
 χρύσεια χαλκείων, ἑκατόνβοι' ἔννεαβοίων

because Proculus himself also uses different Homeric lines supporting himself, and, moreover, he makes use of stronger reasoning. And these are the lines:

And then Zeus the son of Cronus took away the wits of Glaucus  
 who exchanged his gear with Diomedes the son of Tydeus  
 golden for bronze, worth a hundred oxen for gear worth nine beeves.

Theophilus tells us that Proculus counterargued Sabinus by bringing up the verses about Glaucus and Diomedes, also quoted though not credited by Paul.<sup>21</sup> There is no good reason to suspect that the ascription to Proculus is incorrect, also in light of the widespread association of this passage with antiquarian discussions of trade that will be discussed in more detail below.<sup>22</sup> If this is indeed the case, we may infer not only that the Early Principate witnessed a vibrant debate in juristic circles over the conceptual relation between barter and sale,<sup>23</sup> but also that the two main players evoked Homer in the process of pressing their points. Furthermore, as should be clear by now, the surviving record gives every indication that it remained a popular practice for jurists to reference (one or both of) the Homeric scenes in the context of the law of sale. Thus, more than a century later, Gaius included the lines from *Iliad* 7 in his textbook, or at the very least he decided not to jettison

<sup>19</sup> Pomponius reports that Proculus, flourishing a generation after Sabinus, lent his name to the 'school' known as *Proculiani* (*l. s. enchirid.* D. 1.2.2.52; see my nt. 11 above, as well as LEESEN, *Sabiniani* cit. [nt. 11]).

<sup>20</sup> Theoph. *Par.* 3.23.2; cf. I. 3.23.2. On Theophilus and his work, see J.H.A. LOKIN - R. MEIJERING - B.H. STOLTE - N. VAN DER WAL, *Theophili antecessoris Paraphrasis Institutionum*, Groningen 2010; see also B.H. STOLTE, *Gaius in the Paraphrase of Theophilus*, this volume, 683-714.

<sup>21</sup> Theophilus' rendering includes the famous third line that states that Glaucus' golden armour was worth so much more than the bronze armour of Diomedes. Its absence in Paul is probably not so much a slip of Paul or any scribe as an indication of how well known the lines were: readers were probably able to supply the line and its point effortlessly from memory.

<sup>22</sup> That is, I can discover no positive indication to doubt it. For example, the lack of source reference in Paul may suggest that the Homeric altercation between Sabinus and Proculus was so well known that he decided not to cite it.

<sup>23</sup> As for why this would (still) be a debate at this time, see the literature cited in my nt. 10 above.

the lines that he may have found in his most immediate source.<sup>24</sup> Next, a generation after him, Paul used the altercation as a vehicle for showing off his own acumen and learning. After explicitly rejecting Sabinus' choice of evidence and undercutting him further by a quasi-offhand appeal to Proculus' preferred verses, Paul claims his intellectual superiority by introducing the (seemingly)<sup>25</sup> self-selected Odyssean lines as better support for a position he goes on to reject smugly. In sum, then, rather than simply being well known from the works of Sabinus and Proculus, it seems reasonable to conclude that discussing the juristic question of barter and sale acquired a Homeric connection. That is, it became a widespread, topos-like practice to reference Homer in the context of barter and sale.<sup>26</sup>

The point about a commonplace connection can be further substantiated by taking into consideration non-juristic literature from the Early Empire as well. Particularly revealing is a passage from the opening of book 33 of Pliny the Elder's *Natural History*, which was composed around the time Proculus was active. In the context of discussing metals and precious stones, Pliny tells us that in the time of the Trojans people used to exchange things rather than engage in buying and selling. Pliny gives two specific antiquarian examples, both of which come from Homer (*nat.* 33.6-7):

*quanto felice aeo, cum res ipsae permutabantur inter sese, sicut et Troianis temporibus factitatum Homero credi convenit. ita enim, ut opinor, commercia victus gratia inventa. alios coriis boum, alios ferro captivisque res emptitasse tradit. quare, quamquam ipse iam mirator auri, pecore aestimationes rerum ita fecit, ut C boum arma aurea permutasse Glaucum diceret cum Diomedis armis VIII boum. ex qua consuetudine multa legum antiquarum pecore constat etiam Romae.*

In that so much happier age, when things themselves were exchanged for one another, as we ought to believe Homer that it was the custom also in Trojan times. For it is thus, I think, that commerce was discovered, for the sake of sustaining ourselves. He mentions that some people bought goods with the hides of oxen, others with iron and captives. Hence, although he himself was already an admirer of gold, he made his valuations of things in terms of cattle, in such a way that he says that Glaucus exchanged his golden armour worth a hundred oxen for the gear of Diomedes, which was worth nine oxen. From this custom it is that also in Rome a fine in the ancient laws is set in cattle.

<sup>24</sup> On the place of the *Institutes* in a tradition of tralaticious school texts, see NELSON-DAVID, *Überlieferung* cit. (nt. 7), 335-372, and D. JOHNSTON, *Gaius and the Liber singularis regularum Attributed to Ulpian*, this volume, 303-318.

<sup>25</sup> I have not been able to trace further use of these Odyssean lines in the extant record.

<sup>26</sup> Justinian's *Const. Omnem* 11 is a further legal source quoting one of the Homeric scenes. Yet instead of bringing up the technical juristic debate about sale and barter, the law employs the image of Diomedes' obtaining gold for bronze rhetorically so as to assert the superiority of Justinian's codification and educational programme to anything that came before. Similarly so, F. STELLA MARANCA, *Omero nelle Pandette*, in *BIDR* 35 (1927) 1-53, esp. 51-52.

The last sentence of the passage makes clear that Pliny uses Homer as a source for a short exposé on ancient customs, which he then enlists in order to elucidate a peculiar feature of old Roman laws. Pliny's interest here is evidently quite different from establishing whether barter is technically a form of sale. Yet while this seems to put him at some remove of the juristic debate, it is highly remarkable that he selected the very same episodes that we find in the juristic texts. It is very hard to believe that this is coincidental. Given the occurrence of the Iliadic episodes in relation to barter and sale across multiple roughly contemporary works, we should face the question where Pliny, and where Sabinus and Proculus may have got their examples from.

In trying to throw more light on the relation between these texts, the following observations point in the direction of a shared tradition behind all texts. First and foremost, several scholia to the *Iliad* mark out the two episodes as illustrating that the παλαιοί did not trade using coins but bartered instead:<sup>27</sup>

sch. *Il.* 7.473 A (Ariston.) (ed. E)

ἄλλοι μὲν χαλκῶ <ἄλλοι δ' αἴθωνι σιδήρῳ>: ὅτι ἀμοιβαῖς ἐχρῶντο οἱ παλαιοὶ καὶ οὐ νομίμασιν.

'some with bronze <others with glittering iron>': because the ancients used exchange and not coins.

sch. *Il.* 6.236a3 A (mostly identical to 6.236a2 T [ed. E]; distilled version in 6.236 D [ed. VTh])

ἑκατόμβοια: ἑκατὸν βοῶν ἄξια· οὐ γὰρ νομίμασιν ἐχρῶντο· ὅθεν καὶ ἀλφεισίβοια (18.593). | οἱ δὲ παρ' Ἀθηναίοις νόμισμα ἔχον βοῦν.

'worth a hundred oxen': worth one hundred beeves; for they did not use coins; whence also 'bringing in oxen' (*Il.* 18.593). | Others [say] the coin among the Athenians depicting an ox.

As far as I have been able to establish, these are among the very few notes to the Homeric epics that report that the Heroic Age predated the invention of money.<sup>28</sup> According to Van Thiel, the contents of at least the scholion to *Iliad* 7.473 can be ascribed to Aristonicus, a commentator who was active in the age of Augustus and who relied extensively on the work of Dionysius Thrax (who himself may have drawn from Aristarchus).<sup>29</sup> This means that the association of the two Iliadic episodes to barter and sale dates back to at least the Augustan age, if not already Hellenistic times. This timing is entirely plausible,

<sup>27</sup> Eustathius retains the information only for *Il.* 7.473 (p. 502.12-14 ed. VdV).

<sup>28</sup> Similarly sch. *Il.* 21.79 D (ed. VTh). Note that sch. *Od.* 1.431c1 (ed. P) mentions Eurycleia's value in both coins and oxen.

<sup>29</sup> H. VAN THIEL, *Aristarch, Aristophanes Byzantios, Demetrios Ixion, Zenodot: Fragmente zur Ilias gesammelt, neu herausgegeben und kommentiert I*, Berlin 2014, 22. The text can be found in Friedländer's reconstruction of Aristonicus' *De signis Iliadis* at 7.473.

given that, as Kim has demonstrated, the Late Hellenistic and Augustan periods saw increasing scholarly interest in adducing Homer as a source for antiquarian evidence, as can for example be seen in Strabo.<sup>30</sup> Given that scholia and ancient commentaries are generally closely tied up with teaching practices, and given Homer's central place in ancient Greek and Roman education, the association of the Homeric episodes with trade must have been broadcast to a considerable audience of elite Romans already before the days of Sabinus.<sup>31</sup>

If this is indeed a fair assessment, the following remarks about the relation between the three texts above are worth spelling out. On the one hand, whereas the evidence suggests that Sabinus was the first Roman jurist to bring up the Homeric connection, his selection of *Iliad* 7 was not entirely new, since the connection with trade and money had already been established in Homeric (school) commentaries. Sabinus must have drawn from this tradition, whether directly from the scholia or from a (specialist or non-specialist) work drawing from them.<sup>32</sup> As for Proculus, in bringing up another Homeric passage he was probably responding to Sabinus' use of the *Iliad*. Yet in selecting the specific passage he selected, he followed a pre-existing pattern; that is, he chose an episode that the Homeric scholastic tradition had already established as demonstrating that the  $\pi\alpha\lambda\alpha\iota\omicron\iota$  bartered before money was invented. Much later, Paul criticised the validity of the examples and boasted his own learning by quoting a verse from the *Odyssey* that he considered more to the point but that, as far as we can tell, was at the same time not traditionally associated with the issue of barter and sale.<sup>33</sup>

On the other hand, when it comes to Pliny's source, the main question is whether it is likely that he used Sabinus and/or Proculus or whether the specific Homeric connections

<sup>30</sup> L. KIM, *Homer between History and Fiction in Imperial Greek Literature*, Cambridge 2010, 12, 47-84, emphasising that there is more to citing Homer than simply adding elegance to the text, as DAUBE, *The Three Quotations* cit. (nt. 12), 215 and NELSON-MANTHE, *Gai Institutiones III 88-181* cit. (nt. 8), 270 have suggested; TH. MAYER-MALY, *Homer in römischen Rechtstexten*, in TRG 72 (2004) 231-242, esp. 233 cursorily mentions Homer's authority. According to R. MALTBY, *Homer in Servius: A Judgement on Servius as a Commentator on Virgil*, in A. EFSTATHIOU - I. KARAMANOU (eds.), *Homeric Receptions across Generic and Cultural Contexts*, Berlin 2016, 303-314, esp. 311-312, establishing antiquarian facts is the purpose of 15% of the Homeric references in Servius, and of 21% in DServ.

<sup>31</sup> On the connection of scholia and commentaries to education, see e.g. E. DICKEY, *Ancient Greek Scholarship*, Oxford 2007, 3-18. On education in Greek among Romans, see e.g. Quint. *inst.* 1.1.12-14. On the role of Homer, see e.g. Quint. *inst.* 10.1.46-51, Gell. 9.9.14 (*et passim*), and the so-called *Vita Donatiana* 43-46 with the discussion of FARRELL, *Servius* cit. (nt. 1), 120-121.

<sup>32</sup> Of course, one might speculate that the source of the scholia was in turn some other specialist source.

<sup>33</sup> To be sure, the surviving scholia to the *Odyssey* are considerably less extensive than the surviving scholia to the *Iliad*; see e.g. DICKEY, *Ancient Greek Scholarship* cit. (nt. 31), 21. It is therefore harder to establish or exclude that specific lines of the *Odyssey* were used in antiquity to make a particular (e.g. antiquarian) point. In connection to the lines quoted by Paul (above), neither the scholia nor Eustathius mention trade, barter, and/or money.

reached him via a different channel, such as the scholastic material (in some form or another) or as embedded in an earlier source on metallurgy or economics. It has been pointed out that Pliny often indicates his sources for specific information.<sup>34</sup> Given that he keeps silent on his sources at this point in the *Natural History*, it is impossible to say anything with certainty. Perhaps we may infer from the lack of references and the place in the book's introduction that he is reworking familiar material (such as Homeric school commentaries) or earlier work(s) on the topic under discussion (metallurgy and/or economics), rather than a highly specialist work on a subject matter not central to book 33 (such as Sabinus' work on Roman law). At this point, it should be noted that Pollux' *Onomasticon* 9.73-74 and Maximus of Tyre's *Oration* 39.1 too bring up both Homeric episodes in relation to barter and coined money, which seems to hint at the circulation of the association in educational and rhetorical circles in the Early Empire.<sup>35</sup> In short, it is highly problematic to assume that Pliny drew his examples from Sabinus or Proculus.<sup>36</sup> All we can say at present is that the Homeric reference in the context of barter, money, and trade had become a sort of commonplace by the later first century CE. The evidence of Pollux and Maximus of Tyre indicate that this was still the case in Gaius' time. In addition to finding the Homeric lines in one of his immediate juristic sources, then, this last point may go a long way to explain why Gaius included the reference and the lines themselves in his *Institutes*. It made perfect sense for a second-century author and his audience to have this antiquarian commonplace in a legal-antiquarian discussion of barter and sale.

### 3. Servius, his audience, and the authority of Gaius

The preceding section reviewed the wide proliferation of the Homeric scenes as antiquarian evidence about trade. In light of what we have seen, the question as to why Servius credited specifically Gaius as his source becomes all the more pressing. We should recall in this connection that Gaius does not claim to have discovered the Homeric evidence himself, nor does he use it to support a claim of his own or an argument he explicitly subscribes to. In short, Gaius' text gives no impression that he in any sense 'owns' the quotation. In addition, it is crucial to keep in mind that the episodes' association with barter was not simply wide, but that it was prominent in the type of educational material that Servius (and his lineage) used extensively as repositories of knowledge in compiling their commentaries. On the other hand, works on Roman law, by virtue of being more specialist on a

<sup>34</sup> See for example J.F. HEALY, *Pliny the Elder on Science and Technology*, Oxford 1999, 42-62, also on the problems of establishing Pliny's uncredited sources. *Nat.* 1 gives lists of sources for each book, but no juristic text is mentioned for book 33 (1.79-80). As NICOLET, *Pline* cit. (nt. 10), 138 points out, Pliny's several citations of Sabinus only reference his antiquarian collections, not his works on valid law.

<sup>35</sup> See also Max. Tyr. 32.5 and 35.3 (on the Glaucus episode as the prototypical bad deal), with the relevant notes of M. TRAPP, *The Philosophical Orations of Maximus of Tyre*, Oxford 1997; cf. also Gell. 2.23.6 (*pretio*).

<sup>36</sup> NICOLET, *Pline* cit. (nt. 10), 138 finds the idea attractive that Pliny read Sabinus but is unaware of the wider circulation of the episodes.

subject not immediately connected with poetry, must have been a much less obvious choice to turn to when searching for useful material. How, then, can we account for Servius' reference to Gaius? I will address this question in several steps.

For starters, the phrasing of the lemma in Servius does not necessarily indicate that Gaius is the only source for the information the note provides. While the element *quod et Gaius* invokes Gaius' support for the explanation Servius just presented in his own voice, the formulation with *et* leaves open whether Gaius is supposed to be the only authority, or whether he is singled out as the foremost authority (i.e. among others) that comes to mind in relation to barter, also in an antiquarian context.<sup>37</sup> The Gaius reference, therefore, need not imply that Servius did not know the Homeric scholia and commentaries, a point much debated in modern scholarship though in the end hard to dismiss altogether.<sup>38</sup> But the text Servius was commenting on was not the *Iliad*, which makes it unlikely that he was constantly copying off the Homeric scholia to flesh out his commentary. It seems instead that the passage in the *Georgics* called for a note about barter; and while this might already have activated the Homeric connection, the note then somehow needed backing up from an authority on trade, barter, and sale. The specific name that was triggered in this connection was Gaius rather than more indiscriminate educational material (such as the Homeric scholia). Moreover, it is very much possible that Servius' gloss of *magno mutantur* in terms of an *ingens pretium* helped spark a juristic association, given that *pretium* is a key term in the juristic discussions reviewed above.<sup>39</sup> The name that came to Servius' mind was that of Gaius.<sup>40</sup> From a more audience-oriented perspective, the point may be reformulated as follows: Servius may have wanted to make an explicit reference to the kind of authoritative source on topic that his audience would be familiar with, whether intimately from personal reading experience or simply by reputation. In the context of the Roman classroom, dropping Gaius' name may be understood as exposing students to the name and expertise of an author they might study in more detail later in their educational careers. Along the lines of an argument made by Racine, Servius would thus prime students from a young age to associate Gaius with expertise in economics and matters of law.<sup>41</sup>

Needless to say, the inference that Gaius was apparently an authority in Servius' days remains problematic as long as it is based on Servius' statement alone, not least since it involves contextualising a piece of evidence from that very piece of evidence itself. The

<sup>37</sup> Cf. D*Serv. Aen.* 11.51; *Serv. Aen.* 6.741; D*Serv. Aen.* 6.21. Also: *Serv. Aen.* 11.267, *georg.* 2.342.

<sup>38</sup> Different assessments in FARRELL, *Servius* cit. (nt. 1); RACINE, *Servius' Greek Lessons* cit. (nt. 3); MALTBY, *Homer* cit. (nt. 30), 314.

<sup>39</sup> FARRELL, *Servius* cit. (nt. 1), 123-125 explores insightfully how Servius may have been prompted to add certain notes.

<sup>40</sup> Such a scenario would suggest reasonable familiarity with Gaius' passage on Servius' part.

<sup>41</sup> RACINE, *Servius' Greek Lessons* cit. (nt. 3), 57-58, arguing that Servius invokes Herodotus not so much because students knew or could check the text but rather to encourage the association of Herodotus' name with Greek toponyms and mythographical material.

inference thus needs more, independent support to have a claim to being persuasive. How, then, are we to contextualise and substantiate Gaius' authority in the later fourth/early fifth century? In this connection, the most important development from a socio-political point of view is probably the rise of a bureaucratic class in the Late Roman Empire, which is traditionally taken to have resulted from (or to have been intensified by) the administrative reforms of Diocletian and Constantine.<sup>42</sup> Evidence from the East indicates that over the course of the fourth century recruitment for the administration focused increasingly on individuals with some legal education.<sup>43</sup> For what it is worth, the so-called *Expositio totius mundi et gentium*, which probably reflects a fourth-century original, tells us that graduates from the famous law school of Berytus spread across the Empire to man the administrative apparatus (25).<sup>44</sup> From the perspective of the individual, the material and immaterial benefits that came with bureaucratic positions must have made these attractive, and it explains why people increasingly sought training in Roman law.<sup>45</sup> Thus the fourth-century author Libanius complains extensively that so many of his students turned to law instead of staying on for more rhetorical education. Libanius is well known for engaging in caustic polemics against the very idea of studying of law as opposed to oratory, an old rhetorical trope, yet we also hear repeatedly that law may be a very good career choice.<sup>46</sup> The evidence for the West is much more problematic, but Libanius' use of Berytus and Rome as a shorthand for legal education suggests that Rome also had (at least one) law school that attracted hordes of students from all over the Empire.<sup>47</sup> It is also possible that teachers of rhetoric

<sup>42</sup> See first and foremost C.M. KELLY, *Emperors, Government and Bureaucracy*, in *CAH*<sup>2</sup> 13 (1998) 162-175, with further references. Although different reconstructions and chronologies are possible, the patchy evidence indicates that existing offices were reformed and that many new offices were created, increasing the number of posts to be filled. KELLY, *Emperors* cit., 163 with nt. 132 cites various estimates of the number of bureaucrats. See also C.M. KELLY, *Ruling the Later Roman Empire*, Cambridge (Mass.) 2004; E. LO CASCIO, *The New State of Diocletian and Constantine: From the Tetrarchy to the Reunification of the Empire*, in *CAH*<sup>2</sup> 12 (2005) 170-183, esp. 172-173 (esp. nt. 6); cf. R.S. BAGNALL, *Egypt in Late Antiquity*, Princeton 1996, 66. Still relevant is A.H.M. JONES, *The Later Roman Empire, 284-602: A Social, Economic, and Administrative Survey I*, Oxford 1964, 366-410, 563-606. An ancient source linking an explosion of officials with Diocletian is Lact. *mort. pers.* 7.3-4.

<sup>43</sup> See J.H.W.G. LIEBESCHUETZ, *Antioch: City and Imperial Administration in the Later Roman Empire*, Oxford 1972, 246-248 with the (patchy) evidence.

<sup>44</sup> For a sixth-century expression of the same idea of law graduates running the Empire, see *Const. Omnem* 11.

<sup>45</sup> See KELLY, *Emperors* cit. (nt. 42) and *Ruling* cit. (nt. 42) on the benefits in terms of monetary rewards and upward mobility. For an evocative illustration, see the hypothetical quantification of pay rates made at BAGNALL, *Egypt* cit. (nt. 42), 66.

<sup>46</sup> E.g. Lib. *or.* 2.44, 48.22-29 (using Rome and Berytus as metonymies for their law schools); see on Libanius first and foremost R. CRIBIORE, *The School of Libanius in Late Antique Antioch*, Princeton 2007, 211-212 and K. MCNAMEE, *Another Chapter in the History of Scholia*, in *CQ* 48/1 (1998) 269-288, esp. 272-273, 269-270 (with wider context as well).

<sup>47</sup> For Libanius, see my previous nt. The existence of a law school in Rome in the fourth century has been plausibly posited on the argument that Diocletian and successors must have facilitated the legal training called for by their



offered some very rudimentary legal instruction, for which a textbook such as that of Gaius must have been useful.<sup>48</sup> While this view is bound to remain controversial due to problematic evidence, this may be the sort of setting that Jerome has in mind when reminiscing about his training in forensic oratory: the considerable legal knowledge we find throughout his oeuvre indicates that his education must have included at least some basic legal training.<sup>49</sup> All this suggests that legal education was a growth market in the fourth century.

With regard to the question of Gaius' emerging status as an authority, two corollaries are worth spelling out in particular. On the one hand, the increasing turn to legal education must have created a niche for textbooks such as Gaius' *Institutes*. On the other hand, these developments are likely to have projected law into an ever more mainstream place in the world of Roman education, thus also turning legal authors such as Gaius more into household names. I would argue that it is no coincidence that by the late fourth and early fifth centuries we witness the first small boom of references to Gaius. The most obvious and extensive example is the so-called *Collatio legum Mosaicarum et Romanarum*, whose composition is conventionally placed at Rome in the window 390-438 CE.<sup>50</sup> Furthermore, it seems quite clear that the *Fragmenta Augustodunensia* are the remains of lecture material based on Gaius' *Institutes*. Now, apart from the question whether the fourth or fifth-century single ms. is the 'original' or transmits a pre-existing text,<sup>51</sup> the choice to compose/copy the work indicates that Gaius had a place in an educational context at this time.<sup>52</sup> Finally, while both the *Collatio* and the *Fragmenta Augustodunensia* display great

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administrative reforms. However, the evidence is extremely thin. A selection: *Vat. fragm.* 204 (Ulpian quoting Caracalla) indicates that youngsters came to Rome to study law already before Diocletian; *CTh.* 14.9.1 (370 CE) suggests students flooded Rome (though without specifically mentioning law); *Aug. conf.* 6.8.13 reports Alypius studied rhetoric in Carthage and law in Rome (cf. Constantius *vita Germ.* 1); *CIL* VI 31992 (427 CE) commemorates a law teacher from Rome born around 365. See D. LIEBS, *Roman Law*, in *CAH*<sup>2</sup> 14 (2001) 238-259, esp. 253.

<sup>48</sup> The *Fragmenta Augustodunensia* may have been used to give elementary legal instruction on the basis of Gaius' *Institutes* to students of rhetoric. On the work, see J.D. RODRÍGUEZ MARTÍN, *Gayo a través de los Fragmenta Augustodunensia: cuestiones exegeticas*, this volume, 531-564, and R. FERRI, *Teaching Roman Law in an Ancient Western School*, this volume, 565-576. For Quintilian, the ideal orator has knowledge of the law (*inst.* 12.3). On the detailed legal knowledge behind the pseudo-Quintilianic declamations, see D. MANTOVANI, *I giuristi, il retore e le api. Ius controversum e natura nella Declamatio maior XIII*, in D. MANTOVANI - A. SCHIAVONE (a c. di), *Testi e problemi del giusnaturalismo romano*, Pavia 2007, 323-385.

<sup>49</sup> E.g. *Hier. epist.* 52.1.2; *Apol.* 1.30; in *Gal.* 2.11. See J.N.D. KELLY, *Jerome: His Life, Writings and Controversies*, London 1975, 14-16. Jerome's references to detailed points of law are collected by G. VIOLARDO, *Il pensiero giuridico di San Girolamo*, Milano 1937.

<sup>50</sup> See R.M. FRAKES, *Compiling the Collatio Legum Mosaicarum et Romanarum in Late Antiquity*, Oxford 2011, 35-65 as a starting-point. The main alternative dating (early years of Constantine) assumes problematically that the work is (extensively) interpolated.

<sup>51</sup> See RODRÍGUEZ MARTÍN, *Gayo* cit. (nt. 48); FERRI, *Teaching Roman Law* cit. (nt. 48); NELSON-DAVID, *Überlieferung* cit. (nt. 7), 96-104.

<sup>52</sup> Even more speculative (though not implausible) is the suggestion that the *Liber Gai*, an epitome of the *Institutes* appended to the sixth-century *Lex Romana Visigothorum*, was in fact largely produced around 400

interest in and familiarity with Roman legal texts, probably even more telling about the spread of Gaius' reputation is a reference we can glimpse in a less specialist educational text. Thus the commentary of Ps.-Asconius on Cicero's *Verrines*, which should be dated to the late fourth or early fifth century, quotes Gaius' *Institutes* 4.15 in order to elucidate a point of law brought up by *Verrines* 2.1.26.<sup>53</sup> Apparently, then, the anonymous commentator turned to Gaius when resolving the exegetical question before him. All these cases point to Gaius' place among the foremost authorities on law by the late fourth and early fifth centuries, which was eventually recognised by the Law of Citations of 426 (CTh. 1.4.3).<sup>54</sup>

If the above indicates that Gaius' star was rising in a world in which legal education was expanding, this is of course not to say that Gaius' *Institutes* was the only textbook on the market that could be used in legal instruction or for looking up the basic details of legal doctrine. For example, we can observe traces of a similar usage of Ulpian's *Institutes* for the later fourth and early fifth centuries.<sup>55</sup> In this connection, we should note in particular that Servius (or his sources) appear to have mined juristic works other than Gaius' for legal and legal-antiquarian information too, even for material that could also be found in Gaius. It has for instance been pointed out that Servius' characterisation of *coemptio* as a reciprocal sale between the spouses (*georg.* 1.31) bears more similarity to the account in Ulpian's *Institutes* than that in Gaius',<sup>56</sup> who emphasises the groom's act of purchasing (1.113).<sup>57</sup>

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CE rather than by the Visigothic compilers. This would underscore the importance of Gaius in legal teaching in the West in our period. On this very complicated issue, see first and foremost D. MANTOVANI, *Sul Liber Gai. Trasmissione, forma, contenuti e storia degli studi*, this volume, 577-638.

<sup>53</sup> The commentary is transmitted along with those of Asconius Pedianus (first century CE). J.N. MADVIG, *De Q. Asconii Pediani et aliorum veterum interpretum in Ciceronis orationes commentariis disputatio critica*, Hauniae 1828, 134-142 already established that the *Verrines* commentary must be much later, arguing for the fifth century.

<sup>54</sup> Further references to Gaius in this era have been proposed by Huschke and Honoré, though on problematic evidence. PH.E. HUSCHKE, *Iurisprudentiae anteiustinianae quae supersunt*, Lipsiae 1861<sup>1</sup>, 309 emends the grammarian Diomedes' crediting of a rare word *apud Cavium* into *apud Gaium*, even though the mss. give no indication the text is corrupt and a reference to the etymologist Gavius of Quint. *inst.* 1.6.36 (Gavius Bassus?) is plausible. A.M. HONORÉ, *Scriptor Historiae Augustae*, in *JRS* 77 (1987) 156-176, esp. 168 holds that the *lex Caninia* mentioned at *Hist. Aug. Tac.* 10.7 must come from Gai. 1.42; yet for example *Tit. Ulp.* 1.24 provides the same information. The further suggestion that Ausonius at *Griph.* 63-64 relied on Gai. 4.143-155 may be correct but cannot be proven.

<sup>55</sup> Quoted several times in the *Collatio* (i.e. more frequently than Gaius). In addition, fragments of a fifth-century parchment codex, probably produced in Southern Italy, can with certainty be ascribed to the work (Wien, Österreichische Nationalbibliothek, Vindob. L 1b = MP<sup>3</sup> 2959 = LDAB 4136 = *CLA* 10.1471); see S. AMMIRATI, *Sul libro latino antico: ricerche bibliologiche e paleografiche*, Pisa 2015, 79, 104, 109.

<sup>56</sup> The passage from Ulpian is preserved, perhaps in paraphrase, by Boeth. *in top. Cic.* 2.3.14.

<sup>57</sup> NELSON-DAVID, *Überlieferung* cit. (nt. 7), 146-148. The corrupted text in Gaius is least intrusively fixed along the lines of Kübler and Krüger; Nelson's speculation lacks contextual support. In any case, Servius' phraseology seems closer to Ulpian's (note *invicem*). Yet matters are more complicated. Invoking Varro, Nonius Marcellus (fl. 390s?) claims *coemptio* is a ritual purchase of the groom by the bride, the exact opposite it seems

The obvious explanation here is that Servius or his source drew from Ulpian or his lineage. Another case is Servius' note on the *societas ercto non cito* (at *Aen.* 8.642), which he credits to the commentary of Donatus. At present, only two discussions of this antiquarian institute survive that predate Donatus', namely those of Gaius (3.154<sup>a-b</sup>) and Gellius (1.9.12). Yet while Servius cites both authors by name in his commentaries, and while Donatus may perfectly well have known their works too, the idiosyncrasies in the lemma's phrasing in Servius-Donatus do not allow us to establish whether it ultimately goes back to either Gellius or Gaius or perhaps a third source. In short, then, the fame of Gaius' *Institutes* should not make us forget that there were many legal textbooks in circulation in the fourth and early fifth-century Roman world. The point about Gellius underscores that legal-antiquarian knowledge was also transmitted through miscellanies with wider cultural interests.

#### 4. Conclusion

All in all, then, the seemingly offhand remark of Servius in his *Georgics* commentary (at 3.306-307) is of particular value for charting the early reception of Gaius. First, it simply takes for granted that the bare name of Gaius is sufficiently obvious, without further specification and without any indication of the title of his work. In addition, it indicates that for Servius and his audience Gaius is a foremost authority on a topic such as trade, barter, and sale; for even though it had become a commonplace to adduce the Homeric passages as evidence for an antiquarian point about barter in the Heroic age, it was, of all authors featuring the Iliadic episodes, Gaius who was selected as the appropriate authority here. This only makes sense in a world in which Gaius and his *Institutes* had become a staple of elite education.

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of Gaius (p. 852 L., s.v. *nubentes*). Nonius then quotes *georg.* 1.31, the very line Servius' note is attached to. This suggests *emat* at *georg.* 1.31 had long had a note taking it as a *coemptio* (not universally accepted by modern commentaries), which was then fleshed out using different authorities. Note that DServ. includes further background info and jargon presently only found in Gaius, which could (but need not) mean the note combines material from several legal textbooks.